



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Universal Service Requirements

Provision of Access at a Fixed Location (AFL USO)

Response to Consultation and Decision

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An Coimisiún um Rialáil Cumarsáide

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Content

Section	Page
1 Executive Summary	6
1.1 Background	6
1.2 AFL USO Extant Consultation	7
1.3 Summary of this Decision	8
1.4 Quality of Service.....	10
1.4.1 eir’s QoS statements – absent AFL USO	11
1.4.2 Quality of Service – ComReg’s approach.....	11
1.5 Response to Extant Consultation and Decision.....	13
2 Introduction	14
2.1 Regulation of universal service in the State.....	14
2.1.1 European Electronic Communications Code	16
2.1.1.1 Broadband – the NBP, Commercial Rollout and Universal Service	17
2.1.2 Prevailing national legislation	19
2.1.2.1 Access and voice services at a fixed location (“AFL”) during the Transition Period 20	
2.1.2.2 QoS.....	23
2.1.3 Universal Service Costing and Funding.....	25
2.2 Submissions to Extant Consultation	26
2.3 Submissions of the current USP to our Extant Consultation.....	27
2.3.1 The Consultation Process.....	27
2.3.2 Expressions of Interest	31
2.3.3 Justification for an AFL USO	34
2.3.4 Consideration of the need for an AFL USO	37
2.3.5 Quality of Service (QoS).....	38
3 The need for an AFL USO	40
3.1 Our Decision.....	40
3.2 Reasons for Our Decision.....	40
3.3 Summary the Extant Consultation 21/51	42
3.3.1 Overview of AFL related market trends	42
3.3.1.1 Relevant supply side trends	42

3.3.1.2	Relevant supply side trends – Respondents’ Submissions	44
3.3.1.3	Relevant supply side trends – ComReg’s Response	46
3.3.1.4	Relevant demand side trends.....	56
3.3.1.5	Relevant demand side trends – Respondents’ Submissions	57
3.3.1.6	Relevant demand side trends – ComReg’s Response	58
3.3.1.7	Other relevant demand side trend factors – Respondents’ Submissions ...	62
3.3.1.8	Other relevant demand side trend factors – ComReg’s Response	62
3.3.2	Summary – AFL related market trends	63
3.4	Need for AFL USO.....	63
3.5	The need for an AFL USO, post 30 June 2021 – Respondents’ Submissions..	66
3.5.1	The need for an AFL USO, post 30 June 2021 – ComReg’s Response	67
4	Reasonable requests	69
4.1	Our Decision	69
4.2	Reasons for Our Decision.....	72
4.2.1	Alternative Infrastructure.....	74
4.2.2	Equivalent Service	75
4.2.3	USP Obligations	77
4.2.4	End-User Requests	79
4.3	Summary of the Extant Consultation 21/51: our preliminary views, respondents’ submissions, and our responses	80
4.4	Reasonable access request process – Respondents’ Submissions	82
4.5	Reasonable access request process – ComReg’s Response	82
4.6	Reasonable access request threshold levels – Respondents’ Submissions....	83
4.7	Reasonable access request threshold levels – ComReg’s response	85
5	Functional Internet Access	87
5.1	Our Decision	88
5.2	Reasons for Our Decision.....	88
5.3	Retain a minimum data rate of 28.8kbit/s – Respondents’ Submissions	91
5.4	Retain a minimum data rate of 28.8kbit/s – ComReg’s Response.....	92
5.5	USO FIA requirements – Respondents’ views.....	95
5.6	USO FIA Requirements – ComReg’s Response	96
6	Affordability, control of expenditure measures	98
6.1	Our Decision	99

6.2	Reasons for Our Decision.....	100
6.3	Summary of Pre-Existing Obligations	104
6.4	Summary of affordability issues raised in the Extant Consultation 21/51.....	105
6.4.1	Geographical averaging.....	105
6.4.1.1	Geographical Averaging – Respondent’s Submissions.....	106
6.4.1.2	Geographical Averaging – ComReg’s response	107
6.4.2	Tariff options	109
6.4.2.1	Tariff Options – Respondents’ Submissions.....	110
6.4.2.2	Tariff Options – ComReg’s Response.....	111
6.4.3	Control of expenditure measures.....	114
6.4.3.1	Disconnections.....	115
6.4.3.2	Phased Payment of Connection Fees.....	115
6.4.3.3	Control of expenditure measures– Respondents’ Submissions	116
6.4.3.4	Control of expenditure measures– ComReg’s response.....	116
6.5	QoS	117
6.5.1	Quality of Service (QoS) – Respondents’ Submissions.....	118
6.5.2	Quality of Service (QoS) – ComReg’s Response	119
7	Designation of a Universal Service Provider	121
7.1	Our Decision.....	121
7.2	Reasons for Our Decision.....	122
7.3	Expressions of interest	125
7.4	Expressions of interest – Respondents’ submissions.....	126
7.5	Expressions of interest – ComReg’s response	127
7.6	Absent expressions of interest eir is best placed to continue to be the USP for AFL – Respondents’ Submissions.....	131
7.7	eir is best placed to continue to be the USP for AFL (absent expressions of interest) – ComReg’s Response.....	132
7.8	Designation of Universal Service Provider: Geographical Scope – Respondents’ Submissions	133
7.9	Designation of Universal Service Provider: Geographical Scope – ComReg’s Response	133
7.10	Designation of Universal Service Provider: Duration – Respondents’ Submissions	137
7.11	Designation of Universal Service Provider: Duration – ComReg’s response..	138

8	Regulatory Impact Assessment (RIA)	140
8.1	Introduction.....	140
8.2	Extant Consultation 21/51.....	142
8.3	Draft RIA – Respondents’ Submissions.....	143
8.4	Draft RIA – ComReg’s Response	144
8.5	Final RIA.....	147
8.6	Step 1 – Describe the policy issue and identify the objectives.....	147
8.7	Step 2 – Identify and Describe the Regulatory Options	149
8.7.1	Option 1: Maintain an AFL USO Obligation	149
8.7.1.1	Functional Internet Access.....	150
8.7.1.2	Reasonableness of requests.....	151
8.7.1.3	Affordability (including GAP)	152
8.7.1.4	Control of expenditure.....	153
8.7.2	Option 2: Remove an AFL USO Obligation	153
8.8	Steps 3 and 4 – Determine the impacts on stakeholders and competition	154
8.9	Step 5 – Assess the impacts and choose the best option.....	161
8.10	Functional internet access (FIA).....	162
8.11	Reasonableness of requests	164
8.12	Affordability including GAP	166
8.13	Control of expenditure	166
9	Decision Instrument	168
9.1	Our Decision.....	168
9.2	Reasons for the decision	168
9.3	Draft Decision Instrument: Respondents’ Submissions	168
9.4	Draft Decision Instrument: ComReg’s response	169
10	Decision Instrument	170
	Annex 1– D05/16 as amended	173
	Annex 2: Legal Basis	184
	Annex 3: The Code	185

1 Executive Summary

1.1 Background

- 1 The Universal Service Regulations 2011¹ provide that a designated undertaking shall satisfy:
 - any reasonable request for the provision at a fixed location connection to the public communications network;
 - any reasonable request for the provision of a publicly available telephone service (“**PATS**”) over the network connection 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 prevailing technologies used by the majority of subscribers and to technological feasibility.
- 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**”²) for a period of five years, from 29 July 2016, which designation remained in full force and effect until 30 June 2021, unless amended by ComReg.
- 3 In May 2021, ComReg issued a Consultation and draft Decision document entitled, Universal Service Requirements Provision of access at a fixed location (AFL USO), Consultation and draft Decision, (ComReg 21/51) (the “**Extant Consultation**”).
- 4 In June 2021, ComReg sought interested parties’ views on its proposal for an interim designation of eir as the USP for AFL USO for the period 1 July 2021 to 30 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 (the “**Interim Consultation**”).

¹ 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”).

² Access at a fixed location universal service obligation.

- 5 On 30 June 2021 ComReg issued its Response to Consultation and Decision³ regarding the interim designation (ComReg D05/21). The decision noted ComReg’s preliminary view that the USO needs to be maintained beyond 30 June 2021 in order to discharge EU and national law obligations to achieve universal service as set out in the Extant Consultation, which supports the need to avoid a hiatus in AFL USO post 30 June 2021.
- 6 ComReg D05/21⁴ amended ComReg D05/16 to extend eir’s designation period until 30 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 (Extant Consultation), whichever is the earlier. ComReg D05/21 therefore continues all the AFL USO as set out in D05/16 and references to D05/16 in this response to Consultation and Decision shall include references to D05/16 as amended, where appropriate.

1.2 AFL USO Extant Consultation

- 7 The Extant Consultation concerns the basic right of end-users to have access to a minimum set of telecommunications services, and to the legal obligation on ComReg to ensure, that any reasonable request for connection at a fixed location to the public communications network and for the provision of a publicly available telephone service over the connection, are met by at least one undertaking.
- 8 In keeping with Regulation 12(3)⁵, the Extant Consultation set out the measures proposed, the basis for them, and invited comment.
- 9 ComReg set out that it was required to consider whether an AFL USO is required post June 2021, and if so, for how long, what the appropriate obligations should be, and who should be the USP. This consultation document set out ComReg’s preliminary views on these matters and the associated rationale. ComReg invited expressions of interest from any undertaking who wished to be considered to be designated and invited the views of interested parties.
- 10 In the Extant Consultation, ComReg set out its preliminary views based on the evidence available and bringing to bear its experience in this area, including that:
- 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

³ ComReg D05/21, Document No. 21/71 “Universal Service Requirements Provision of Access at a Fixed Location (AFL USO: Interim designation)”, 30 June 2021.

⁴ ComReg D05/21, Document No. 21/71 “Universal Service Requirements Provision of Access at a Fixed Location (AFL USO: Interim designation)”, 30 June 2021.

⁵ Regulation 12 of the Framework Regulations 2011, entitled “Consultation and Transparency”, establishes the general form of consultation to be adopted. Regulation 12(3) provides that before taking a specified measure ‘*the Regulator shall publish the text of the proposed measure, give the reasons for it, including information as to which of the Regulator’s statutory powers gives rise to the measure, and specify the period within which submissions relating to the proposal may be made by interested parties.*’

expressed the preliminary view that there is a continued need for an AFL USO(s) for Ireland post 30 June 2021 (Chapter 4).

- ComReg considered that Quality of Service (“**QoS**”) is an important aspect of AFL. Accordingly, ComReg expressed the view that it is important that the QoS performance is maintained. Therefore, at this time, ComReg stated that it intended to continue to monitor QoS performance for any designated undertaking to publish QoS trends and that it would commence a review on QoS as may be appropriate.
- ComReg expressly communicated that it was considering maintaining the AFL USO and designation for a maximum period of 24 months considering the transition. However, ComReg proposed to keep under review any AFL USO and designation in light of transposition of the Code and developments in the market, including the roll out of the NBP. Specific reference is made to this in the Extant Consultation.

- 11 ComReg then invited expressions of interest from undertakings for this proposed designation. All stakeholders including eir were informed that, in the absence of expressions of interest, it was ComReg’s preliminary view to maintain 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.
- 12 Chapter 3 of the Extant Consultation addressed the AFL related market developments. This analysis informed ComReg’s preliminary views on whether there is a continued need to sustain an AFL USO, for the whole of the State, after 30 June 2021 and the nature of any AFL USO. The chapter examined the relevant market trends, both on the supply and demand side, the competitive dynamic, and the Government’s NBP initiative, that are of relevance to the AFL USO.
- 13 In Chapter 4, ComReg set out in detail its analysis and data relevant to whether there was a need for AFL USO. ComReg considered AFL in the context of the market trends and evolution, identified in Chapter 2, and data in respect of eir’s implementation of the current USO, and the statutory objectives set at national and EU level. ComReg also assessed the counterfactual (absent an AFL USO) to inform ComReg’s preliminary views on whether there is a need for an AFL USO, post 30 June 2021.

1.3 Summary of this Decision

- 14 ComReg has decided that AFL USO needs to be maintained beyond 30 October 2021 in order to discharge EU and national law obligations to achieve universal service as set out in the Extant Consultation.
- 15 In reaching its Decision, ComReg has taken into account the following:

- respondents' submissions to the Extant Consultation,
- the forthcoming expiration of the current designation of eir as USP with AFL USO,
- ComReg's preliminary views and reasoning, Section 13D(1) statutory information requirement data and other data set out in the Extant Consultation. ComReg's preliminary view in the Extant Consultation is that an AFL USO is still required beyond June 2020,
- 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.

- 16 This decision maintains eir's designation and associated measures until 30 June 2023, subject to further amendments to reasonable access requests. The amendments to reasonable access requests are made in response to submissions from eir received in response to the Extant Consultation.
- 17 The existing connections and/or PATS obligations remain. All existing connections⁶ and/or PATS (whether active or not), are deemed to be reasonable and should continue to be supplied, (including in-situ connections). It is envisaged that the copper switch off-process will play a role in the future of such existing copper connections (post this designation period).
- 18 The new connections and/or PATS obligation is now amended. The initial cost threshold of €1,000 is now removed. The automatic USP obligation to supply all reasonable access requests costing under €1,000, irrespective of whether there is an alternative infrastructure and an equivalent service available, is now removed. The USP now has an obligation to supply reasonable access requests where there is no alternative infrastructure and equivalent service available. The further tests and thresholds in the reasonable access request criteria remain unchanged.
- 19 The Equivalent Service definition⁷ is now amended to include voice and broadband services supplied in a bundle, providing the bundle meets certain existing criteria, including affordability. The Bundle definition⁸ has now been added.

⁶ "Existing Connection" means any Connection that is not a New Connection. New Connection means a Connection at any primary location or residence that has never been connected to the PCN (fixed).

⁷ "Equivalent Service" means a Connection and a standalone PATS, or **bundle** [emphasis added], which is equivalent to that prevailing for AFL provided by the USP, with respect to quality of service, Minimum Indoor Availability, and affordability.

⁸ "Bundle" means grouping a fixed voice service and fixed broadband service as a package.

- 20 Where an Equivalent Service is not affordable, or the end-user requests a standalone PATS, such access requests are deemed as reasonable and must be satisfied by the USP, using the least cost technology. The least cost technology is likely be a Fixed Cellular Solution (FCS) where there is no in-situ connection.
- 21 As proposed in the Extant Consultation, ComReg will keep under review any AFL USO and designation in light of transposition of the Code and development in the market, including the roll out of the NBP. Specifically, ComReg proposes to commence a review:
- (i) where changes in market conditions and technological developments are such that ComReg deems it appropriate to do so, or
 - (ii) 6 months after DECC has concluded the transposition of the Code into national law,
- whichever is the earlier.
- 22 On foot of this review, ComReg a new consultation process may be required.
- 23 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).

1.4 Quality of Service

- 24 Consistent with the provisions of the Universal Service Regulations, ComReg's approach to universal service has been to designate an undertaking under Regulation 7, where necessary, to comply with the obligations set out in Regulation 3 and to subsequently, and if ComReg considers it necessary, specify further measures applicable to the designated undertaking as appropriate (for example as allowed under Regulation 3(5) and Regulation 10).
- 25 Regulation 10 of the Universal Service Regulations allows for targets to be set "from time to time", allowing for flexibility and means that ComReg can set or change performance targets over the period of the designation.
- 26 ComReg has previously specified AFL USO QoS requirements by way of decision. The most recent obligation was set out in Decision D02/19 which came to an end on 30 June 2021 and has not been replaced.

1.4.1 eir's QoS statements – absent AFL USO

27 Between July and September 2021 ComReg issued several statutory 13(D)(1) information requirements⁹ to eir, seeking information for the period July 2021 – June 2023, absent any USO QoS obligations on:

- eir's planned QoS performance,
- eir's plan to ensure acceptable QoS levels in all areas, and
- the remedial action eir will take if QoS targets/standard are not being met.

28 eir in response to ComReg's statutory 13(D)(1) information requirement on its planned performance, absent any QoS obligations stated:

"... we would expect the QoS performance to be at a similar level to recent years when considered at an aggregate annual level. This could perhaps be considered using a two or three year average of past performance. ComReg already has information on past performance"

29 eir in response ComReg's statutory 13(D)(1) information requirement on its plan to ensure acceptable QoS levels in all areas stated:

"open eir will continue with its current approach which is illustrated by performance in recent years"

30 eir in response to ComReg's statutory 13(D)(1) information requirement on the remedial action eir will take if QoS targets/standard are not being met stated:

"...open eir will continue to operate as currently, remediating issues as they arise in the copper network that impact service availability. open eir has no plans to amend existing working practices in a manner that would negatively impact on quality of service on the copper network. eir's capital investment is efficiently focussed on developing a full fibre access network which will replace the copper network during this decade."

1.4.2 Quality of Service – ComReg's approach

31 In line with our regulatory functions ComReg will monitor eir's QoS performance on an ongoing basis. ComReg considers that QoS is an important aspect of AFL and it is important that the QoS performance is maintained.

⁹ 26 July 2021 and 29 September 2021.

- 32 Quality of service targets are determined separately to the decision to designate and are not automatically imposed by such a decision. A consequence of designation is that such targets can be set for a USP. ComReg may in addition specify the regularity, content, form, and manner of information to be published. Consequences in terms of compliance action may arise if the parameters set in any QoS determination are not met by the USP. The overall aim is to ensure that end-users receive universal services at an appropriate quality, for example in relation to outages, repairs, and installations, which may not be provided, absent a QoS USO.
- 33 ComReg understands from the statements made by eir that eir's QoS performance will be maintained at a similar level to that delivered by eir heretofore in the context of the targets previously in place under D02/19.
- 34 In line with our Regulatory functions ComReg will monitor eir's QoS performance using its statutory information gathering powers to obtain information as ComReg considers necessary (including reports, processes, and plans) to carry out its functions, during the AFL designation period. ComReg will continue to publish QoS trends. ComReg may separately, from time to time, request other relevant reports from eir.
- 35 ComReg may commence a review in respect of establishing a mandated AFL USO QoS obligation, during this designation period, where ComReg is of the view that eir's actual QoS performance outputs deteriorate to an inappropriate level.
- 36 ComReg cannot fetter its discretion and there may be other circumstances which arise where ComReg deems it appropriate to intervene (e.g., inter alia, changes in market conditions; changes in technological developments; investment, activities or events that negatively impact on quality of service on eir's copper network; where ComReg has reason to believe that eir's QoS performance outputs would deteriorate to an inappropriate level).
- 37 Any consideration of a regulatory measure in relation to QoS will follow normal consultation procedures with related rights for stakeholders.

1.5 Response to Extant Consultation and Decision

38 ComReg has now carefully considered the submissions received in response to the Extant Consultation and Draft Decision. This Response to Consultation and Decision sets out our final view that there is a need for an AFL USO post 30 October 2021.

39 It also sets out our decision in relation to reasonable access requests, and affordability aspects including the retention of Geographically Averaged Pricing (“GAP”) and retention of the specification of a minimum bitrate in respect of Functional Internet Access (“**FIA**”).

40 The document is structured as follows:

Chapter 2 - Introduction

Chapter 3 - The continued need for AFL USO

Chapter 4 - Reasonable Requests

Chapter 5 - Functional Internet Access

Chapter 6 - Affordability, Control of Expenditure measures, and QoS

Chapter 7 - Designation of a Universal Service Provider

Chapter 8 - Regulatory Impact Assessment (RIA)

Chapter 9 - Decision Instrument

2 Introduction

- 41 This chapter provides a brief overview of the regulation of universal service for electronic communications in the State, submissions to the Extant Consultation, and the chapter also addresses specific complaints made by eir in relation to the consultation process engaged by ComReg.
- 42 While ALTO, BT and Sky also submitted responses to the Extant Consultation they did not raise specific issues in relation to the consultation process engaged by ComReg.

2.1 Regulation of universal service in the State

- 43 Universal service is governed primarily by the European Communities (Electronic Communications Networks and Services) (Universal Service and Users¹ Rights) Regulations 2011 S.I. No. 337/2011, (hereinafter "**the Universal Services Regulations 2011**") which transposes Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services ("**the Universal Service Directive**"). The Universal Service Directive has been replaced by Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 (referred to as "**the Code**" and described in more detail below)¹⁰.
- 44 Universal service is a safety net to ensure that a set of at least the minimum services is available to all end-users and at an affordable price, where the risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society.
- 45 Universal service ensures the provision of basic telecommunication services throughout the State, particularly in areas of the State (such as rural or sparsely populated areas) where the market might otherwise not deliver these services. Thus, universal service contributes to social and economic inclusiveness and cohesiveness in society.

¹⁰ The European Electronic Communications Code - EECC Directive (EU) 2018/1972.

- 46 In respect of electronic communications networks, the obligation to ensure universal service was imposed on Member States at European level through the Universal Service Directive, which required under Article 3(1) that Member States shall ensure that the services set out therein are made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price. These essential features are maintained and are provided for in the Code.
- 47 The Commission for Communications Regulation (“ComReg”) is the independent regulator for the electronic communications sector in Ireland. ComReg was established by section 6 of the Communications Regulation Act 2002 (the “Act of 2002”).
- 48 ComReg’s key statutory objectives are to:
- i. Promote competition.
 - ii. Contribute to the development of the internal market.
 - iii. Promote the interests of users of electronic communications services (“ECS”) in Ireland, as well as within the European Union.
- 49 Among ComReg's objectives, as set out in section 12 of the Act of 2002, is the promotion of the interests of users within the community, in particular *"ensuring that all users have access to a universal service" and "addressing the needs of specific social groups, in particular disabled users."*
- 50 ComReg is therefore responsible for ensuring that end-users in Ireland can access basic telecommunications services, thus bringing benefits to those who might otherwise be at risk of isolation, for instance those with low-income or special social needs, including older people, end-users with disabilities and consumers living in rural or geographically isolated areas for whom the cost of gaining access to services might otherwise be prohibitive. If end-users would not be served in a competitive market, reasonable requests for access by those end-users must be met.

- 51 Ensuring universal service, i.e., the provision of a defined minimum set of services to all end-users at an affordable price, may involve requiring the provision of some services to some end-users that would not otherwise be served under normal market conditions. This arises from the concern that, with the operation of market forces alone, operators may not serve customers whom they view as uneconomic.
- 52 ComReg has a statutory mandate to ensure that all reasonable requests to access at a fixed location, for a connection and voice services, whether standalone or in a bundle, are met by at least one undertaking.
- 53 This mandate derives from EU legislation, and the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (the "**Universal Service Regulations 2011**"). We are cognisant that the Code will replace the Universal Service Regulations 2011 upon transposition into Irish law.
- 54 Apart from the AFL USO there is no other mechanism, programme, or scheme in place to ensure that basic telephony at a fixed location, is provided to everyone who requires it and who cannot obtain it under normal market conditions.

2.1.1 European Electronic Communications Code

- 55 The Code was enacted on 20 December 2018, with a transposition deadline of 21 December 2020. It modernises and reforms the existing telecommunications regulatory framework in Ireland. The Department of Environment, Climate and Communications ("**DECC**") is responsible for the transposition of the Code into national law, and this is ongoing.
- 56 Under the Code, Member States are obliged to ensure that all consumers have access at an affordable price to an available adequate broadband internet access service ("**ABB IAS**") and voice communications services at the quality specified in their territories, including the underlying connection, at a fixed location.
- 57 The Code provides that Member States may ensure that AFL and ABB IAS are available through the provision of a USO where this need cannot be ensured under normal commercial circumstances or by other potential public policy tools.
- 58 The Code also provides that end-users may continue to access a voice only service upon request, that is to say a voice service unbundled from other products or services, at an affordable price.

- 59 The transposition of the Code has included extensive and ongoing engagement with relevant key stakeholders, including industry, the Regulator, the Office of the Data Protection Commissioner, other Government Departments, and the European Commission. DECC have held five workshops with stakeholders in relation to the Code and intended to hold a public consultation in Quarter 1 of 2021.
- 60 During the course of its work, the DECC decided in December 2020 to develop primary legislation to transpose the enforcement provisions of the Code. However, it remains the DECC's intention that much of the transposition will still be effected by way of statutory instrument.
- 61 The Department is currently preparing legislation. The Code sets out Member State functions which must be allocated to the relevant national authorities.
- 62 While we await transposition ComReg has liaised with DECC in relation to the transposition of the Universal Service Provisions of the Code, and ComReg understands that the definition of adequate broadband (ABB) and the procedure for the imposition of affordability measures will be progressed following transposition. It is anticipated that ComReg will have a role in implementing USO in relation to ABB, if appropriate.

2.1.1.1 Broadband – the NBP, Commercial Rollout and Universal Service

- 63 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.
- 64 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.
- 65 ComReg recognises that over time, the NBP rollout coupled with committed commercial rollouts will bring high speed broadband to the majority of premises in Ireland.

- 66 The scope of the new universal service is to ensure the availability of adequate broadband internet access service at a fixed location, and of voice communications services, as defined by Article 86 of the Code. Under the Code, any intervention to provide access to adequate broadband internet access service is only appropriate if the Member State has established that access to such services cannot be ensured under normal commercial circumstances), or through the use of other potential public policy tools.
- 67 Once this aspect of the Code is transposed, a universal service for adequate broadband internet access service will therefore act as a safety net ensuring that all Irish citizens will have access to ABB IAS.
- 68 ComReg understands that 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.
- 69 These details will be used by ComReg as key inputs in the performance of its role in respect of any potential need for a USO, where ABB IAS cannot be ensured under normal commercial circumstances or through other public policy tools.
- 70 Following transposition, the need for a Universal Service Obligation (USO) to provide adequate broadband connection and service will be assessed in light of the NBP intervention and the committed commercial deployments, ComReg anticipates however that these commercial and State deployments will not be completed within the next 12 – 24 months.
- 71 In addition to ABB IAS, the Code also provides that when a consumer so requests, the connection, where applicable, may be limited to support voice communications services¹¹. Consumers should not be obliged to access services they do not want, and it should therefore be possible for eligible consumers to restrict, on request, the affordable universal service to voice communications services¹².

¹¹ Article 84(4) of the Code.

¹² Recital 216 of the Code.

- 72 The rollout of high-speed broadband should also facilitate the provision of broadband based fixed voice services (VOB/VoIP) either standalone or in a bundle, on a commercial basis. However, if this is not the case, USO(s) may be required to ensure that voice communication services, including standalone PATS, are provided at an affordable price.
- 73 In respect of voice at fixed location, ComReg expects that as broadband continues to roll out, affordable voice offers (standalone or in a bundle) will be made available to end-users on a commercial basis. Where affordable fixed voice access and services are not provided commercially, a USO may be required.

2.1.2 Prevailing national legislation

- 74 Notwithstanding the anticipated new legislation, European and national legislation still requires ComReg to ensure that reasonable requests for access to basic services including voice service at a fixed location, either standalone or in a bundle, are met by at least one undertaking.
- 75 In the interim, the Universal Service Regulations 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 Universal Service Regulations 2011 to be interpreted to give effect to the Code. In this regard, we note the requirement under the Code for Member States to ensure access to an available ABB IAS and voice communications services at a fixed location at the quality specified in their territories, including the underlying connection, at a fixed location, where this need cannot be ensured under normal commercial circumstances or by other potential public policy tools.
- 76 To this end, Regulation 7 of the Universal Services Regulations 2011 provides that ComReg may designate one or more undertakings, for such period as ComReg specifies, to comply with any or all of a number of specified obligations as set out in the Universal Services Regulations 2011.
- 77 These obligations include the obligation at Regulation 3, which states that a designated undertaking shall satisfy any reasonable request to provide, at a fixed location, connection to a public communications network that is capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional internet access, and for a publicly available telephone service that allows for originating and receiving of national and international calls. This is known as access at a fixed location ("**AFL**").

- 78 Regulation 3(5) provides that ComReg may, with Ministerial consent, specify requirements to be complied with by a designated undertaking in relation to functional internet access, the reasonableness of requests or the terms and conditions upon which a connection is provided. In addition, under Regulation 10(5), ComReg may separately set performance targets for a designated undertaking in respect of certain of its obligations. Any obligations imposed in this way are together known as an AFL Universal Service Obligation ("AFL USO") and the undertaking designated to comply with such obligations is known as the Universal Service Provider ("USP").
- 79 It is therefore ComReg's role to determine whether there is a need for an AFL USO and, if so, to designate a provider or providers as the USP¹³ and define the scope of the AFL USO, as well as specifying other matters, for instance under Regulations 3(5) and 10, if it so chooses.
- 80 Regulation 8 states that ComReg may, in light of national conditions specify, with the consent of the Minister, requirements to be complied with for the purpose of ensuring that consumers are provided with tariff options or packages which depart from those provided under normal commercial conditions, to ensure that those on low incomes or with special social needs are not prevented from accessing the network.

2.1.2.1 Access and voice services at a fixed location ("AFL") during the Transition Period

- 81 In circumstances where the Code has not yet been transposed into national law, ComReg must continue to rely on the Universal Service Regulations 2011 interpreted to give effect to the relevant provisions of the Code. In light of this and having regard to the ongoing transition to high-speed broadband networks, ComReg's focus, during the transition period, and in this response to consultation and decision, is to continue to ensure that voice services at a fixed location are provided in accordance with its obligations to ensure such services under the Universal Service Regulations 2011¹⁴ and under the Code¹⁵.

¹³ Regulation 7 of the Universal Service Regulations 2011.

¹⁴ Regulation 3 of the Universal Service Regulations 2011.

¹⁵ Article 84 of the Code.

- 82 The Universal Service Regulations 2011 places primary responsibility on ComReg, ECS regulator for Ireland, to safeguard and ensure the provision of a minimum set of telecommunications services in the State. We may designate an undertaking, or undertakings, to satisfy any reasonable request to provide, at a fixed location, a connection to the public communications network (“**PCN**”) and a publicly available telephone service over the network connection that allows for originating and receiving of national and international calls.
- 83 As set out above, following transposition, adequate broadband IAS may be specified, and consideration given to the need for associated requirements, however, under the Universal Service Regulations 2011, the connection must be capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional internet access (“**FIA**”)¹⁶.
- 84 We may also impose requirements on a designated undertaking in respect of affordability, control of expenditure, terms, and conditions, and QoS. Any process for consideration of QoS targets may be independent of any designation process. The question as to whether there is a need for the imposition of such measures, is a matter for ComReg, and it is not mandatory, the process for consideration of and imposition of QoS targets, is a separate and independent process which ComReg may undertake.
- 85 Where we designate an undertaking to comply with any such requirements, we refer to the designated undertaking as the universal service provider. We refer to the requirements imposed on a USP as the universal service obligation.
- 86 A USP that is designated to provide AFL USO must:
- satisfy any reasonable request to provide at a fixed location connection to a public communications network;
 - satisfy any reasonable request for the provision of a publicly available telephone service over the public communications network which allows for originating and receiving national and international calls; and
 - ensure that the connection is capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit FIA, bearing in mind the technology used by the majority of subscribers and technological

¹⁶ Regulation 3 of the Universal Service Regulations 2011 and Article 84 of the Code.

feasibility.¹⁷

- 87 The Regulations provide that ComReg may, with the consent of the Minister, specify requirements to be complied with by the designated USP in relation to the reasonableness of requests for connection at a fixed location, associated terms and conditions, FIA¹⁸ and affordability measures including geographical average pricing (“GAP”)¹⁹.
- 88 During the transition period (when alternative fibre networks are being deployed), our objective is to ensure that reasonable requests for access at a fixed location are met, without requiring unnecessary investment in the USP’s legacy copper network and without inhibiting the retirement of that network, once an alternative is available.
- 89 In anticipation of transposition of the Code into national law by the transposition deadline, ComReg commenced review of AFL USO in October 2020, issuing eir and other undertakings with a Section 13D(1) statutory information requirement in December 2020, the purpose of which was to inform the review and consultation on need to continue AFL USO beyond June 2021.
- 90 eir provided an initial response to the Section 13D(1) statutory information requirement on 12 February 2021, and provided the final dataset requested on 31 March 2021, which enabled ComReg to progress its consultation on its proposals for the future of AFL USO in May 2021. ComReg consulted on its proposals for the future of the AFL USO in May 2021.²⁰
- 91 Meanwhile, the designation under D05/16 expired on 30 June 2016. ComReg maintained obligations on eir for a further period, the current designation, under D05/21²¹ which ends on 30th October 2021.
- 92 ComReg must continue to fulfil its statutory objective to ensure that all reasonable requests for AFL are satisfied at an affordable price.

¹⁷ Regulation 3 (1) - (3), Universal Service Regulations.

¹⁸ Regulation 3 (5) (a) of the Universal Service Regulations.

¹⁹ Regulation 8 (3) - (4) of the Universal Service Regulations.

²⁰ ComReg Document No. 21/51 “Universal Service Requirements Provision of Access at a Fixed Location (AFL USO)”, 27 May 2021.

²¹ ComReg D05/21, Document No. 21/71 “Universal Service Requirements Provision of Access at a Fixed Location (AFL USO: Interim designation)”, 30 June 2021.

93 This response to Extant Consultation and Decision concerns the basic right of end-users to have access to a minimum set of telecommunications services, and the legal obligation to ensure that all reasonable requests for connection at a fixed location to the public communications network and/or for the provision of a publicly available telephone service over the connection, are met by at least one undertaking²².

2.1.2.2 QoS

94 In line with our Regulatory functions ComReg will monitor eir's QoS performance on an ongoing basis. ComReg considers that QoS is an important aspect of AFL and it is important that the QoS performance is maintained.

95 Between July and September 2021 ComReg issued several statutory 13(D) (1) information requirements²³ to eir, seeking information for the period July 2021 – June 2023, absent any USO QoS obligations on:

- eir's planned QoS performance,
- eir's plan to ensure acceptable QoS levels in all areas, and
- the remedial action eir will take if QoS targets/standard are not being met.

96 eir in response to ComReg's statutory 13(D) (1) information requirement on its planned performance, absent any QoS obligations stated:

"... we would expect the QoS performance to be at a similar level to recent years when considered at an aggregate annual level. This could perhaps be considered using a two or three year average of past performance. ComReg already has information on past performance".

97 eir in response ComReg's statutory 13(D) (1) information requirement on its plan to ensure acceptable QoS levels in all areas stated:

"open eir will continue with its current approach which is illustrated by performance in recent years"

²² Regulation 7 of the Universal Service Regulations 2011 and Article 86 of the Code.

²³ 26 July 2021 and 29 September 2021.

98 eir in response ComReg's statutory 13(D) (1) information requirement on the remedial action eir will take if QoS targets/standard are not being met stated:

"...open eir will continue to operate as currently, remediating issues as they arise in the copper network that impact service availability. open eir has no plans to amend existing working practices in a manner that would negatively impact on quality of service on the copper network. eir's capital investment is efficiently focussed on developing a full fibre access network which will replace the copper network during this decade."

99 In line with our Regulatory functions ComReg will monitor eir's QoS performance using its statutory information gathering powers to obtain information as ComReg considers necessary (including reports, processes, and plans) to carry out its functions, during the AFL designation period. ComReg will continue to publish QoS trends. ComReg may separately, from time to time, request other relevant reports from eir.

100 ComReg may commence a review in respect of establishing a mandated AFL USO QoS obligation, during this designation period, where ComReg is of the view that eir's actual QoS performance outputs deteriorate to an inappropriate level.

101 ComReg cannot fetter its discretion and there may be other circumstances which arise where ComReg deems it appropriate to intervene (e.g., inter alia, changes in market conditions; changes in technological developments; investment, activities or events that negatively impact on quality of service on eir's copper network; where it is of the view that eir's QoS performance outputs would deteriorate to an inappropriate level).

102 Any consideration of a regulatory measure in relation to QoS will follow normal consultation procedures with related rights for stakeholders.

2.1.3 Universal Service Costing and Funding

- 103 The provision of a universal service may result in the USP(s) providing designated services at a net cost. The Universal Service Regulations 2011²⁴ allow a USP to seek funding for the net costs of meeting the USO, however, funding will only be permitted if it is determined by ComReg that the net cost may represent an unfair burden on the USP. To the extent that it does represent an unfair burden, the net cost of the USO shall be apportioned among providers of electronic communications networks and services.
- 104 Any designation method(s) we adopt must ensure that the obligations are provided in a cost-effective manner. Where a designated undertaking seeks to receive funding for the net costs of meeting its universal service obligation it may submit a written request to the regulator for such funding. In this regard, Decision D04/11 sets out how the net cost for all USOs, will be calculated and how the existence of an unfair burden will be determined. In the event a net cost is deemed to be an unfair burden, the requirement for a sharing mechanism is then triggered.
- 105 We have completed our assessment and determination of each of eir's applications for funding for the 2010 - 2015 periods. Our determinations were that there were positive net costs for the 2010-2015 periods and that these positive net costs did not represent an unfair burden to eir. The decisions of ComReg in respect of funding for the 2010 – 2015 periods and, more specifically, ComReg's unfair burden assessment for those periods have been appealed to the High Court ("the Appeal"). The Appeal is being dealt with in the Commercial Division of the High Court and a question relevant to the determination of the appeal has been referred to the Court of Justice of the European Union.
- 106 We have issued a consultation document in respect of eir's 2015-2016 USO funding application.²⁵ Submissions have been received in response to the consultation and ComReg is considering those submissions.
- 107 ComReg has received no funding applications from eir for financial years 2016-2017; 2017-2018; 2018-2019 and 2019-2020.

²⁴ Regulation 11 "Costing of universal service obligations" and Regulation 12 "Financing of universal service obligations".

²⁵ ComReg Document 21/17, "Assessment of eir's 2015-2016 Universal Service Fund Application: Assessment of the net cost and unfair burden for the period 2015-2016", 12 March 2021.

- 108 eir has notified ComReg of its intention to reserve its position in respect of any further funding applications that become due before the pending appeal of ComReg’s assessments of unfair burden in each of ComReg’s individual 2010-2015 USO funding application decisions (“the Appeal”) in the Commercial Court (including the reference to the Court of Justice of the European Union (“CJEU”), is determined.
- 109 ComReg has issued an Information Notice²⁶ setting out its position in this regard. ComReg has also issued an Information Notice²⁷ in relation to the decision of the Commercial Division of the High Court to refer a question concerning the unfair burden assessment to the Court of Justice of the European Union (the “CJEU”) for a preliminary ruling pursuant to Article 267 of the Treaty on the Functioning of the European Union.

2.2 Submissions to Extant Consultation

- 110 ComReg received four submissions to its Extant Consultation on the future of AFL USO during this transition period. The respondents were
- Alternative Operators in the Communications Market (ALTO)
 - Eircom Ltd. (eir)
 - BT Communications Ireland Ltd. (BT)
 - Sky Ireland (Sky)
- 111 ComReg wishes to thank the four respondents for their submissions. Having considered the views of respondents, this Response to Consultation and Decision sets out our final views.

²⁶ ComReg Information Notice, Document No. 21/44 “Universal Service Fund applications 2018-2019 and 2019 – 2020”.

²⁷ ComReg Information Notice, Document No. 21/50, “Universal Service Funding Applications – 2010 – 2015 Appeal”.

112 A copy of all non-confidential submissions received will be made available on our website and high-level discussion of general views is set out below. However, it is not practical for us to respond to every comment made. This Response to Consultation and Decision summarises the key elements of comments provided, and our views in relation to these. However, it should be noted that all views were considered, and account has been taken of the merits of the views expressed.

2.3 Submissions of the current USP to our Extant Consultation

113 As set out earlier in this chapter, ALTO, BT, and Sky also submitted responses to the Extant Consultation. However, they did not make specific complaints in relation to the consultation process engaged by ComReg.

2.3.1 The Consultation Process

114 In its submission, eir made certain claims in relation to the consultation process engaged by ComReg, which are not accepted by ComReg.

115 eir states that ComReg has:

“conducted the consultation process in accordance with a timetable that is fundamentally flawed, inefficient and has significantly discriminated against eir and its interests... The process ComReg is following is fundamentally flawed....”

“...sought to bounce eir into being designated as the USP through a truncated consultation process with responses due 4 days before the expiry of the current designation on 30th June 2021. This is clearly an unfair process of either deliberate or incompetent design on the part of ComReg... The unduly short timeframe have nullified ComReg’s call for expressions for interest from other telecoms operators, which in turn increases the likelihood of eir being designated the AFL USP....”

116 Regulation 12 of the Framework Regulations 2011, entitled Consultation and Transparency, establishes the general form of consultation to be adopted. Regulation 12(3) provides that before taking a specified measure *“the Regulator shall publish the text of the proposed measure, give the reasons for it, including information as to which of the Regulator’s statutory powers gives rise to the measure, and specific time period within which submissions relating to the proposal may be made by interested parties.”*

- 117 Regulation 12(3) empowers ComReg to specify the period for consultation.
- 118 ComReg is, therefore, required to have formulated and considered the text of the proposed measure. It must set out its reasons and rationale for the measure to interested parties and then invite submissions on the proposal. Thus, at the consultation stage, ComReg must have a preliminary view developed to the point where it presents the text of the measure, and the reasons for the measure being proposed. This facilitates interested parties in providing a focused submission on the measure being considered. This contrasts with consultations, or calls for input, engaged in by other public bodies where interested parties are asked for views on a broad range of (sometimes many) options engaged by an issue. The requirements of Regulation 12(3) do not mean, by definition, that in a consultation ComReg has finalised its position on the measure being proposed, and eir is aware of this given its familiarity with ComReg's consultation procedures.
- 119 ComReg's consultations ensure that relevant facts, and considerations, are identified, which leads to better decision making. Before having a view on a proposed measure, ComReg must have, and publish the reasons for, the measure, supported by the relevant facts. Relevant facts and considerations may also be identified by interested parties. Those parties may have a range of different views, from the measure proposed being not necessary at all to the measure not going far enough or requiring further refinement.
- 120 Following consultation, the measure proposed may be adopted, or varied, or not adopted at all.
- 121 In considering the need for and timing of the Extant Consultation in relation to AFL USO, ComReg was cognisant of the date for the transposition of the Code and that transposition would impact many elements of the Extant Consultation including in relation to the concepts of affordability, reasonableness, and availability. The ideal scenario was for universal services, post 30 June 2021, to be consulted on and addressed under the new domestic provisions.
- 122 Given the timeframe set out in the Code, there was sufficient time to consult under the newly transposed legislation prior to the expiry of the current designation on 30 June 2021, and thereby avoiding a scenario where the framework underpinning the Extant Consultation would change mid-way through the Extant Consultation period.

- 123 At a meeting with industry representatives on Friday, 11 December 2020, the Minister for the Environment, Climate and Communications indicated that the 21 December 2020 deadline for transposition would not be met. He also indicated that draft text of the transposing Statutory Instrument would be published sometime in January 2021.
- 124 Upon learning that the deadline would pass without transposition, ComReg published a statement on the 'Industry News' section of its website on 21 December 2020 to inform operators of the delay in transposition and that the delay would be to the first or second quarter of 2021.
- 125 Further, ComReg issued a Section 13D(1) statutory information requirement to fixed voice operators, including eir on 21 December 2020. ComReg sought information to inform its view in the Extant Consultation.
- 126 The Section 13D(1) statutory information requirement to all fixed voice operators, including eir, set out that it was 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."*
- 127 ComReg also sought relevant information *"(i) on the counter/actual scenario (ii) access (iii) affordability and (iv) other relevant customer surveys and/or market research reports"*.
- 128 eir was required to respond by 12 February 2021.
- 129 It is obviously important to seek up-to-date data before formulating a reasoned draft measure for consultation. Often, such data is in the possession of the undertaking or undertakings in question and therefore must be requested by ComReg under Section 13D(1) statutory information requirement.
- 130 On 8 January 2021, ComReg published an Information Notice (21/01) indicating that it planned to commence its review of AFL USO and anticipated it would consult in relation to it in Q1 2021.

- 131 eir acknowledged that, in respect of critical information, eir could not comply with the Section 13D(1) statutory information requirement within the original deadline proposed by ComReg. eir sought an extension of the deadline for the provision of the required information.
- 132 In that regard, on 19 January 2021, 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 it would not be in a position to provide the data until then.
- 133 On 5 February 2021, ComReg granted eir a 5-week extension in respect of that data, as the data was required in order for ComReg to prepare the Extant Consultation and could not be carried out without it. It was known to eir that by pushing out the date for compliance with the Section 13D(1) statutory information requirement, that time leading up to 30 June 2021 would be taken up. In particular, ComReg when granting the extension, observed: "*[i]n 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*".
- 134 eir further responded on 12 February 2021, expressing its appreciation for ComReg's granting of an extension to 31 March 2021. The letter made a number of points regarding the scope of the request and contended that eir was not responsible for delay.
- 135 As a result of the extension, ComReg did not receive a critical portion of the requested data from eir until 31 March 2021.
- 136 By April, transposition in Q1 of the Code had not been met and it was clear that the transposition was not going to be achieved before the expiry of the current AFL USO designation.
- 137 ComReg proceeded to the Extant Consultation under the existing regulatory framework and the Extant Consultation was published on 27 May 2021. If ComReg waited for transposition to take place, a lacuna in any designation would have occurred, which could result in significant consumer harm.
- 138 ComReg used and took into account the information gathered from eir and the rest of industry, in order to form its proposals in the Extant Consultation, and this Response to Consultation and final Extant Decision.

- 139 ComReg subsequently issued an AFL USO interim designation consultation document on 27 May 2021, in accordance with ComReg’s consultation procedures²⁸. Following this consultation, ComReg decided to maintain the existing AFL USO (D05/16) for an interim period of a maximum of 4 months in order to avoid potential consumer harms arising from any potential lacuna period, between 30 June 2021 and ComReg making a final decision on the future of the need for AFL USO.
- 140 Under Regulation 10(5) of the Universal Service Regulations ComReg, as the NRA, “may set performance targets for those designated undertakings in respect of the services referred to in Regulation 3 and in respect of such other services referred to in Regulations 4, 5, 6 and 8 as the Regulator deems appropriate from time to time.”
- 141 The designation of QoS performance targets may be consulted and decided upon independently from the designation of an undertaking as USP. ComReg has previously specified QoS requirements in this manner, as was the case with the most recent QoS obligation, that was set out in Decision D02/19 which came to an end on 30 June 2021 and has not been replaced.

2.3.2 Expressions of Interest

- 142 eir has objected to ComReg having sought expressions of interest in the Extant Consultation from service providers who might wish to be a USP, in parallel with its Extant Consultation on the scope and the nature of USO requirements. eir claims that the process adopted by ComReg makes it a pre-condition that operators express an interest, so it is entirely discriminatory.
- 143 The Extant Consultation set out ComReg’s preliminary views on AFL USO and sought to understand which providers wished to be considered as a potential Universal Service Provider so that ComReg could consider who would be best placed to deliver the USO.
- 144 eir claims that the process followed by ComReg ensures that no undertaking other than eir may be designated, as ComReg makes it a pre-condition that operators express interest, and so it is entirely discriminatory.

²⁸ ComReg Document No. 11/34, “ComReg Consultation Procedures”, 6 May 2011.

- 145 The designation method adopted by ComReg ensure that the obligations are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Regulation 11.
- 146 ComReg has received **no** expressions of interest from any interested party in response to our call for expressions of interest. Sky considered this matter and confirmed that it did not wish to express an interest in being the USP as it does not have the necessary infrastructure. Another respondent's submission also indicated they had considered the matter.
- 147 Neither has any interested party pro-actively approached ComReg in the period of the previous or current USO designation (July 2016 to date) to express an interest in providing some or all of the elements of the universal service. This indicates an absence of service providers willing or able to provide AFL. Accordingly, no competitive process was appropriate.
- 148 eir points out that, like other operators, it has not registered an interest in being designated as a USP. This cannot however mean that ComReg is therefore not in a position to designate a USP and must fall foul of its obligations under the Regulations. It is for Member States to decide on the basis of objective criteria which undertaking(s) are designated for the purposes of the Directive, where appropriate taking into account the ability and the willingness of undertakings to accept all or part of the universal service obligations and, in the current circumstances, ability must be the key factor. It is also important that universal service obligations are fulfilled in the most efficient fashion.
- 149 For the avoidance of doubt the designation of a USP is not solely dependent upon an expression of interest being received by ComReg from interested service providers. ComReg also considers how any designation may be provided in a cost-effective manner. The USO is allocated to an undertaking demonstrating the most cost-effective means of delivering access and services.
- 150 ComReg notes that Next Generation broadband is not yet available throughout the State. Accordingly, Next Generation networks cannot yet be relied on to ensure the availability of a telephone service (managed VoIP) nationally, in the short to medium term.

- 151 The lack of ubiquity of next generation networks (i.e., Virgin Media, SIRO and NBP), and the level of investment that would be required to replicate a network capable of offering retail fixed telephony service, such as eir's ubiquitous network reflects the continued importance of fixed narrowband access (copper) network (within at least the next 24 months).
- 152 The ubiquity of eir's network and its capability and experience dictate that while alternative network is being rollout out and until Equivalent Service is available, the most efficient and proportionate approach, is to designate eir. It is the largest provider of connection and voice services at a fixed location in Ireland. eir has the ability to exploit greater economies of scale, and scope in the provision of voice access and voice services, than other operators.
- 153 The designation of eir as the USP will ensure that those end-users who make reasonable requests for access at a fixed location and a publicly available telephone service will be served. This will guarantee the provision of the universal services so that the whole of the State is covered²⁹ during this transition period.
- 154 ComReg notes that eir has confirmed to ComReg, in its Section 13D(1) statutory information requirement response of 21 December 2020, that, [X [REDACTED] X]. ComReg has considered and relies upon these statements. This supports ComReg's reasoning for its decision.
- 155 Accordingly, absent any expressions of interest, the USO is assigned to an undertaking with the most ubiquitous network, capability, and experience, and which represents the most cost-effective means of delivering AFL.
- 156 ComReg does not accept eir's view that the consultation process and timetable are fundamentally flawed and have significantly discriminated against eir and its interests, and specifically that the short timeframe has nullified ComReg's call for expressions of interest from other telecoms operators, which in turn increases the likelihood of eir being designated the AFL USP.

²⁹ Regulation 7(1) of the Universal Service Regulations.

2.3.3 Justification for an AFL USO

157 eir states that ComReg has:

- “... failed to consider the relevant issues in any meaningful way and has not adducted any quantifiable evidence in support of its position that there is a need to maintain a market intervention the scale of the AFL USO. There is no justification for an AFL USO as the market is delivering social inclusion through mobile and other voice services...”

158 eir is of the view that there is no justification for an AFL USO as the market is delivering social inclusion through mobile and other voice services.

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

160 Because of this, we consider that any justification for the **complete** withdrawal of the existing AFL USO would need to be undisputed. There would need to be assurances that AFL USO service (standalone if necessary) would be delivered in the future, at an affordable price, and appropriate quality, throughout the State. However, there can, for example, be no assurance that uneconomic customers would be provided with basic telecommunications services under normal market conditions, without an AFL USO being imposed.

161 Universal service is a safety net to ensure that a set of at least the minimum services at a fixed location are available to all end-users and at an affordable price, where a risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society³⁰.

162 eir’s argument, that mobile penetration and mobile usage in Ireland is such that the market is meeting the AFL obligation, underpins much of eir’s submission.

³⁰ EECC, Recital 212.

- 163 However, eir does acknowledge³¹ that: “... *It is true that Member States may not impose as a USO the provision of mobile services. However, this does not in any way mean that the universal service may not be met by mobile services such that there is no need for a USO AFL. This is a matter which appears to have been either ignored or misunderstood by ComReg....*”
- 164 This argument is misplaced. It assumes that it is appropriate to treat mobile as access at a fixed location. The terms “at a fixed location” means the opposite of the term “mobile”³². Mobile communications are, by definition, excluded from the access and a connection at a fixed location to a public communications network.
- 165 ComReg has acknowledged in the Extant Consultation the changing nature of the market and the growing number of end-users who only use mobile services. The presence, quality, and affordability of alternative infrastructure, including mobile services, is a factor to be considered in conjunction with the cost to the USP of a connection, when assessing the “reasonableness” of any specific request in accordance with the current reasonable access request process.
- 166 ComReg in assessing if there is a need for an AFL in the State considered the position of mobile and concluded that mobile provision is not access at a fixed location and that it is not a sufficient substitute for AFL such that there is no longer a need for an AFL USO.
- 167 ComReg’s overall objective is to fulfil our statutory mandate under the Regulations and to ensure that there is a *provider of last resort* for basic electronic communications services within the State.
- 168 Because of this, we consider that any justification for the **complete** withdrawal of the existing AFL USO would need to be undisputed. There would need to be assurances that AFL USO service (standalone if necessary) would be delivered in the future, at an affordable price, and appropriate quality, throughout the State. However, there can, for example, be no assurance that uneconomic customers would be provided with basic telecommunications services under normal market conditions, without an AFL USO being imposed.

³¹ ComReg Document No. 21/51s, eir’s response to Q1 in its Response to Consultation document, 24 June 2021.

³² See ComReg’s more detailed response on this matter in chapter 3 (ComReg’s response to respondents’ submissions to Q1 in the Extant Consultation).

- 169 The current evidence does not support eir's view that social inclusion is met commercially by mobile services and fixed and mobile access. If this were the case, all end-users would behave rationally and vulnerable and/or low-income end-users (at risk of social exclusion³³) would be availing of mobile services and fixed and mobile access, on a commercial basis. Service providers (including eir) would serve all customers on a commercial basis and there would be no end-users availing of access at a fixed location and voice service via universal service.
- 170 eir is of the view that because mobile service is cheaper than fixed services, end-users' needs for a connection and voice service are met and therefore there is no risk of social exclusion. The existence of mobile services however does not negate an end-user's rights to access fixed voice connection and service, where the access request is deemed reasonable.
- 171 ComReg's Residential and Fixed Voice Research³⁴ sets out the profile of standalone fixed line ownership by several factors, including social class³⁵. The profile of fixed landline owners is biased significantly towards those aged 65+, and those from C2DE class (55% of this sample). This cohort are likely to be both vulnerable and price sensitive and at risk of social exclusion. This is borne out further in the Residential and Fixed Voice Research where 30% of fixed landline users indicate that they receive calls from other landlines on their fixed landline, daily. Within this cohort (who do not bundle their landline and pay for line rental and costs of calls together), 31% indicate they would change behaviour in response to a price increase of €4 per month, with 32% likely to cancel their subscription, and 28% to reduce their usage.
- 172 The premise that the scale of the AFL USO intervention is not necessary, is flawed. End-users' legal right to AFL is clear and these rights are not constrained by the prevalence or use of mobile services. The USO is tailored to ensure that the obligations in place are only those which are necessary in the context of other available networks and services and customer demand for their right to AFL. If end-users choose to use alternative mobile services, the requirement on the USP to supply service will be limited.

³³ Special social needs, including older people, end-users with disabilities, and consumers living in rural or geographically isolated areas.

³⁴ ComReg Document No. 20/46a, "2019 Residential Market Research", 17 June 2020.

³⁵ ComReg Document No. 20/46a, "2019 Residential Market Research", 17 June 2020, slide 10.

173 Accordingly, ComReg rejects eir's view that (i) there is no justification for an AFL USO as the market is delivering social inclusion through mobile and other voice services; and (ii) ComReg has not adduced any quantifiable evidence in support of its position.

2.3.4 Consideration of the need for an AFL USO

174 eir is of the view that:

- *“ComReg’s bias can be further observed by the fact that questions 4 to 11 deal with the design/components of the USO AFL. It is not until question 12 that ComReg remembers its needs to be seen to ask the question whether there is a continued need for an AFL USO.”*

175 ComReg's Extant Consultation commences by setting out the supply and demand side trends. This analysis is the appropriate starting point to ensure that the market, technological and end-user developments are examined to ascertain if the market itself is likely to deliver end-user consumer rights, in this case the universal service(s).

176 The Extant Consultation then considered the elements of the universal service obligations that may be put in place, and the status of the current universal service obligations, in the context of the relevant market trends. The aspects examined in the consultation include (i) reasonable access requests and associated thresholds, (ii) minimum data rate, (iii) GAP, (iv) tariff options, (v) control of expenditure measures, and (vi) QoS. Having set out the context for any potential AFL USO post 30 June 2021, ComReg sought the views of interested parties as to whether there is a need for an AFL USO, post 30 June 2021.

177 Accordingly, ComReg rejects eir's view that: *“...ComReg’s bias can be further observed by the fact that questions 4 to 11 deal with the design/components of the USO AFL. It is not until question 12 that ComReg remembers its needs to be seen to ask the question whether there is a continued need for an AFL USO.”*

2.3.5 Quality of Service (QoS)

178 eir states that:

- *“... the absence of any details of the QoS regime that will apply places eir at an incredibly unfair disadvantage of being proposed as the USP without full knowledge of the potentially very costly implications...”*

179 In line with our Regulatory functions ComReg will monitor eir’s QoS performance on an ongoing basis. ComReg considers that QoS is an important aspect of AFL and it is important that the QoS performance is maintained.

180 Between July and September 2021 ComReg issued several statutory 13(D) (1) information requirements³⁶ to eir, seeking information for the period July 2021 – June 2023, absent any USO QoS obligations on:

- eir’s planned QoS performance,
- eir’s plan to ensure acceptable QoS levels in all areas, and
- the remedial action eir will take if QoS targets/standard are not being met.

181 eir in response to ComReg’s statutory 13(D) (1) information requirement on its planned performance, absent any QoS obligations stated:

“... we would expect the QoS performance to be at a similar level to recent years when considered at an aggregate annual level. This could perhaps be considered using a two or three year average of past performance. ComReg already has information on past performance”.

182 eir in response ComReg’s statutory 13(D) (1) information requirement on its plan to ensure acceptable QoS levels in all areas stated:

“open eir will continue with its current approach which is illustrated by performance in recent years”

183 eir in response ComReg’s statutory 13(D) (1) information requirement on the remedial action eir will take if QoS targets/standard are not being met stated:

³⁶ 26 July 2021 and 29 September 2021.

“...open eir will continue to operate as currently, remediating issues as they arise in the copper network that impact service availability. open eir has no plans to amend existing working practices in a manner that would negatively impact on quality of service on the copper network. eir’s capital investment is efficiently focussed on developing a full fibre access network which will replace the copper network during this decade.”

- 184 In line with our Regulatory functions ComReg will monitor eir’s QoS performance using its statutory information gathering powers to obtain information as ComReg considers necessary (including reports, processes, and plans) to carry out its functions, during the AFL designation period. ComReg will continue to publish QoS trends. ComReg may separately, from time to time, request other relevant reports from eir.
- 185 ComReg may commence a review in respect of establishing a mandated AFL USO QoS obligation, during this designation period, where ComReg is of the view that eir’s actual QoS performance outputs deteriorate to an inappropriate level.
- 186 ComReg cannot fetter its discretion and there may be other circumstances which arise where ComReg deems it appropriate to intervene (e.g., inter alia, changes in market conditions; changes in technological developments; investment, activities or events that negatively impact on quality of service on eir’s copper network; where it has reason to believe that eir’s QoS performance outputs would deteriorate to an inappropriate level).
- 187 Any consideration of a regulatory measure in relation to QoS will follow normal consultation procedures with related rights for stakeholders.

3 The need for an AFL USO

188 This chapter sets out our decision that there is a need for an AFL USO in the State, post 30 October 2021, and the reasons for our decision. It summarises the issues raised by respondents in response to the Extant Consultation 21/51, and ComReg's responses to these submissions.

189 On 26 July 2021, Eircom Limited appealed to the High Court against ComReg Decisions D05/21. ComReg D05/21 has not been stayed. ComReg will fully defend the proceedings brought by Eircom Limited. ComReg does not therefore address any issues raised which are more appropriately part of those proceedings, in this Response to Consultation and Decision.

3.1 Our Decision

190 There is a continued need for an AFL USO within the State, post 30 October 2021.

191 ComReg has carefully considered AFL related market developments (demand and supply side - chapter 3 Extant Consultation 21/51) and respondents' submissions, in reaching its decision.

3.2 Reasons for Our Decision

192 Universal service is a safety net to ensure that a set of at least the minimum services is available to all end-users and at an affordable price to consumers, where a risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society³⁷. If end-users would not be served in a competitive market, they must still have access to basic services which are considered essential for participation in society.

193 The electronic communications market is one which rapidly changes. As technology and competition develops, and as consumer needs evolve, ComReg is required to ensure that the AFL USO continues to meet consumers' needs, particularly if they are not already met by the market.

³⁷ EECC, Recital 212.

- 194 ComReg's overall objective is to fulfil our statutory mandate under the Regulations and to ensure that there is a *provider of last resort* for basic electronic communications services within the State.
- 195 Because of this, we consider that any justification for the **complete** withdrawal of the existing AFL USO would need to be undisputed. There would need to be assurances that AFL USO service (standalone if necessary) would be delivered in the future, at an affordable price, and appropriate quality, throughout the State. However, there can, for example, be no assurance that uneconomic customers would be provided with basic telecommunications services under normal market conditions, without an AFL USO being imposed.
- 196 In Extant Consultation 21/51 we examined the need for an AFL USO (chapter 4), the relevant market trends, (both supply and demand side chapter 3), the possible competitive constraints, and the impact and the extent of, the current rollout of DECC's NBP programme (chapter 3). An overview of the AFL market trends is summarised in section 3.3.1 of this response to consultation and Extant Decision document.
- 197 ComReg has taken into account the likely extent of the NBP rollout over the next 24 months and its potential impact.
- 198 ComReg is of the view (based on the available information) that eir's proposed MSAN (Multi-Service Access Nodes) deployment (i.e., to modernise its PSTN network), and possible mandatory migration from the copper network to fibre networks will not have any material impact on the provision of retail fixed telephony service to existing and new customers within at least the next 24 months.
- 199 No new evidence has been provided to us that suggests our views on the counterfactual do not remain valid. Left to the operation of market forces alone, access to services mandated by the Regulations may not be provided to everyone, irrespective of location, at an affordable price, and appropriate quality as demonstrated by the counterfactual.
- 200 The obligations that we are imposing in this decision go no further than ensuring that there is a telecommunications service provider of last resort. This means that where the market is delivering the required services, the provider of last resort does not have to provide the required services.

201 ComReg has decided that it would be unacceptable to withdraw the AFL USO at this time considering:

- i. the lack of ubiquity of Alternative Infrastructure, and
- ii. the limited availability of Equivalent Service.

3.3 Summary the Extant Consultation 21/51

202 In the Extant Consultation 21/51 we reviewed the overall trends that impact the need for AFL USO beyond 30 June 2021.

203 We invited interested parties to submit their views. We have taken account of the submissions we received, the 2019 Residential³⁸ and SME Market Research and ComReg's analysis and reasoning set out in the Extant Consultation 21/51.

3.3.1 Overview of AFL related market trends

204 In the Extant Consultation 21/51 chapter 4 we examined the need for an AFL USO for the State. We examined relevant market trends, (both supply and demand side) possible competitive constraints, and the impact, of the NBP programme over the next 24 months. We also considered all the submissions received in response to the Extant Consultation 21/51.

205 Interested parties are referred to the Extant Consultation 21/51 generally and paragraphs 62 -155 in respect of our analysis of AFL related markets.

3.3.1.1 Relevant supply side trends

206 The key supply side trends are:

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

³⁸ ComReg Document No. 20/46a, "2019 Residential Market Research", 17 June.

- 207 The NBP and commercial investment have the potential to provide a publicly available telephone service. It may well be that a standalone telephone service can and will be provided using Alternative Infrastructure and Equivalent Service which have been fully deployed under the NBP or commercially. A Managed VoIP service over a high-speed quality network could satisfy end-user requirements for standalone fixed voice service at an affordable price.
- 208 Coverage on a national basis has not yet been achieved by Alternative Infrastructure as it is more economically viable to roll out in densely populated areas. The commercial incentive to invest in such networks is not based on the capacity to earn revenues on the supply of standalone retail fixed telephony service. It appears that other providers are unlikely to replicate eir's ubiquitous fixed narrowband access (copper) network.
- 209 The lack of ubiquity of next generation networks (i.e., Virgin Media, SIRO and NBP), and the level of investment that would be required to replicate a network capable of offering retail fixed telephony service, such as eir's ubiquitous network, reflects the continued importance of fixed narrowband access (copper) network (within at least the next 24 months).
- 210 As next generation broadband is not yet available nationally it affects the ability to support managed VoIP at all locations. This indicates that next generation networks cannot yet be relied on to ensure the full availability of an AFL telephone service nationally, in the short to medium term.
- 211 The supply side focus, from an AFL perspective, is primarily to ensure:
- the continued availability and continuity of service for the current installed base of standalone fixed voice service end-users (should they continue to choose it) while ensuring the capability is in place to enable end-users who are seeking a new connection and a standalone fixed voice service to obtain it; and
 - a minimum data rate of 28.8kbit/s
- 212 The Extant Consultation 21/51 asked the following question regarding the other relevant factors in relation to supply side trends.

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

3.3.1.2 Relevant supply side trends – Respondents’ Submissions

- 213 All four respondents (ALTO, BT, eir and Sky) responded to Question 1 setting out their views on other relevant factors in relation to supply side trends which ComReg should consider in the context of AFL USO.
- 214 ALTO states that: (i) “...One very significant issue to new entrant and alternative operators is the lack of a viable or any wholesale VoIP product offerings...” that (ii): “...The reports cited in the consultation are forward looking but do not appear to analyse the position at the consumer level...” (iii) “...ComReg must remain fully cognisant of the risks associated with splitting FACO into Urban and Rural and seek to deploy measures to ensure that service levels are not diminished for either grouping...” and that (iv): “...FCS appears to be a band aid solution to cover-up migration to the next generation of services over fibre, often resulting in consumers having no standalone voice/talk service”.
- 215 BT agrees with ComReg’s preliminary view and state that (i): “...ComReg should use the 24 months extension of the existing scheme to start considering how it can apply the USO to NBI premises passed... so that in 24 months-time the migration of USP will be seamless within the IA” and that (ii): “We welcome that ComReg is planning to consult on the proposal for Copper Withdrawal... urge ComReg to start the consultation process quickly as there are many issues to consider...”.
- 216 eir states that: “ComReg has failed to acknowledge the potential role of mobile services both on the supply and demand sides”, and that while: “... It is true that Member States may not impose as a USO the provision of mobile services. However, this does not in any way mean that the universal service may not be met by mobile services such that there is no need for a USO AFL. This is a matter which appears to have been either ignored or misunderstood by ComReg”.

- 217 eir also states that: *“ComReg’s concern about indoor coverage in rural areas is misplaced. ComReg has also overlooked its own initiatives including the licensing of mobile phone repeaters to enhance indoor coverage (D08/18 refers). More generally, it calls into serious question the rationale for maintaining the AFL USO as there does not appear to be any basis for the proposition that the AFL USO is necessary to avoid social exclusion in Ireland where social inclusion is now achieved through both fixed and mobile access.*
- 218 Furthermore, eir states that: *“The relatively low cost of providing access for mobile subscriptions, the fact that mobile has become the service of choice for voice-oriented users and the emergence of broadband as key driver of fixed subscriptions has resulted in mobile service becoming far more affordable than even basic fixed line rental for low to medium level users... eir believes that end users’ requirements for access at a fixed location including allowing them functional internet access are met by mobile services so that it is neither necessary nor proportionate to designate a USP for the next two years”.*
- 219 eir is of the view that: *“In determining whether all reasonable requests for connection at a fixed location permitting actual functional internet access are already met, regard should be had to the communications services that are consumed by End Users in Ireland, the risk of social exclusion arising from being unable to have fixed access and the cost and proportionality of mandating an AFL USP in these prevailing circumstances”.*
- 220 eir concludes by stating that: *“... it is eir’s view that ComReg, contrary to what is required under the Universal Service Directive, has failed to make the preliminary determination as to whether it is proportionate, efficient and non-discriminatory to impose a USO for AFL and erred in its finding that it is required under the universal service regime to ensure that demand for narrowband fixed voice telephony, which does not allow functional internet access, is met”.*
- 221 Sky states that: *“... We agree that Next Generation networks (paragraph 89) cannot yet be relied upon to support VoIP in all locations. However, splitting regulating of FACO into Urban and Rural will run the risk that certain Urban customers will not be able to avail of a fixed service and these customers should be catered for in the decision”.*

3.3.1.3 Relevant supply side trends – ComReg’s Response

- 222 The Universal Service Directive³⁹ is now replaced by the Code which has yet to be transposed into national legislation.
- 223 ComReg notes ALTO and Sky’s concerns in respect of the availability of wholesale VoIP products at all locations.
- 224 There are currently three wholesale service providers [X [REDACTED] X] who offer (upon request) commercial wholesale fixed VoIP voice services in the State. ComReg understands that these commercial services are available for resale on a national basis, where fibre to the premises (FTTP) or very high-speed digital subscriber line VDSL has been deployed.
- 225 The NBP and commercial investment has the potential to meet the needs of basic voice telephony. It may well be that standalone fixed voice can and will be provided using infrastructure and associated services which have been fully deployed under the NBP. A Managed VoIP service over a high-speed quality network could satisfy end-user requirements for standalone fixed voice service at an affordable price.
- 226 ComReg understands that National Broadband Ireland (NBI) does not currently offer a wholesale voice telephony product. The national broadband plan (NBP) contract, Schedule 5.2 (“Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules”)⁴⁰ has a provision for “other permitted wholesale products” which includes a “voice telephony wholesale product”.
- 227 The lack of ubiquity of next generation networks (i.e., Virgin Media, SIRO and NBP), and the level of investment that would be required to replicate a network capable of offering retail fixed telephony service, such as eir’s ubiquitous network reflects the continued importance of fixed narrowband access (copper) network (within at least the next 24 months). As next generation broadband is not yet available nationally it affects the ability to support managed VoIP in all locations. This indicates that next generation networks cannot yet be relied on to ensure the full availability of and AFL standalone retail fixed telephony service nationally, in the short to medium term.

³⁹ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (Universal Service Directive) as amended.

⁴⁰ [gov.ie - National Broadband Plan Contract \(www.gov.ie\)](http://www.gov.ie).

- 228 In the intervening period there is a requirement to ensure that those customers who wish to avail of access at a fixed location and a voice service should be able to do so, where the access request is deemed reasonable.
- 229 ComReg does not accept ALTO's view that: "...while the reports cited in the consultation are forward looking they do not appear to analyse the position at the consumer level". The 2019 Residential and SME Fixed Voice Reports⁴¹ referenced by ComReg in the Extant Consultation 21/51 analyse the position at a consumer level, with specific consideration of landline ownership, wider telecommunications ownership, bundles, service providers, landline costs, frequency of making and receiving calls, unmanaged VoIP usage, switching and sticking, non-landline owners, and SSNIP⁴².
- 230 Respondents (ALTO and Sky) commented on risks associated with splitting FACO into Urban and Rural running the risk that certain Urban customers will not be able to avail of a fixed service or at a suitable quality of service, and that these customers should be catered for in this decision.
- 231 Following the September 2021 EC Withdrawal Decision in respect of ComReg's FACO/RFTS draft measures, the FACO market review is currently underway in accordance with ComReg consultation procedures⁴³. Any removal of regulatory obligations on eir arising from this market review would imply that eir would no longer be obliged to provide wholesale FACO products to Access Seekers. This may require an orderly transition of affected customers to alternative wholesale equivalent service. An AFL universal service designation will ensure that urban customers (as set out in the FACO consultation) will be able to avail of a fixed service, at a suitable quality of service, where the request is deemed reasonable.
- 232 Respondents (ALTO and BT) commented on the suitability or otherwise of fixed cellular solution (FCS) as an interim product to bridge the transition from copper to fibre-based networks.

⁴¹ ComReg Document No. 20/46a, "2019 Residential Market Research", 17 June 2020, and ComReg Document No. 20/46b, "2019 SME Market Research", 17 June 2020.

⁴² "SSNIP" means small but significant and non-transitory increase in price.

⁴³ ComReg Document No. 11/34, "ComReg Consultation Procedures", 6 May 2011.

- 233 As set out in the Extant Consultation 21/51 at paragraphs 182 – 186 the number of reasonable access requests met during the past three years by the USP does not support the statements made by respondents in respect of FCS. FCS is currently being used in a de minimis manner in the retail market, where neither copper nor fibre-based services are available. Indeed, most new AFL universal service connections (2018-2021) were served using in-situ connections. Furthermore, ComReg does not have evidence of retail customers raising issues in respect of their inability to avail of a fixed voice service.
- 234 Accordingly, ComReg is of the view that its approach of allowing FCS as part of the reasonable access request process (during a transition period from copper to fibre networks) is a reasonable and proportionate approach to adopt. This will ensure the provision of a fixed voice connection and service (where the request is deemed reasonable) while awaiting the deployment of more permanent fibre-based services.
- 235 BT has questioned “*how the USO may apply to ‘NBI premises passed’ in the future*”. ComReg has further considered how the rollout of the NBP (delivered via NBI) may be considered in the assessment of reasonable access requests. This is now set out in chapter 4 of this response to consultation and Extant Decision document.
- 236 ComReg notes BT’s comments on the proposal for ‘Copper Withdrawal’. ComReg published an information notice on copper switch off, which set out its intention to (i) engage with eir and other stakeholders on this important matter and (ii) to consult publicly in due course.
- 237 In August 2021, ComReg has issued a Call for Inputs document, to which responses were received on 14 September 2021. The inputs received which will inform the upcoming consultation document on this matter.
- 238 ComReg notes eir’s statements in respect the potential role of mobile services.
- 239 eir believes that end-users’ requirements for access at a fixed location (including functional internet access) are met by mobile services so that it is neither necessary nor proportionate to designate a USP for the next two years.
- 240 eir state that ComReg should have regard to the communications services that are consumed by end-users in Ireland and the proportionality of mandating an AFL USP in these prevailing circumstances.

- 241 ComReg disagrees with eir's view that ComReg has failed to acknowledge the potential role of mobile services both on the supply and demand sides. ComReg refers the reader to paragraphs 163 - 167 for detail of its analysis and reasoning on the role of mobile services.
- 242 ComReg recognises and understands that an alternative infrastructure such as mobile may play a role in meeting end-users' requirements for service. The reasonable access request process make provision for the use of mobile, where the end-user accepts that the mobile solution is capable of, and will provide, an equivalent service. However, ComReg is cognisant that despite the existence of mobile phone repeaters, mobile coverage is not ubiquitous within all premises. ComReg refers eir to paragraph 134 of the Extant Consultation 21/51 which sets out that indoor coverage while having improved over time, remains an issue for 13 %.
- 243 While mobile usage and services are a factor when considering the future demand for voice at a fixed location, they do not negate the end-user right to universal service at a fixed location.
- 244 ComReg's 2019 Mobile Consumer Experience survey showed that while users experience service problems in both urban and rural locations, difficulties are more apparent in rural location. Difficulties include loss of signal in specific rooms and in the entire home. The level of daily experiences of loss of voice/text signal throughout entire home and in specific rooms remains high at 48% and 59% respectively.⁴⁴ Loss of signal (or no/poor signal/coverage) throughout the home for voice call and texts was highest in rural samples.⁴⁵
- 245 The survey also showed that dropped calls in a specific part of the house appear to be more of an issue in 2019 (13% v. 10% compared to the 2017 Mobile Consumer Experience for all of the time), although quality of reception on a call (15% v. 9%) and the inability to connect a call remain significant issues.⁴⁶

⁴⁴ Slide 77 of ComReg Mobile Consumer Experience survey.

⁴⁵ Slide 78 of ComReg Mobile Consumer Experience survey.

⁴⁶ Slide 88 of ComReg Mobile Consumer Experience survey.

- 246 Mobile penetration has remained stable in recent years and ComReg's 2019 Mobile Customer Experience survey indicates that 98% of all adults 18+ in Ireland have a mobile phone. ComReg's market research notes that despite the high number of mobile subscriptions, end-users continue to retain retail fixed telephony services indicating that consumers continue to require and use fixed voice services.
- 247 The current market demand (set out in the Extant Consultation 21/51, section 3.2.1.5) does not support eir's view. If this view was correct, there would be no demand for universal service fixed voice services and end-users would choose mobile services to meet their needs (migrating from fixed to mobile service or by always selecting mobile services (in preference to fixed voice services) to meet their needs). However, this is not the case, as borne out by (i) the small number of end-users continue to request access at a fixed location for voice communications services, and (ii) and existing fixed voice service customers who continue to choose fixed services in preference to mobile services. End-users have the choice to commercially select mobile services where they meet their needs. However, where an end-user wishes to procure a fixed voice communication service, ComReg is obliged to ensure that such a choice is made available to the end-users, where the request is reasonable. Accordingly, ComReg disagrees with eir's view.
- 248 In the context of AFL, ComReg notes the judgment of the European Court of Justice ('ECJ') on 11th June 2015 (in relation to a request for a preliminary ruling by the Belgian courts)⁴⁷ states that the term "at fixed location" should be understood as meaning the opposite to "mobile". The judgement considered what constitutes a universal service, rather than what technology is capable of providing a universal service.
- 249 ComReg's view is that the ECJ's statement "*that AFL means the opposite to mobile*" is not inconsistent with ComReg's position that AFL is not a mobile service, however the obligation to provide AFL does not have to be provided using a specific technology. In accordance with the principle of technology neutrality, wireless technology can be used as part of the solution to deliver access at a fixed location for USO.

⁴⁷ Case C-1/14 - Request for a preliminary ruling in the proceedings Base Company NV and Mobistar NV v Ministerraad, 11th June 2015.

- 250 ComReg notes eir's statements regarding the proportionality of mandating an AFL USP in the prevailing circumstances. As set out previously, the USP is the *'provider of last resort'* and the obligation only materialises when an end-user requests service, and the request is reasonable. The installed base of standalone fixed voice only consumers continue to decline while the number of new fixed voice connection requests is small. ComReg refers eir to its previous analysis set out in the Extant Consultation 21/51 chapter 4 at paragraphs 177 - 187 which shows that most of the new AFL connections are provisioned using existing infrastructure (in-situ connections) and a very small number require the deployment of any new infrastructure. Indeed, eir in its response to consultation (question four⁴⁸) states that *"eir has not used the process to date"*. The implication of this statement is that either all new connection requests pertain to (i) in-situ premises or (ii) new premises where the cost of connection is below the €1,000 threshold, as set out in the reasonable access request process.
- 251 ComReg notes and disagrees with eir's view that social inclusion is now achieved through both fixed and mobile access, and accordingly: (i) ComReg *"...has failed to make the preliminary determination as to whether it is proportionate, efficient and non-discriminatory to impose a USO for AFL..."* and (ii) *"... erred in its finding that it is required under the universal service regime to ensure that demand for narrowband fixed voice telephony, which does not allow functional internet access, is met"*.
- 252 Universal service is a safety net to ensure that a set of at least the minimum services is available to all end-users and at an affordable price, where the risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society.
- 253 ComReg's RIA sets out our objective to ensure that consumers continue to have access to AFL in the future, as relevant, and to ensure end-user rights are upheld. ComReg recognises that mobile usage and services are a factor when considering the future demand for voice at a fixed location.
- 254 ComReg notes that the number of reasonable access requests is decreasing year on year. There remains a sizeable but declining number of standalone retail fixed telephony service subscriptions.

⁴⁸ Question 4 "Do you agree or disagree with ComReg's preliminary view that there is no requirement to amend the current reasonable access requests process?"

- 255 ComReg's 2019 Mobile Consumer Experience survey showed that while users experience service problems in both urban and rural locations, difficulties are more apparent in rural locations. Difficulties include loss of signal in specific rooms and in the entire home. The level of daily experiences of loss of voice/text signal throughout entire home and in specific rooms remains high at 48% and 59% respectively⁴⁹. Loss of signal (or no/poor signal/coverage) throughout the home for voice call and texts was highest in rural samples⁵⁰. The survey also showed that dropped calls in a specific part of the house appear to be more of an issue in 2019 (13% v. 10% compared to the 2017 Mobile Consumer Experience for all of the time), although quality of reception on a call (15% v. 9%) and the inability to connect a call remain significant issues⁵¹.
- 256 ComReg is of the view that as yet the complete withdrawal of the USO cannot be justified.
- 257 Accordingly, given the ubiquity of eir's network, its existing connections, and its capability and experience as well as its responses, dictate that while alternative networks are being rolled out and until equivalent service is available, the most efficient and proportionate approach to ensure that those customers who wish to avail of access at a fixed location and a voice service should be able to do so, is to designate eir. This will guarantee the provision of the universal services so that the whole of the State is covered⁵² during this transition period.
- 258 It is important to note that the obligation only materialises where an end-user makes a reasonable access request.
- 259 Furthermore, ComReg notes that the AFL USO designation period is relatively short, until 30 June 2023, in light of in light of the transition from copper to fibre networks.
- 260 ComReg will keep under review any AFL USO and designation in light of transposition and changes in the market. Accordingly, we will:

⁴⁹ Slide 77 of ComReg Mobile Consumer Experience survey.

⁵⁰ Slide 78 of ComReg Mobile Consumer Experience survey.

⁵¹ Slide 88 of ComReg Mobile Consumer Experience survey.

⁵² Regulation 7(1) of the Universal Service Regulations.

- commence a review, (i) where changes in market conditions and technological developments are such that ComReg deems it appropriate to do so, or
- (ii) 6 months after DECC has concluded the transposition of the Code into national law, whichever is the earlier.

261 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.

262 ComReg is of the view that it is proportionate, efficient, and non-discriminatory to impose a USO for AFL.

263 eir incorrectly states that ComReg “...erred in its finding that it is required under the universal service regime to ensure that demand for narrowband fixed voice telephony, which does not allow functional internet access, is met”.

264 Universal service is technology neutral. The USP may meet its obligations using whatever technology it wishes (as set out by the ECJ). eir advised ComReg that it has chosen to meet its USO obligations through the underlying copper infrastructure. This is a commercial decision by eir, as opposed to a decision set out by ComReg.

265 It is eir, not ComReg, who has made a commercial decision to meet its current universal service obligations using the copper network. ComReg refers eir to its own response⁵³ to ComReg’s Section 13D(1) statutory information requirement request of 21 December 2020 where it states “[<

[REDACTED]

[<]”.

⁵³ eir Section 13D (1) statutory information requirement response letter dated 12 February 2021

- 266 ComReg's decision requires eir to maintain existing connections for its current installed fixed voice only base. ComReg has defined a minimum bit rate of 28.8kbits/s while clearly setting out that eir may offer services beyond this minimum data rate.
- 267 ComReg notes eir's view "*...that Universal Service Directive, has failed to make the preliminary determination as to whether it is proportionate, efficient and non-discriminatory to impose a USO for ComReg, contrary to what is required under the AFL in designating an undertaking under paragraph (1), the Regulator shall seek to adopt an efficient, objective, transparent and non-discriminatory mechanism and erred in its finding that it is required under the universal service regime to ensure that demand for narrowband fixed voice telephony, which does not allow functional internet access, is met.*".
- 268 ComReg does not accept eir's view. ComReg is satisfied that it has complied with its obligations. ComReg has consulted on its preliminary views and is exercising its powers and making its decision in a proportionate, efficient, objective, transparent and non-discriminatory manner.
- 269 ComReg re-iterates its position as articulated on previous occasions. ComReg has maintained the status quo and requires the USP to adopt 28.8kbit/s as a reasonable minimum data rate. ComReg emphasises that this is a minimum data rate and that it does not preclude eir as the USP from offering data rates that are faster than this.
- 270 ComReg acknowledges that there has been significant progress and that:
- End-users can obtain 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 the NBP area once completed.

- 271 Furthermore, ComReg is cognisant that pursuant to the Code the Member State (Ireland) shall ensure that all consumers and other relevant end-users have access at an affordable price to an available adequate broadband internet access service. 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.
- 272 These details will be used by ComReg as key inputs in the performance of its role, in respect of any potential need for a USO, where ABB IAS cannot be ensured under normal commercial circumstances or through other public policy tools.
- 273 Accordingly, it would be inappropriate for ComReg to intervene in the market at this time.
- 274 However, notwithstanding that the market is evolving and high-speed networks are being deployed, ComReg is concerned that absent an obligation for a minimum data rate then there is a risk that this minimum data rate would not be provided to a small cohort who are dependent on it for basic data needs.
- 275 ComReg is concerned that, although the number of narrowband subscribers has decreased, as commercial rollouts continue and the high capacity NBP infrastructure is being rolled out, there may be unacceptable short-term implications for some end-users if the AFL USO is withdrawn, prior to the completion of the NBP rollout.
- 276 Therefore, notwithstanding the anticipated new legislation, European and national legislation still requires that ComReg ensures that reasonable requests for access to basic services particularly voice service at a fixed location are met by at least one undertaking.
- 277 In light of the submissions to the Extant Consultation and specifically to question one, *“whether there are other relevant factors in relation to supply side trends which ComReg should consider in the context of AFL USO”*, ComReg has carefully considered respondents views and sought to address the pertinent elements in its responses set out above.

3.3.1.4 Relevant demand side trends

278 The key demand side trends of:

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

illustrate that:

- the main service providers supplying customers in the retail fixed telephony service markets in Ireland are eir, Virgin Media, Vodafone, Sky and Pure Telecom and several other smaller service providers.
- there has been a gradual decline in retail fixed telephony service subscriptions, and traffic. However, as indicated in Eurobarometer data¹³, a (declining) majority of households (55%) continue to retain a fixed landline.
- the number of managed VoIP subscriptions continues to rise with an associated increase in traffic (i.e., number of minutes).
- consumer usage patterns indicate a general and ongoing decline in the use of standalone fixed telephony service, as well as increased usage of broadband, of mobile telephony, and of bundled products. Purchasing retail fixed telephony service as part of a bundle is increasing in popularity amongst consumers.
- there remains a sizeable but declining cohort of end-users who continue to use standalone fixed voice services, and a small number of new end-users who are seeking access to networks for standalone retail fixed telephony services. The vast majority of these are provided over fixed narrowband access (copper) network, which remains the predominant form of retail fixed telephony service for households and businesses.

- End-users who primarily value retail fixed telephony service are relatively more 'voice-centric' and may have less choice of service provider. This is largely due to the shift away from standalone retail fixed telephony service provided service providers over fixed narrowband access networks, and towards retail fixed telephony service delivered as part of a bundle over next generation broadband

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

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

281 The Extant Consultation 21/51 asked the following question regarding the other relevant factors in relation to demand side trends.

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

3.3.1.5 Relevant demand side trends – Respondents' Submissions

282 ComReg received three responses to Question 2 (ALTO, eir and Sky). Most respondents agree with ComReg's review of the relevant demand trends.

283 ALTO agrees with ComReg's review stating that its agreement is caveated by "... *highlighting the lack of a wholesale VoIP offering.*"

284 eir agrees with several trends identified in ComReg's preliminary view, however, eir states that taking into consideration its comments in respect of other relevant factors in relation to supply side trends in respect of USO it : "... *cannot see why ComReg is so blinkered when considering the availability of voice services to support social inclusion.*"

285 Sky notes that, in paragraph 139 of ComReg 21/51, ComReg “does not take account of the availability of copper on placing an order”, submitting that “Large volumes of orders are rejected as FCS Only or Fibre Planned areas (where. [sic] in these cases, customers cannot avail of a standalone talk service (unless they accept FCS)). This trend has increased substantially over the last couple of years and as such could account for the decrease in standalone subscriptions.”

3.3.1.6 Relevant demand side trends – ComReg’s Response

286 ComReg has addressed in its response to ALTO’s submission in respect of “lack of a wholesale VoIP offering” in question 1 at paragraphs 128 to 130.

287 eir in its response to question 1, sets out its views that: (i) social inclusion is met by mobile services and fixed and mobile access, (ii) 97% of the population should have good indoor mobile coverage, and (iii) “mobile access is much more likely to provide truly functional internet access than a copper line supporting 28.8kbit/s”.

288 eir states that ComReg has provided no evidence to substantiate that access at a fixed location is required to avoid social exclusion.

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

290 Because of this, we consider that any justification for the **complete** withdrawal of the existing AFL USO would need to be undisputed. There would need to be assurances that AFL USO service (standalone if necessary) would be delivered in the future, at an affordable price, and appropriate quality, throughout the State. However, there can, for example, be no assurance that uneconomic customers would be provided with basic telecommunications services under normal market conditions, without an AFL USO being imposed.

291 Universal service is a safety net to ensure that a set of at least the minimum services is available to all end-users and at an affordable price to consumers, where a risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society⁵⁴.

⁵⁴ EECC, Recital 212.

- 292 eir's argument, that mobile penetration and mobile usage in Ireland is such that the market is meeting the AFL obligation, underpins much of eir's submission.
- 293 However, eir does acknowledge⁵⁵ that: "... *It is true that Member States may not impose as a USO the provision of mobile services. However, this does not in any way mean that the universal service may not be met by mobile services such that there is no need for a USO AFL. This is a matter which appears to have been either ignored or misunderstood by ComReg....*"
- 294 This argument is misplaced. It assumes that it is appropriate to treat mobile as access at a fixed location. The terms "at a fixed location" means the opposite of the term "mobile"⁵⁶. Mobile communications are, by definition, excluded from the minimum set of universal services, because their provision does not presuppose access and a connection at a fixed location to a public communications network.
- 295 ComReg has acknowledged in the Extant Consultation the changing nature of the market and the growing number of end-users who only use mobile services. The presence, quality, and affordability of alternative infrastructure, including mobile services, is a factor to be considered in conjunction with the cost to the USP of a connection, when assessing the "reasonableness" of any specific request in accordance with the current reasonable access request process.
- 296 ComReg in assessing if there is a need for an AFL in the State considered the position of mobile and concluded that mobile provision is not access at a fixed location and that it is not a sufficient substitute for AFL such that there is no longer a need for an AFL USO.
- 297 As set out earlier, the current evidence does not support eir's view that social inclusion is met commercially by mobile services and fixed and mobile access.

⁵⁵ ComReg Document No. 21/51s, eir's response to Q1 in its Response to Consultation document, 24 June 2021.

⁵⁶ See ComReg's more detailed response on this matter in chapter 3 (ComReg's response to respondents' submissions to Q1 in the Extant Consultation).

- 298 If this were the case, all end-users would behave rationally and vulnerable and/or low-income end-users (at risk of social exclusion⁵⁷) would be availing of mobile services and fixed and mobile access on a commercial basis. Service providers (including eir) would serve all customers on a commercial basis and there would be no end-users availing of access at a fixed location and voice service via universal service.
- 299 eir is of the view that because mobile service is cheaper than fixed services, end-users' needs for a connection and voice service are met and therefore there is no risk of social exclusion. The existence of mobile services does not negate an end-user's rights to access fixed voice only connection and service, where the access request is deemed reasonable.
- 300 ComReg's Residential and SME Fixed Voice Research sets out the profile of standalone fixed line ownership by several factors, including social class⁵⁸. The profile of fixed landline owners is biased significantly towards those aged 65+, and those from C2DE class (55% of this sample). This cohort are likely to be both vulnerable and price sensitive and at risk of social exclusion. This is borne out further in the Red C Research where 30% of fixed landline users indicate that they receive calls from other landlines on their fixed landline, daily. Within this cohort (who don't bundle their landline and pay for line rental and costs of calls together), 31% indicate they would change behaviour in response to a price increase of €4 per month, with 32% likely to cancel their subscription, and 28% to reduce their usage.
- 301 eir state that mobile access is much more likely to provide truly functional internet access than a copper line supporting 28.8kbit/s.

⁵⁷ Special social needs, including older people, end-users with disabilities, and consumers living in rural or geographically isolated areas.

⁵⁸ ComReg Document No. 20/46a, "2019 Residential Market Research", 17 June 2020, slide 10.

- 302 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 maintained the status quo which required the USP to adopt 28.8k/bits as a reasonable minimum bitrate.⁵⁹ It also set an associated target that 94% of installed telephone connections must be capable of achieving this minimum data rate of 28.8kb/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.
- 303 As set out earlier, 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. These details will be used by ComReg as key inputs in the performance of its role, in respect of any potential need for a USO, where ABB IAS cannot be ensured under normal commercial circumstances or through other public policy tools.
- 304 Accordingly, it would be inappropriate for ComReg to intervene in the market at this time.
- 305 ComReg notes Sky's submission regarding the increasing volume of reasonable requests that are being rejected where they are located within 'fibre planned areas' or where they are being offered 'FCS only'. ComReg reiterates that technology used to meet reasonable access requests (at new premises) by the USP is not prescribed as the principle of technological neutrality allows the USP to choose the optimum method of meeting reasonable access requests and service requests. Furthermore, the data pertaining to new standalone fixed voice connections and service requests received by eir, as the USP, do not support Sky's view (see the Extant Consultation 21/51, paragraphs 182- 187).
- 306 The Extant Consultation 21/51 asked the following question regarding the other relevant factors in relation to demand side trends.

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

⁵⁹ ComReg D05/16, Document No. 16/65, "Universal Service Requirements - Provision of Access at a Fixed Location (AFL USO)", 29 July 2016.

3.3.1.7 Other relevant demand side trend factors – Respondents’ Submissions

- 307 All four respondents responded to Question 3 on whether there are other relevant factors in relation to demand trends which ComReg should consider.
- 308 ALTO submits that ComReg should consider the “... *acute lack of wholesale VoIP offerings in fibre only areas*” noting that: “... *a products [sic] with specific profiles and pricing that fulfil the requirements of USO but don’t necessarily require a broadband service to be the anchor service should be considered fully by ComReg.*”
- 309 BT responds specifically with regards to the issue of migrations, stating: “... *we welcome the recent ComReg Direction and aspects of the FACO Draft Decision concerning migrations that should facilitate workable bulk migrations of voice services from WLR to VoIP carried over BB.*”
- 310 eir, in responding to question 3, refer ComReg to its responses⁶⁰ to question 1 and question 2.
- 311 Sky highlights the issue of a lack of wholesale VoIP offerings in fibre-only areas, stating: “*In the case of Fibre only areas, there is effectively no VoIP only wholesale product available. Consideration should be given to creating a product(s) with specific profiles and pricing that fulfil the requirements of USO but don’t necessarily require a broadband service to be the anchor service.*”

3.3.1.8 Other relevant demand side trend factors – ComReg’s Response

- 312 ComReg refers Sky to its response on the lack of wholesale VoIP offerings in fibre-only areas set out in its response to question 1 (paragraphs 225 to 227). ComReg notes that [REDACTED] [REDACTED]. ComReg notes the lack of availability of a wholesale anchor ‘naked fibre’ service (i.e., does not necessarily require a broadband service) with specific profiles and pricing that fulfils the requirements of USO.

⁶⁰ ComReg Document No. 21/51s, eir’s Response to Consultation document, 24 June 2021.

313 ComReg notes that there is no commercial impediment to service providers requesting such services from wholesale network operators. Indeed, ComReg notes that the national broadband plan (NBP) contract, Schedule 5.2 (“Wholesale prices, price benchmarking rules and wholesale product benchmarking rules”) has a provision for “other permitted wholesale products” which includes a “voice telephony wholesale product”

3.3.2 Summary – AFL related market trends

314 Where end-users who cannot purchase broadband, or who prefer standalone retail fixed telephony service, the requirement to purchase broadband to have retail fixed telephony service (provided by means of managed VoIP) is likely to be barrier on end-users switching away from standalone retail fixed telephony service provided by means of fixed narrowband access (copper) network.

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

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

317 The Universal Service Regulations require us to ensure that any reasonable request by an end-user for connection at a fixed location is satisfied and that is provided at an affordable price and quality. If this is not satisfied by the market then we must designate USP(s) to ensure that reasonable requests are satisfied.

318 We are satisfied that the demand and supply trends described, and which were considered in the Extant Consultation 21/51, reflect the current market situation.

3.4 Need for AFL USO

319 This section provides a summary of our proposal in the Extant Consultation, and the reasoning thereafter.

- 320 Universal service is a safety net to ensure that a set of at least the minimum services is available to all end-users and at an affordable price, where the risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society.
- 321 Accordingly, ComReg notes that the justification for a **complete** withdrawal of the existing USOs would need to be undisputed. There would need to be assurances that AFL USO services would be delivered in the future, at an affordable price, and appropriate quality, throughout the State, without any USO obligation.
- 322 ComReg noted in the Extant Consultation 21/51:
- Growing attractiveness and take up of bundled services leading to increased fixed voice subscriptions;
 - A decline in retail PSTN retail voice traffic;
 - Declining use of narrowband internet services;
 - Increased use of VoIP services; and
 - Decreasing but continued use of traditional fixed voice services.
- 323 ComReg's objective is to find the most appropriate approach to ensure that AFL is available to end-users throughout Ireland, if and where it is not met commercially by the market.
- 324 The information received from eir⁶¹, as the USP, indicates that reasonable access requests continue to be received by eir. This information shows that:
- the number of existing connections under the USO are decreasing but a significant cohort remain.
 - the number of new standalone retail fixed telephony connection requests are decreasing year on year
 - the majority of new connection requests are being met using in-situ connections

⁶¹ Received in eir's response, of 12 February 2021, to a Section 13D(1) Information Requirement issued by ComReg.

- the number of new connections using a fixed cellular solution is very small
- 325 and accordingly, these new requests do not impose a disproportionate burden on eir.
- 326 ComReg notes that eir has confirmed to ComReg, in its Section 13D(1) statutory information requirement response of 12 February 2021, that, absent an AFL USO, [X] [REDACTED] [X].
- 327 ComReg’s Residential and Fixed Voice Research⁶² sets out the profile of standalone fixed line ownership by several factors, including social class⁶³.
- 328 The profile of fixed landline owners is biased significantly towards those aged 65+, and those from C2DE class (55% of this sample). This cohort are likely to be both vulnerable and price sensitive and at risk of social exclusion.
- 329 30% of fixed landline users indicate that they receive calls from other landlines on their fixed landline, daily. Within this cohort (who do not bundle their landline and pay for line rental and costs of calls together), 31% indicate they would change behaviour in response to a price increase of €4 per month, with 32% likely to cancel their subscription, and 28% to reduce their usage.
- 330 There continues to be a demand for retail fixed telephony services generally and in accordance with the current USO, which absent a designation may not be guaranteed by market forces alone, particularly while new networks are still in the process of rollout.
- 331 During this transition period it is important that ComReg upholds its duty to ensure that the AFL USO continues to meet this cohort of end-users’ basic telephony needs, at an affordable price and appropriate quality, throughout the State where they may not be met commercially by the market.
- 332 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 has decided that there is a continued need for an AFL USO(s) for Ireland post 30 October 2021.

⁶² ComReg Document No. 20/46a, “2019 Residential Market Research”, 17 June 2020.

⁶³ ComReg Document No. 20/46a, “2019 Residential Market Research”, 17 June 2020, slide 10.

333 The Extant Consultation 21/51 asked the following question regarding the need for an AFL USO post 30 June 2021:

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

3.5 The need for an AFL USO, post 30 June 2021 – Respondents' Submissions

334 All four respondents responded to question 12.

335 ALTO agrees with ComReg's preliminary view stating that: *"... ComReg has an obligation to maintain the status quo ante [sic] particularly in circumstances where the copper network is due to be retired shortly. AFL USO must continue when viewed on this basis"*.

336 BT concurs stating that: *"...Absent the AFL USO there is a strong and we believe real risk that customers that can't be served commercially will not be served"*.

337 eir fundamentally disagrees that there is a continued need for an AFL USO, post 30 June 2021, stating that: *"[eir]... do not accept in this respect that it remains necessary to have access to a fixed voice, narrowband, access connection in order to participate fully in society in Ireland, having regard to the electronic communications services that are demanded and consumed by the majority of users in Ireland today and as evidenced by the State's NBP initiative. ComReg, however has failed to give any consideration to this issue and reached its conclusion that there is a continued need for an AFL USP using a flawed and circular rationale which reflects its misunderstanding of the requirements of the Universal Service Directive and Regulations.... ComReg has set the bar too high. The European regulatory framework does not set an absolute right to a fixed voice service"*.

338 eir subsequently states that: “...Member States are not required to ensure that all requests for connection at a fixed location are met. Rather, Member States are required, under Article 4(1) of the Universal Service Directive, to ensure that “all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking” (eir’s emphasis). eir does not believe that any, or sufficient, consideration has been given by ComReg to whether it is necessary to ensure by way of a USO that all reasonable requests for connection at a fixed location in Ireland are met, having regard to their characteristics and the initiatives already underway, in particular the NBP.”

339 Sky agrees with ComReg’s preliminary view stating that “.... We agree with this view particularly in a State that will be predominantly Fibre only and where copper may be retired. The AFL USO will need to consider the impacts through this lens”.

3.5.1 The need for an AFL USO, post 30 June 2021 – ComReg’s Response

340 All four respondents responded to question 12.

341 The majority of respondents (ALTO, BT, and Sky) agreed with ComReg’s preliminary view that there is a continued need for an AFL USO, post 30 June 2021.

342 eir re-iterates many aspects of its response to question 1 in its response to question 12. For ease of reference ComReg refers the reader to its response to question 1 at section 3.3.2.2. in this document.

343 The Universal Service Directive is now replaced by the Code.

344 The basic right of end-users under Article 84 of the Code is to have access to a minimum set of telecommunications services, and Article 86 sets out the Member State’s legal obligation to ensure that all reasonable requests for connection at a fixed location to the public communications network and/or for the provision of a publicly available telephone service over the connection are met by at least one undertaking. The Member State, upon transposition sets out its approach to universal service, within the discretion it is granted.

345 The Code has yet to be transposed into national legislation.

- 346 ComReg re-iterates its position (as set out in the consultation document). Universal service is a safety net to ensure that a set of at least the minimum services are available to all end-users and at an affordable price, where the risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society.
- 347 In the interim ComReg has a statutory mandate set out in the Universal Service Regulations 2011 (the “**Regulations**”)³. The existing Regulations requires that: “... a designated undertaking that provides a connection to the public communications network shall ensure that the connection is capable of...”. Accordingly, ComReg must protect end-users throughout the State who need AFL USO but who will not be commercially served.
- 348 Because of this, ComReg considers that any justification for the complete withdrawal of the existing USO would need to be undisputed. There would need to be a guarantee that AFL USO services would be delivered in the future, at an affordable price and quality, throughout the State.

NON CONFIDENTIAL

4 Reasonable requests

349 This chapter sets out our decision with our reasons on what constitutes a reasonable request to the USP by an end-user for AFL USO; how requests must be satisfied by the USP; and the situations where the USP does not have to satisfy them.

350 It sets out the following.

- Our Decision
- Reasons for our Decision
- Summary of the Extant Consultation 21/51: our preliminary views, respondents' submissions, and our responses.

4.1 Our Decision

351 The Regulations provide that a designated undertaking shall satisfy any reasonable request to provide a connection to the public telephone network and access to PATS at a fixed location within the State. The Regulations also provide that we may, with the consent of the Minister, specify requirements to be complied with by the designated USP in relation to the reasonableness of requests for connection and access.

352 Having carefully and fully responses to the Extant Consultation ComReg has decided to maintain the reasonable access request process set out in D05/16, subject to the following further amendments:

- The new connections and/or PATS obligation is now amended. The initial cost threshold of €1,000 is now removed. The automatic USP obligation to supply all reasonable access requests costing under €1,000, irrespective of whether there is an alternative infrastructure and an equivalent service available, is now removed. The USP now has an obligation to supply reasonable access requests where there is no alternative infrastructure **and** equivalent service available. The further tests and thresholds in the reasonable access request criteria remain unchanged.

- The Equivalent Service definition is now amended to include voice and broadband services supplied in a bundle, providing the bundle meets certain existing criteria, including affordability.
- **“Equivalent Service”** means **“Equivalent Service”** means a Connection and a standalone PATS, or **bundle** [emphasis added], which is equivalent to that prevailing for AFL provided by the USP, with respect to quality of service, Minimum Indoor Availability, and affordability;
- **“Bundle”** means grouping a fixed voice service and fixed broadband service as a package;

353 The following elements of the current reasonable access request process are retained:

- Where an Equivalent Service is not affordable, or the end-user requests a standalone PATS, such access requests are deemed as reasonable and must be satisfied by the USP, using the least cost technology. The least cost technology is likely to be a Fixed Cellular Solution (FCS) where there is no in-situ connection.
- The existing connections and/or PATS obligation remain. All existing connections⁶⁴ and/or PATS (whether active or not), are deemed to be reasonable and should continue to be supplied, (including in-situ connections). It is envisaged that the copper switch off-process will play a role in the future of such existing copper connections (post this designation).

354 ComReg proposes to keep under review any AFL USO and designation in light of transposition of the Code and development in the market, including the roll out of the NBP. Specifically, ComReg proposes to commence a review:

- (iii) where changes in market conditions and technological developments are such that ComReg deems it appropriate to do so, or
- (iv) 6 months after DECC has concluded the transposition of the Code into national law,

⁶⁴ “Existing Connection” means any Connection that is not a New Connection. New Connection means a Connection at any primary location or residence that has never been connected to the PCN (fixed).

whichever is the earlier.

355 ComReg has amended the reasonable access request process flow to reflect this.

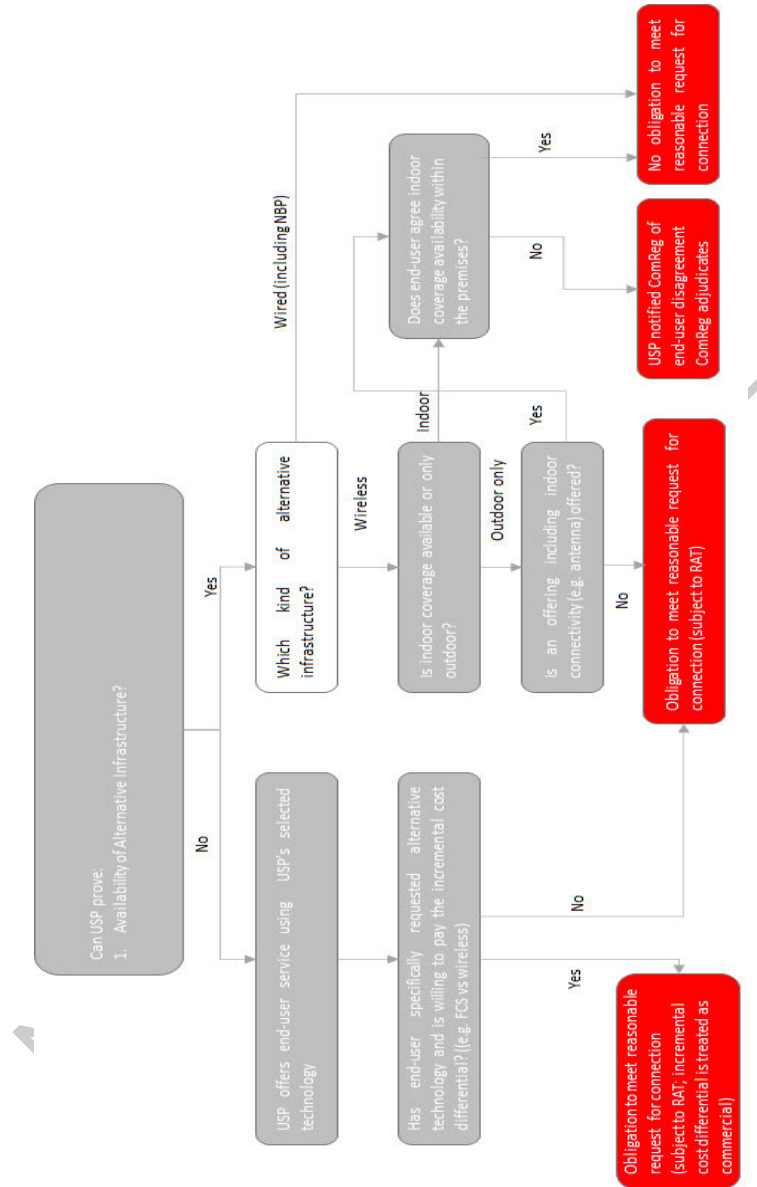


Figure 1: Reasonable access requests - Decision tree

4.2 Reasons for Our Decision

- 356 ComReg has carefully considered eir's submission in respect of NBP IA and alternative infrastructure market developments when assessing what constitutes a reasonable request to the USP by end-users for AFL USO; how requests must be satisfied by the USP; and the situations where the USP does not have to satisfy them, and respondents' submissions, in reaching its decision.
- 357 eir submits that once a premises has been passed in the NBP intervention area, the obligation should be lifted from eir in respect of such premises and the threshold should be reduced to zero.
- 358 ComReg notes that eir's view is based on the assumptions that (i) NBI is offering an access at a fixed location and a voice only wholesale service; and/or (ii) one or more resellers are offering end-users access at a fixed location and a voice service. This may not always be the case. Accordingly, the reasonable access request process now expressly considers the availability of Alternative Infrastructure and associated Equivalent Service. This is set out in sections 4.2.1 and 4.2.2 below.
- 359 eir submits that the reasonable access threshold should reduce relative to the forecast date that the NBP will be rollout out to reflect the requirement for eir's investment to be recovered over a much shorter period.
- 360 ComReg notes that where there is an in-situ connection at the premises, this in-situ connection is likely to be the most efficient and cost-effective method of meeting these reasonable access requests. For inactive lines, eir will have to switch on the existing connection, which can be done remotely for the majority of access lines and could only involve a very small cost, if any to eir. In the case of active existing customers, there is no connection cost.
- 361 While eir must satisfy a request for an existing connection, it is open to eir to use any technology to do so. The requirement in respect of existing connections does not stipulate that that this must be provided using copper and does not preclude eir from offering fibre-based services, if they so wish, to provide the connection.

362 Where there is (i) no in-situ connection (ii) no alternative infrastructure provider; and (iii) no alternative service, then FCS is likely to be the most efficient and cost-effective method of meeting these reasonable access requests. The use of FCS will ensure that eir's investment associated with the provision of access at a fixed location and a standalone PATS will be recovered over a much shorter period than that of a traditional copper line.

363 ComReg's Section 13D(1) statutory information requirement of 21 December 2020 asked eir to set out its strategy (or any proposed change in strategy) for fixed-voice only customers over the period - 1 July 2021 to 30 June 2023, including:

- Whether eir intends to serve its both its existing fixed voice-only customers and new fixed voice-only customers - nationally, and sub-nationally with specific reference to customers in sub-national areas 1, 2 and 3;

364 eir stated in its response to ComReg's Section 13D(1) statutory information requirement of 21 December 2020 "...[REDACTED]

[REDACTED]

[REDACTED]".

365 In respect of existing connections, eir state that: "[REDACTED]
[REDACTED]
[REDACTED]". ComReg has considered and relies upon these statements. The above supports ComReg's reasoning for its decision.

366 However, ComReg also needs to ensure that those requests where, no existing connection or alternative infrastructure exists, are satisfied, if the request is reasonable.

367 Where an Equivalent Service is not affordable, or the end-user requests a standalone PATS, these access requests are deemed as reasonable and must be satisfied by the USP, using the least cost technology. The least cost technology is likely be a Fixed Cellular Solution (FCS) where there is no in-situ connection.

368 This Decision on what constitutes a reasonable request for AFL USO is intended to be both deregulatory and dynamic. It lessens eir's obligations, as the USP, to satisfy end-user requests for USO AFL in those parts of the State where there is Alternative Infrastructure available which offers an Equivalent Service. It is dynamic in nature as the obligation changes as Alternative Infrastructure and Equivalent Service becomes available.

369 This will largely prevent inefficient infrastructure and service duplication, which should ensure that the lowest possible cost is incurred in the provision of AFL USO.

370 It is important to note that where an end-user exercises their right to access at a fixed connection and a standalone PATS that is not met commercially eir, as the USP, is obliged to fulfil it.

4.2.1 Alternative Infrastructure

371 ComReg recognises the existence of alternative infrastructure will play an important part in the future of AFL. The committed investment by commercial enterprises coupled with intervention by the State via the National Broadband Plan⁶⁵ should, once the NBP Intervention is completed, ensure that high speed broadband and voice services are delivered to all premises in Ireland. At that time, the need for a Universal Service Obligation (USO) to provide adequate broadband connection and service will be assessed following transposition.

372 ComReg anticipates however that these commercial and State deployments will not be completed within the next 12 – 24 months.

373 ComReg has fully considered the reasonable access request process and the availability of Alternative Infrastructure and Equivalent Service. ComReg has amended the reasonable access request process in response to submissions made to the Extant Consultation. Accordingly, the reasonable access request process now considers the availability of Alternative Infrastructure and associated Equivalent Service so that it is dynamic in its application to accommodate the further rollout of Alternative Infrastructure and associated Equivalent Service.

⁶⁵ In those parts of the country where private companies have no plans to invest.

374 It is important to note that the existence of Alternative Infrastructure may not be sufficient, in and of itself, to ensure the availability of an Equivalent Service. Alternative Infrastructure providers may not offer Equivalent Service. Accordingly, ComReg has carefully considered and amended the definition of Equivalent Service to now include a bundle (set out in section 4.2.2 below).

4.2.2 Equivalent Service

375 eir in its response to the Extant Consultation is of the view that once a premises has been passed within the NBP Intervention Area, the AFL Obligation should be lifted from eir in respect of these premises (i.e., the reasonable access threshold is reduced to zero).

376 This Decision sets out the definition of:

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

377 ComReg note that eir’s view is based on the assumptions that (i) NBI is offering both access at a fixed location and a voice only wholesale service; and/or (ii) one or more of its resellers is offering end-users access at a fixed location and a voice only service.

378 ComReg notes that eir’s assumption may not always be valid. The availability of Alternative Infrastructure does not automatically mean that an Equivalent Service is available on that Alternative Infrastructure.

379 As set out in the Extant Consultation, only eir and Pure Telecom actively offer standalone retail fixed telephony service. This is generally only available over fixed narrowband access (copper) network. Other service providers may continue to offer it on a legacy basis to existing customers. Vodafone, Virgin Media, or Sky do not offer a standalone retail fixed telephony service product.

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

381 Figure 7 in the Extant Consultation provides a breakdown on total retail fixed telephony service subscriptions by subscription type as a Q4 2020. This illustrates that 17% of all subscriptions are standalone fixed voice only. 83% of retail fixed telephony service subscriptions are bundled with at least one other service. The most common bundle combinations are a retail fixed telephony service and fixed broadband which accounts for 83%⁶⁶.

382 In considering eir's submission, ComReg has taken on board where there is an Alternative Infrastructure with an available Equivalent Service and decided to amend the Equivalent Service definition to now include consideration of a 'Bundle'

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

383 to now include a definition of a '**Bundle**'.

- “**Bundle**” means grouping a fixed voice service and fixed broadband service as a package;

384 These definition amendments recognise the increasing prevalence of bundles and will ensure that where an alternative service provider only sells an Equivalent Service as part of a bundle, the bundle, where it is equivalent in respect of quality of service and affordability, will now meet the Equivalent Service definition. This will have the direct effect of removing the obligation on eir, as the USP, to fulfil this type of request where there is availability of an Equivalent Service as part of a bundle.

385 This amendment this will increase the likelihood that requests for a connection and voice service will be met commercially, while having the practical effect of further reducing the extent to which eir, as the USP, will be obliged to fulfil requests. It will also have the potential to reduce any associated net cost.

386 ComReg has amended the reasonable access request process decision tree to reflect the removal of the automatic USP obligation to supply all reasonable access requests costing under €1,000, irrespective of whether there is an alternative infrastructure and an equivalent service available.

⁶⁶ Rounded to the nearest 1%.

387 These deregulatory amendments further ComReg’s aim that, during this the transition from copper to fibre networks, eir is truly the provider of *last resort* (within the designation period).

388 We have designed the associated obligations in such a way that no obligation to satisfy reasonable requests for connection and PATS materialises on eir, as the USP, unless the end-user has no suitable alternative Equivalent Service or where an end-user may exercise their right to a standalone fixed voice service (excluding data). If, as is eir’s view, there is no need for any AFL USO, then no requests would need to be satisfied by eir as the provider of *last resort*.

389 We consider that these amendments are a proportionate approach that takes on board eir’s view that any approach must be dynamic to reflect Alternative Infrastructure and Equivalent Service and to ensure unnecessary investment is not mandated.

4.2.3 USP Obligations

390 As the USP, eir is required to fulfil the requests which are reasonable in accordance with the reasonable access request process.

391 eir, in its response to ComReg’s Section 13D(1) statutory information requirement of 21 December 2020 stated that: “[REDACTED]

[REDACTED]”, and that: “[REDACTED]

[REDACTED]”.

ComReg has considered and relies upon these statements. This supports ComReg’s reasoning for its decision.

392 It remains the responsibility of the designated USP to verify that there is an Equivalent Service available at the end-user’s location.

393 In the case of a FCS service, where it does not support the minimum data rate in relation to FIA, it can only be considered if the USP is within the 94% threshold in relation to FIA connections. This is in addition to the tests for affordability and QoS (including indoor coverage) applied to alternative technologies.

- 394 The USP is also required to record the details of the Alternative Infrastructure present and the end-user's acknowledgement that the alternative is sufficient for the purposes of AFL USO. In respect of mobile networks, the indoor coverage equivalent to prevailing AFL USO is required, in order for it to be considered a feasible alternative. We require that the designated USP to provide us with these records on a quarterly basis.
- 395 To assess the **affordability** of the Equivalent Service, details such as cost of terminal equipment, connection fees, and monthly subscriptions and call/package prices must be compared with the service requests from the USP. If they are broadly the same price then the alternative solution could be acceptable, that is, for the alternative to be considered affordable, the Alternative Infrastructure must offer an Equivalent Service, which is broadly in line with those prices offered by the USP in respect of connection, line rental, calls, and the terminal equipment.
- 396 If the presence of an appropriate Alternative Infrastructure with an Equivalent Service cannot be established, the request for connection must be considered in accordance with the reasonable access request process.
- 397 The USP is required to implement simple and transparent processes, whereby if the end-user (who has requested a connection) does not disagree that there is a suitable alternative (Equivalent Service), then the connection request may be considered not to be reasonable. This acknowledgement may be difficult to acquire. There may be situations where ComReg will need to intervene to solve disagreements using our dispute resolution powers⁶⁷.
- 398 If the end-user is not satisfied with the solution proposed by the USP (and assuming the solution complies with the regulatory obligations we have retained the end-user's ability to be able to request a different technology. If this is a technology more expensive than that proposed by the USP, any such request should be considered by the USP. However, the end-user must be willing to pay the costs above the technology proposed by the USP.

⁶⁷ Under Regulation 27(4) the Universal Service Regulations 2011.

399 When measuring the cost of the connection, the cost to a point inside the premises must be included. The costs incurred by the USP in bringing the connection from the roadside to inside the premises would relate to overhead drop wires, where such a solution is possible. However, where overhead wires can be used and the end-user requires underground cables, it is reasonable that the end-user should incur the additional costs, for example, of digging trenches and laying ducting for example.

400 In assessing the cost of a connection, only those costs that can be attributed to the individual end-user should be measured. Thus, infrastructure that is used currently, or will be used in the future, for the provision of a service to other end-users should be excluded from the calculation of connection cost.

401 We consider that the end-user is entitled to a detailed breakdown of the estimated costs of the connection. If they remain dissatisfied, the matter may then be referred to us for review.

402 A record of all the requests for connection from end-users and the cost evaluation and of the solution proposed must be kept, and USP must use the least cost technology, so long as it is capable of allowing access to all the elements of USO telephony services - voice, fax and data within the FIA performance targets.

4.2.4 End-User Requests

403 For end-users, this continues to mean that they will have alternative access to a connection and PATS and/or a bundle, with similar AFL USO features to those provided by the designated USP (with sufficient quality and affordability).

404 An end-user may request a standalone PATS (new connection). Where this occurs, the USP may fulfil this request using most cost-efficient technology (which is likely to be FCS).

- 405 If the end-user is not satisfied with the solution proposed by the USP (and assuming the solution is in keeping with the regulatory obligations in place) the end-user will be able to request an alternative technology. If this alternative technology is more expensive than that proposed by the USP, the end-user must be willing to pay the costs above the technology proposed by the USP (i.e., commercial service). This shall however be subject to an exception: if the designated USP confirms that the Alternative Infrastructure is mobile, but the end-user does not agree that this will not provide an equivalent service to that currently prevailing for AFL USO (including Minimum Indoor Availability) the designated USP must promptly notify ComReg of this fact, with relevant supporting information. ComReg will then adjudicate on whether the request is reasonable or not.
- 406 If an end-user believes the cost estimate for providing access is excessive, this can be subject to eir's complaint handling process.
- 407 As set out above, the obligations that we are imposing in this decision go no further than ensuring that there is a telecommunications *service provider of last resort*. This means that where the market is delivering the required universal services commercially, the *provider of last resort* does not have to provide the access at a fixed location and a publicly available telephone service over the network connection.
- 408 This approach is proportionate, efficient, and non-discriminatory. It is proportionate as the obligation only crystallises where there is a reasonable access request to be fulfilled or maintained. It is efficient as it ensures that the most cost efficient and effective method of supply is deployed. It is non-discriminatory as it takes into consideration the ubiquity of networks and the availability of an Equivalent Service.

4.3 Summary of the Extant Consultation 21/51: our preliminary views, respondents' submissions, and our responses

- 409 The prevailing universal service reasonable access request specification sets out what constitutes a reasonable access request. It takes into consideration:
- pre-existing infrastructure;
 - whether one or more operators can fulfil the request;

- a monetary threshold;
- a standard connection fee; and
- parameters within which a customer is required to make the relevant contribution towards the connection cost.

410 In Extant Consultation ComReg considered whether there is a requirement for an AFL USO in respect of reasonable requests and whether there is evidence to support any amendment or alteration to the current process for defining the reasonableness of requests and the associated thresholds.

411 Based on the analysis set out in the Extant Consultation 21/51 at section 4.2, ComReg was of the preliminary view that:

- the current reasonable access request definitions, process, and associated thresholds remain relevant and appropriate to assess the reasonableness of requests currently and remain relevant for the proposed designation period.
- Having considered the existing connections provided under the AFL USO, ComReg considers that this cohort is decreasing in size and eir can continue to provide service via their own network (new networks where appropriate) and services or via wholesale inputs from other providers as networks are rolled out.
- Accordingly, ComReg was of the preliminary view that it remains reasonable that eir continue to satisfy the USO for 'Existing Connections'.

412 The Extant Consultation 21/51 asked the following question regarding whether or not there is a requirement to amend the current reasonable access requests process.

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

4.4 Reasonable access request process – Respondents' Submissions

- 413 All four respondents responded to question 4.
- 414 ALTO disagrees with ComReg's preliminary view that there is no requirement to amend the current reasonable access requests process, stating that: *"...FCS is not a viable alternative to copper"* and that *"... A cautionary approach should be taken to more FCS connections on the public telephone network."*
- 415 BT agrees with ComReg's preliminary view that there is no requirement to amend the current reasonable access requests process *"... as there are few operators providing standalone voice and it's likely that some/most of those operators would be dependent on open eir products anyway"*.
- 416 eir responded stating: *"eir hasn't used the process to date."*
- 417 Sky also disagrees with ComReg's preliminary view that there is no requirement to amend the current reasonable access requests process, stating: *"We do not believe that FCS is a viable alternative to copper and customers do not get the opportunity to invoke the reasonable access requests process in the first instance."*

4.5 Reasonable access request process – ComReg's Response

- 418 ComReg notes ALTO and Sky's views that the reasonable access request process should be amended, neither are of the view that FCS is a viable alternative to copper.
- 419 ComReg reiterates its view that universal service operates in accordance with the principle of technological neutrality, meaning that the universal service obligations may be fulfilled using a range of technologies (copper/fibre/fixed wireless). It is the universal service provider who selects the underlying technology used to fulfil such a request.

- 420 The current reasonable access request process makes provision for an end-user to request that the fixed voice communications service be delivered using a particular technology where (i) where there is an existing in-situ connection at the premises, or (ii) where the end-users is willing to pay the price differential in the cost of delivery of a specific technology (i.e., copper). Requests for service which are met in this manner are commercial services and are outside the scope of universal service.
- 421 Where there are no in-situ connections and these access requests are deemed as reasonable, they must be satisfied by the USP, using the least cost technology. The least cost technology is likely be a Fixed Cellular Solution (FCS) where there is no in-situ connection.
- 422 The total volume of FCS is capped at 6% of the total universal service installed based to prevent the risk of FCS being substituted for connections in situ or new.
- 423 ComReg notes eir's response that "it has not used the process to date". This clearly indicates that the vast majority of connections are either in-situ or new connections which cost under €1,000 to connect.
- 424 The Extant Consultation 21/51 asked the following question regarding whether or not there is a requirement to amend the current reasonable access requests threshold levels.

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

4.6 Reasonable access request threshold levels – Respondents' Submissions

- 425 All four respondents responded to question 5.
- 426 ALTO state that: "... *there is an obvious mismatch between the thresholds applied for PSTN and LLU. The PSTN process should align with the LLU process*".

- 427 BT states that *“We are aware of operational disagreements that have existed for some years concerning the thresholds and believe further work is needed in this area. For example, it’s our perception that a number of applications will end with an offer of the Fixed Cellular Service (FCS) (or whatever name open eir is calling or not calling it) and there is a lack of transparency as to the costs involved before going down this route vs. the copper route...”*.
- 428 eir states that: *“... eir fully agrees with the principles set out in ComReg’s statement...”* and propose the following two considerations in respect of the NBP IA: *“... First once a premises has been passed the AFL USO obligation should be lifted from eir in respect of such premises, essentially the reasonable access threshold is reduced to €0. Second, when a request for a new connection is received in the NBP IA [intervention area] the reasonable access thresholds should be reduced relative to the forecast date that the NBP will be rolled out to the premises reflective of the fact that eir’s investment must be recovered over a much shorter period”*.
- 429 Sky states that: *“...there is a mismatch between the thresholds applied for PSTN and LLU. In addition, we believe that LLU operators could potentially obtain a copper service more easily than a PSTN only Operator. The PSTN process should align with the LLU process”*.

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4.7 Reasonable access request threshold levels – ComReg’s response

- 430 ComReg notes the views of ALTO and Sky regarding the thresholds applied for PSTN and LLU. The LLU/ULMP processes states that eir is required to build a new copper path upon request when there is no copper path in-situ and the cost of the new path does not exceed €7000⁶⁸
- 431 ULMP is a product that is designed to remedy competition problems in the WLA market. ULMP specifically relates to the provision of unbundled local metallic path whereas Universal service relates to an end-user’s rights to access at a fixed location and an associated service. An important difference is that Universal service delivery is technology neutral, but ULMP is a copper-based product. Accordingly, it would be inappropriate to directly correlate and link the thresholds associated with LLU/ULMP and universal service.
- 432 ComReg has carefully reviewed and taken into account respondents’ feedback in respect of the reasonable access request process and its associated threshold levels. As a result, the new connection and/or PATS €1,000 threshold has now been removed. Accordingly, where there is no Alternative Infrastructure provider capable of providing an Equivalent Service, the universal service provider has the obligation to meet reasonable access requests, using the most efficient and effective means possible. Where there is in-situ copper, this is likely to be the most efficient and cost-effective method to serve. Where there is no-in situ copper, FCS is likely to be the most cost-effective method to serve.
- 433 Accordingly, while there is a certain degree of alignment between the LLU/ULMP threshold and the universal service threshold, the rationale for supply is separate and discrete.
- 434 ComReg notes eir’s view that once a premises has been passed in the NBP intervention area, the obligation should be lifted from eir and the threshold should be reduced to zero. This view is based on the assumptions that (i) NBI is offering access at a fixed location and a voice only wholesale service; and/or (ii) one or more resellers are offering end-users access at a fixed location and a voice service.

⁶⁸ [Open eir ULMP Product Description.](#)

- 435 This may not always be the case. Accordingly, the reasonable access request process now expressly considers the availability of Alternative Infrastructure and associated Equivalent Service. This is set out in sections 4.2.1 and 4.2.2.
- 436 However, where there is an in-situ connection at the premises, this in-situ connection is likely to be the most efficient and cost-effective method of meeting these reasonable access requests.
- 437 For inactive lines, eir will have to switch on the existing connection, which can be done remotely for the majority of access lines and could only involve a very small cost, if any to eir. In the case of active existing customers, there is no connection cost.
- 438 While eir must satisfy a request for an existing connection, it is open to eir to use any technology to do so. The requirement in respect of existing connections does not stipulate that that this must be provided using copper and does not preclude eir from offering fibre-based services, if they so wish, to provide the connection.
- 439 Where there is (i) no in-situ connection (ii) no alternative infrastructure provider; and (iii) no alternative service, then FCS is likely to be the most efficient and cost-effective method of meeting these reasonable access requests. The use of FCS will ensure that eir's investment associated with the provision of access at a fixed location and a standalone PATS will be recovered over a much shorter period than that of a traditional copper line.
- 440 ComReg, having considered the divergent views on the reasonable access request thresholds, has amended the €1,000 threshold level (associated with new connection /PATS) to ensure that the reasonable access request threshold levels are dynamic and seek to ensure that all costs are fully recovered over a much shorter period during this transition period (the move from copper to fibre networks).

5 Functional Internet Access

- 441 In this Chapter we set out our Decision to maintain a minimum data rate of 28.8 kbit/s for internet access and our reasons for this. We have decided to maintain the status quo as set out in ComReg Decision D05/16 in respect of FIA.
- 442 Regulation 3(5)(a) does not require ComReg to specify functional internet access data rates, rather, ComReg may specify requirements in relation to functional internet access. ComReg is firmly of the view that it may specify a minimum data rate threshold which eir, as the USP, is not permitted to fall below for a percentage of installed connections. A data rate below the specified minimum data rate is very unlikely to support internet access and is therefore the lowest (and least burdensome) that ComReg can apply.
- 443 This is a pragmatic approach in light of increasing speeds offered by the market, the new universal service of ABB in the Code and to protect end-users during this transition period.
- 444 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 a specific rate for functional internet access. ComReg decided to specify as a requirement on the USP, that the data rate must not be less than 28.8 kbit/s, as a minimum data rate. It also set an associated target that 94% of installed telephone connections must be capable of supporting a minimum data rate of 28.8 kbit/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.
- 445 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.
- 446 We have decided that the existing requirements of 28.8 kbit/s in relation to FIA should be maintained to ensure that the minimum data rate is maintained for current users, pending the availability of higher speed services and any introduction of a new USO for ABB under the Code, when transposed.

447 We consider that it is not appropriate to use the current FIA Universal Service requirements to mandate increased data speeds. The Code provides for a new ABB universal service.

448 This Chapter sets out the following:

- Our Decision.
- Reasons for our Decision.
- Need to maintain requirements specified in relation to FIA, sets out issues addressed in the Extant Consultation 21/51; respondents' submissions and our response.

5.1 Our Decision

449 Having regard to the analysis set out in the Consultation document and respondents' views, we have decided:

- to maintain the *status quo*;
- to maintain the specification that 94% of installed connections must be capable of 28.8 kbit/s as a minimum data rate.

5.2 Reasons for Our Decision

450 As set out earlier, regulation 3(5)(a) does not require ComReg to specify functional internet access data rates rather, ComReg may specify requirements in relation to functional internet access.

451 ComReg acknowledges that there has been significant progress since 2016 and that:

- end-users can obtain internet access (both narrowband and broadband) nationally, in areas that are served commercially, or
- via the national broadband plan (NBP State Intervention) once rollout has been completed within an area

- 452 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, which would include a role for ComReg in implementing a USO, if appropriate.
- 453 The Code sets out that 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.⁶⁹
- 454 Following transposition, ComReg understands that the definition of the new available adequate broadband internet access service and the procedure for the imposition of associated affordability measures will be progressed. 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.
- 455 These details will be used by ComReg as key inputs in the performance of its future 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.
- 456 In the interim, ComReg is cognisant of the prevailing national legislation and the rights of existing end-users. The number of narrowband subscribers has decreased significantly since 2016, as commercial rollouts continue and the high capacity NBP infrastructure is being rolled out. ComReg notes that while the total number of termination calls to internet services is in significant decline⁷⁰ there may be unacceptable short-term implications for a very small cohort of existing end-users, if the minimum data rate of 28.8kbit/s is removed.
- 457 ComReg has decided to re-specify 28.8 kbit/s as a minimum data rate, which is the lowest (and least burdensome) that ComReg can apply, while at the same time protecting existing end-users.

⁶⁹ Article 84 of the Code.

⁷⁰ eir's Q1/Q2 2021 flat rate internet access call origination (FRIACO) submission QKDR.

- 458 Maintaining this specification means that eir, as the USP, is not permitted to fall below this data rate for a percentage of installed connections. This is a minimum data rate and it does not preclude eir from offering data rates that are faster than this.
- 459 A data rate below the specified minimum data rate is very unlikely to support internet access and is therefore the lowest (and least burdensome) that ComReg can apply, while at the same time protecting end-users.
- 460 A measure that increased data rates at this time would not be in keeping with ComReg's statutory objectives or the regulatory principles which govern its decisions, in particular ComReg's duty to promote efficient investment in the it would potentially lead to a duplication of infrastructure
- 461 Accordingly, ComReg has decided that it would be inappropriate and pre-emptive for ComReg to intervene in the market (under the prevailing national legislation) and to specify new universal service requirements at this time.
- 462 Accordingly, ComReg has decided that:
- the retention of the minimum data rate of not less than 28.8kbit/s⁷¹ is the most appropriate option considering the aforementioned; and
 - that it remains inappropriate to use current USO FIA requirements as a mechanism to guarantee access to broadband connections.
- 463 This will ensure that a very small cohort of existing end-users' rights are upheld without inhibiting the commercial freedom of operators (including the USP) to offer data rates above 28.8kbit/s and not going further to mandate higher rates.
- 464 The Extant Consultation 21/51 asked the following question regarding whether or not to retain a minimum data rate of 28.8kbit/s.

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

⁷¹ Set out in ComReg D05/16, Document No. 16/65, "Universal Service Requirements - Provision of Access at a Fixed Location (AFL USO)", 29 July 2016.

5.3 Retain a minimum data rate of 28.8kbit/s – Respondents' Submissions

- 465 ComReg received four responses to Question 6 (from ALTO, BT, eir, and Sky) regarding ComReg's preliminary view to retain the minimum data rate of 28.8kbit/s.
- 466 ALTO agrees with ComReg's preliminary view to retain the minimum data rate of 28.8kbit/s stating that "... We do so only on the basis that there are users taking services at this level. More generally members believe that there should be a movement away from retention of such services, however ComReg's suggestion remains appropriate considering the market and public network conditions at this time".
- 467 BT states that: "... Whilst 28.8kbit/s is an incredibly slow speed in the modern world we would agree it's better to maintain the facility for the interim given the existing small cohort of users that maybe dependent on this for data communication. However, we would suggest that ComReg monitor both the volume of users and network costs from time-to-time to determine the service is still being used and to look at alternative services... We agree the State Funded NBI rollout in the rural areas should improve matters".
- 468 eir states that: "... eir does not agree it is appropriate or justified to impose an obligation for a minimum data rate of 28.8 Kbit/s..." and that: "...it appears to suggest ComReg has stepped back from the concept of FIA in favour of a minimum data rate. However, it is clear from the USR and USD that ComReg only has the authority to specify and impose obligations in respect of FIA..." and that it has "... substantial cost implications for the USP".
- 469 eir rejects ComReg's view that there may be unacceptable short-term implications for some end-users if the AFL USO is withdrawn, prior to the completion of the NBP rollout, stating that: "... ComReg provides no evidence to support its stated concern", stating that: "... in reality the effect of the proposed obligation is to require eir to maintain a national dial-up internet access service. There are very few users of the service and most of those will be large business using legacy machine to machine applications. They are not vulnerable or socially excluded citizens...", which requires "... continued investment to make available an outmoded service nationally".

470 eir concludes by stating that it: *“...is of the view that ComReg’s proposals are at odds with the specific requirements of the Universal Service Directive and Regulations, and for this reason are unsustainable and unlawful”* and that *“... eir considers it to be an absolute requirement that the USO does not duplicate the purpose of the NBP in delivering broadband in the NBP area. Having established that the NBP best serves the objective of delivering broadband service throughout the State, it is entirely counterintuitive to consider that a USO is required in parallel with the NBP, now or at a later stage”*.

471 Sky agrees with ComReg’s preliminary view and state that: *“We agree with this threshold in paragraph 236 but it should apply to 94% of retail working copper lines and exclude active FTTH lines”*.

5.4 Retain a minimum data rate of 28.8kbit/s – ComReg’s Response

472 ComReg notes that ALTO, BT and Sky agree with ComReg’s preliminary view to retain a minimum bit rate of 28.8 kbit/s taking into consideration (i) that there is a cohort of end-users who are availing of services at this level, and (ii) the market and public network conditions at this time.

473 ComReg notes that Regulation 3(5)(a) does not require ComReg to specify functional internet access data rates rather ComReg may specify requirements in relation to functional internet access. ComReg is firmly of the view that it may specify a minimum data rate threshold which eir, as the USP, is not permitted to fall below for a percentage of installed connections. A data rate below the specified minimum data rate is very unlikely to support internet access and is therefore the lowest (and least burdensome) that ComReg can apply.

474 Universal service is technology neutral. eir may meet its obligations using whatever technology it wishes (as set out by the ECJ⁷²). As set out earlier, eir has advised ComReg that it has chosen to meet its USO obligations through the underlying copper infrastructure. This is a commercial decision by eir, as opposed to a decision set out by ComReg.

⁷² Case C-1/14 - Request for a preliminary ruling in the proceedings Base Company NV and Mobistar NV v Ministerraad, 11th June 2015.

- 475 eir is not precluded from approaching its existing customer base with alternative commercial service offerings. These customers may choose to migrate to alternative services. However, eir is not entitled to remove the underlying infrastructure, without issuing a “stop sell” notice to consumers and putting in place an orderly transition plan.
- 476 ComReg notes eir’s statement that: “...*to impose an obligation for a minimum data rate of 28.8 Kbit/s...* has “... *substantial cost implications for the USP*”. ComReg is firmly of the view that it may specify a minimum data rate threshold which eir, as the USP, is not permitted to fall below for a percentage of installed connections. eir has provided no evidence to support this statement.
- 477 ComReg notes that while the total number of termination calls to internet services is in significant decline⁷³ there may be unacceptable short-term implications for a very small cohort of existing end-users if the minimum data rate of 28.8kbit/s is removed. Some end-users (including micro enterprises)⁷⁴ of eir’s dial up internet access service use the facility for EPOS type transactions. Accordingly, ComReg rejects eir’s statement that ComReg provides no evidence to support its stated concern.
- 478 ComReg does not accept eir’s statement that the specification of a minimum data rate of 28.8 kbit/s requires eir to maintain a national dial-up internet access service. Universal service is technology neutral. ComReg has proposed a minimum data rate of 28.8 kbit/s which does not preclude eir from offering data rates that are higher than this to meet its universal service obligations (exercising its commercial choice in respect of the underlying technology used to deliver the service). Accordingly, it is factually incorrect to state that the retention of a minimum data rate of 28.8 kbit/s de facto requires the “... *continued investment to make available an outmoded service nationally*”.
- 479 ComReg notes eir’s view that: “...*ComReg’s proposals are at odds with the specific requirements of the Universal Service Directive and Regulations, and for this reason are unsustainable and unlawful*”.

⁷³ eir’s Q1/Q2 2021 flat rate internet access call origination (FRIACO) submission QKDR.

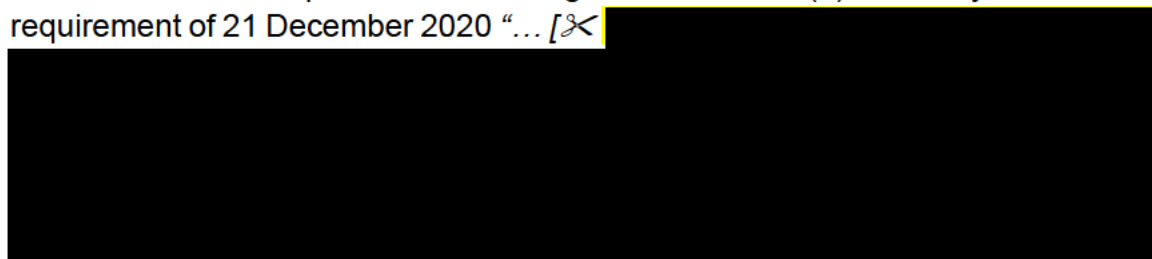
⁷⁴ Micro-enterprises are encompassed by the definition of “end-users” under S.I. No. 333/2011 - European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.

- 480 eir fails to set out precisely which specific requirements of the Universal Service Directive or the Regulations, or in what way ComReg's actions are "unsustainable or unlawful".
- 481 As set out previously the USP is the provider of last resort. Accordingly, end-users will avail of the relevant available services in the NBP and other commercial areas. It is only where services are unavailable or yet to be rolled out, will end-users seek to avail of services via the USP. ComReg therefore rejects eir's view that the USP will be duplicating the delivery of broadband in the NBP area, particularly in light of the reasonable access request amendment contained within this Decision.
- 482 The NBP will provide broadband services in the intervention area and not as stated by eir "... *the NBP best serves the objective of delivering broadband service throughout the State*". It has long been recognised that there will be a transition period while NBP rolls out. The Regulations require ComReg to ensure the availability of service to end-users. It is therefore inevitable that there may be some minimal element of temporary overlap during this transition period.
- 483 ComReg has taken on board eir's views in respect of the NBP area in relation to reasonable requests. Accordingly, ComReg has decided to amend the reasonable access request process and the associated new connection and/or PATS threshold in this Decision, in response to these submissions (see chapter 4). ComReg, having taken in account the submissions from respondents, has decided that retaining a minimum data rate of 28.8kbit/s is the most appropriate option. This will ensure that a very small cohort of existing end-users rights are upheld without inhibiting the commercial freedom of operators (including the USP) to offer data rates above 28.8kbit/s.
- 484 As set out earlier, in relation to the transposition of the Universal Service Provisions of the Code, ComReg understands that the definition of adequate broadband internet access service and the procedure for the imposition of associated affordability measures will be progressed following transposition. It is anticipated that ComReg will have a role in implementing a USO(s), if appropriate.
- 485 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.

486 Accordingly, this obligation is transitional in nature.

487 ComReg notes Sky's view that the threshold in paragraph 236 of the consultation should apply to 94% of retail working copper lines and exclude active FTTH lines.

488 eir states in its response to ComReg's Section 13D(1) statutory information requirement of 21 December 2020 "... [X



X]." ComReg has considered and relies upon these statements. This supports ComReg's reasoning for its decision.

489 Universal service is technology neutral, accordingly ComReg will not specify specific technology to which the 94% threshold applies.

490 The Extant Consultation 21/51 asked the following question regarding whether or not to retain a minimum data rate of 28.8kbit/s.

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

5.5 USO FIA requirements – Respondents' views

491 ComReg received four responses to Question 7 (ALTO, BT, eir and Sky). The majority of respondents agree with ComReg's preliminary view.

492 ALTO agrees with ComReg's preliminary view stating: "...that a minimum threshold remains sensible", and that: "It is unacceptable to withdraw services prior to the completion of the NBP rollout."

493 BT disagrees with ComReg's preliminary view, stating: *"We do not agree that ComReg should be restricting the customer's right to seek the best services they can achieve which is what this question is suggesting."* BT also stated: *"If the customer wants to try/request any form of FIA why should they be restricted? After all the line may recover more revenue, easing the USP claim. For example, if the customer tried to replace their 28.8kbit/s dial-up modem with a 56kbit/s dial-up modem why should that be prohibited..."*

494 Furthermore, BT also states: *"We don't believe there is any intention to guarantee access to broadband as the line may not be capable of broadband speeds..."*

495 eir's submission notes that there will be a review to define Adequate Broadband Internet Access Services when the Code is transposed into Irish legislation and that: *"... It would not be appropriate to create a new mechanism to guarantee access to broadband connections in advance of completion of that review."*

496 Sky agrees with ComReg's preliminary view that it remains inappropriate to use USO FIA requirements as a mechanism to guarantee access to broadband connections during this transition period.

5.6 USO FIA Requirements – ComReg's Response

497 ComReg notes that ALTO, eir and Sky all agree with ComReg's preliminary view, while BT disagrees.

498 ComReg re-iterates that 28.8 kbit/s is a minimum data rate and that it does not preclude the USP from offering data rates that are faster than this.

499 Accordingly, ComReg is not seeking to restrict a customer's right to seek the best services they can achieve. For the avoidance of doubt this does not inhibit a customer from replacing their 28.8kbit/s dial-up modem with a 56kbit/s dial-up modem, or moving to high-speed broadband, where a higher broadband service is available.

500 ComReg acknowledges that there has been significant progress and that:

- end-users can obtain 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.

- 501 Furthermore, ComReg is cognisant that pursuant to the Code the Member State (Ireland) shall ensure that all consumers and other relevant end-users have access at an affordable price to an available adequate broadband internet access service.
- 502 As set out on previous occasions in this document, in relation to the transposition of the Universal Service Provisions of the Code, ComReg understands that the definition of adequate broadband internet access service and the procedure for the imposition of associated affordability measures will be progressed following transposition. It is anticipated that ComReg will have a role in implementing a USO(s), if appropriate.
- 503 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.
- 504 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.
- 505 These details will be used by ComReg as key inputs in the performance of its role, in respect of any potential need for a USO, where ABB IAS cannot be ensured under normal commercial circumstances or through other public policy tools.

Accordingly, ComReg has decided that it would be inappropriate for ComReg to intervene in the market at this time.

6 Affordability, control of expenditure measures

- 506 Regulation 8 states that ComReg may, in light of national conditions specify, with the consent of the Minister, requirements to be complied with for the purpose of ensuring that consumers are provided with tariff options or packages which depart from those provided under normal commercial conditions, to ensure that those on low incomes or with special social needs are not prevented from accessing the network.
- 507 ComReg may, with the consent of the Minister, require designated undertaking(s) to apply common tariffs, including geographical averaging throughout the State. Furthermore, terms and conditions shall be established in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required in respect of the services requested. GAP does not apply to bundled products where a significant amount of competition takes place.
- 508 Regulation 9 states that ComReg may specify the provision of specific facilities and services, such as (i) itemised billing, (ii) selective barring for outgoing calls or premium SMS or MMS (free of charge), (iii) pre-payment systems, (iv) phased payment for connection fees, (v) non-payment of bills, (vi) tariff advice, and (vii) cost control.
- 509 Regulation 10(5) states that ComReg may set performance targets for those designated undertakings in respect of Regulation 3 (provision of access at a fixed location and provision of telephone services).
- 510 This Chapter sets out the following:
- Our Decision.
 - Reasons for our Decision.
 - Summary of Pre-Existing Obligations.
 - Summary of issues raised in the Extant Consultation 21/51.
 - Geographically Averaged Pricing: This gives an overview of the obligation, a summary of respondents' submissions to our Consultations, and views.

- **Tariff options:** This gives an overview of the obligation, a summary of respondents' submissions to our Consultations, and our views.
- **QoS**

6.1 Our Decision

511 ComReg has decided the following:

- **GAP:** GAP is required to ensure that universal service remains affordable for end-users.
- **Tariff options:** in the light of GAP (for the voice only access and services) and in the context of the transposition of the Code, ComReg will not consider the imposition of tariff measures at this time.
- **Disconnection policy:** the inclusion of a disconnection policy, post 30 October 2021 would present no additional obligations, where a universal service obligation and designation are imposed.
- **Phased payment (connection fee):** the existing phased connection fee obligation should be maintained, given its importance for end-users (helping to prevent social exclusion) and low implementation costs for the USP.
- **Terms and conditions:** not to impose any special terms and conditions, in the context of the transposition of the Code,

512 The retail price cap (RPC) is a retail remedy imposed on eir following its designation as operator with significant market power (SMP) in the FACO market. It applies to eir's pricing of retail PSTN and ISDN BRA.

513 ComReg's FACO consultation published in June 2020, set out ComReg's proposal to remove the retail price cap in the standalone low-level retail fixed telephony service market, effective as at the date that ComReg's final FACO Market Review Decision takes effect. No sunset period is proposed.

6.2 Reasons for Our Decision

514 **GAP:**

515 This obligation relates to the designated services in accordance with Regulation 3, namely, a connection and PATS. For the avoidance of doubt, this does not apply to a bundle (bundled products). ComReg has decided that maintaining GAP will result in an overall net welfare benefit. This is set out below.

516 The cost of providing AFL services can in principle vary considerably between rural and urban end-users with the result that some end-users would be unprofitable to serve. Absent GAP, eir could behave differently in different geographical areas, depending on the relative level of competition, and whether eir's pricing behaviours is likely to be sufficiently price constrained by other competing services.

517 End-users' price sensitivity and competition combine to somewhat constrain eir's ability to increase the line rental and connection prices, particularly for end-users who take up bundled voice – increasing demand and supply of bundled offers nationally. Any impact on consumers is likely to vary depending on the area within which they are located, and the pricing strategy pursued by operators.

518 End-users, who are voice-centric (i.e., primarily value fixed voice telephony service) may have less choice of service providers. This is largely due to the shift away from standalone retail fixed voice service provided over fixed narrowband access networks, and towards retail fixed voice service delivered as part of a bundle over next generation broadband.

519 ComReg notes eir's recent price increases on Fixed Voice Plan⁷⁵ and Business Talk Voice Plans notified to ComReg on 23 June 2021, with effect from 1 September 2021⁷⁶. ComReg understand that the Fixed Voice Plan includes [X [REDACTED] ⁷⁷ X].

⁷⁵ [Pricing | eir Group | eir.ie](#) (accessed 23 June 2021)

⁷⁶ [Call Charges | eir Group | eir.ie](#)

⁷⁷ eir email to ComReg 23 June 2021.

- 520 In this context it could not be excluded, that eir may wish to increase prices in specific areas where competitive price constraints are not yet sufficient. This could preclude some consumers from receiving an affordable AFL USO service. Indeed, eir has signalled in its response to consultation that GAP will inhibit eir in this respect. Absent an AFL USO, eir may seek to increase line rental and introduce differential pricing based on geographical location.
- 521 Retail price cap (RPC) and GAP may have had the combined effect of constraining any price increases to the maximum that would be borne by its customers located in competitive areas, as it is current restricted from offering differential pricing based on geographical location or other criteria.
- 522 A question arises as to whether, in the future, absent of a retail price cap (should that arise), and where eir is designated as the USP, would GAP be sufficient to ensure that universal service remains affordable for end-users. ComReg recognise that GAP operating on its own may not achieve the objective of affordable voice access for all end-users.
- 523 ComReg has decided that geographical averaged pricing (GAP) 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. It is unlikely that these customers will have an alternative which they could easily switch to, should eir increase the retail line rental price or fixed telephony prices in general.
- 524 It is envisaged that standalone voice consumers may increasingly migrate to bundles which include voice, and accordingly, any impact of the GAP obligation on eir, would decrease over time.
- 525 Competition is intended to deliver benefits for all end-users in the State, including those who do not deliver in areas where competition is effective. The GAP specification facilitates the achievement of this objective. When promoting competition ComReg is obliged to ensure that users, in particular the elderly and users with special social needs, derive maximum benefit in terms of choice, price, and quality (see section 12(2)(a) of the communications Regulation action 2002).
- 526 ComReg will continue to closely monitor the price of fixed voice services and may intervene in the context of AFL USO, as appropriate, where fixed voice services are at risk of becoming unaffordable.

527 Tariff Options:

528 Tariff options generally fall into two broad categories: (i) discounts and reductions for end-users who are entitled to clan social tariffs; or (ii) a special package.

529 The current public policy intervention is the Telephone Support Allowance Scheme⁷⁸. This allowance is paid automatically to people are in receipt of one of a number of qualifying payments and both the Living Alone Allowance and Fuel Allowance.

530 ComReg is cognisant that, upon transposition of the Code the Member State shall ensure that all consumers have access at an affordable price to an available adequate broadband internet access service and to voice communications services at the quality specified in their territories, including the underlying connection, at a fixed location.

531 While ComReg recognise that GAP operating on its own may not achieve the objective of affordable voice access for all end-users, ComReg has decided that it would be inappropriate for ComReg to intervene in the market at this time.

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

533 Disconnection policy:

534 Universal service is not truly universal if some end-users are left without access to a telephone service, through their inability to pay (while recognising that disconnections may also result for other reasons such as fraud or the deliberate non-payment of connection fees).

535 The current USP's Disconnection Policy⁷⁹ includes notification measures for end-users who fall in payment arrears. This includes the ability to restrict an end-user's ability to make and receive calls (except to the emergency services) and the USP will endeavour to contact an end-user to remind them that a bill is overdue.

⁷⁸ Gov.ie – Telephone Support Allowance (www.gov.ie).

⁷⁹ [Support | Non-Payment of Bill | eir.ie](#)

536 Accordingly, ComReg has decided that the inclusion of this requirement, post 30 June 2021, presents no additional obligations, where a universal service obligation and designation are imposed.

537 ComReg will monitor available disconnection data to identify whether any issues arise.

538 **Phased payment (connection fee):**

539 Universal service is not truly universal if some end-users are left without access to a telephone service, through their inability to pay a once off connection fee.

540 The phased payment obligation helps to prevent possible social exclusion of end-users who are experiencing affordability issues. The existence of this facility is of significant important and has a significant impact on this cohort of end-users. Indeed, many service providers offer phased payment (for connection fee) on a commercial basis.

541 In recent years eir, as the USP, has implemented a series of connection promotions whereby connection charges were set to €0. Accordingly, no end-user needs to rely on the phased payment (connect fee). End-users seeking a connection to the network obtain a tangible benefit (no connection fee) and the implementation cost to the USP is generally low (where (i) connection fees are set to €0 and (ii) where circa 99% of new connections are in-situ connections⁸⁰).

542 **Terms and conditions:**

543 Regulation 3(5) sets out that ComReg may, with the consent of the Minister, specify requirements to be complied with by a designated undertaking in relation to terms and conditions.

544 Regulation 3(5) of the 2011 Universal Service Regulations remain valid and in force. We are cognisant of the need for the 2011 Regulations to be interpreted in the context of the Code.

545 ComReg is not specifying terms and conditions to be complied with by eir, as the designated USP at this time. ComReg may review, in the future, whether it is necessary to define a social tariff, should circumstances justify it.

⁸⁰ Period 2018-2020.

6.3 Summary of Pre-Existing Obligations

546 As set out earlier pursuant to the Regulations, the USP can be required to adhere to the principle of maintaining affordability for universal services. In this respect, the Regulations provide that we may oblige a designated USP to offer 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. The Regulations also provide that we may require USP to apply common tariffs, including geographical averaging throughout the State.

547 At present, affordability is maintained through a number of different schemes:

- Within the existing RPC⁸¹: this provides a safeguard on consumer's line rental and connection fees (but excludes calls).
- eir's low usage scheme or Vulnerable Users Scheme ("VUS").
- GAP obligation: ensures universal services provided by the USP are available at a uniform price, irrespective of geographical location in Ireland.

548 As noted in the Extant Consultation 21/51 the FACO consultation published in June 2020 set out ComReg's proposal to remove the retail price cap in the standalone low-level retail fixed telephony service market, effective as at the date that ComReg's final FACO Market Review Decision takes effect. No sunset period is proposed.

549 To date, eir has not maximised the pricing flexibility afforded to it under the retail price cap. This may have been informed by eir's obligation, as the USP, to offer geographically averaged pricing.

⁸¹ Retail price cap.

6.4 Summary of affordability issues raised in the Extant Consultation 21/51

6.4.1 Geographical averaging

- 550 ComReg notes that a very small number of service providers are actively selling standalone fixed voice service. Accordingly, there is limited competition. This means that there are fewer alternatives to those customers who only wish to avail of a standalone offering. The ComReg market research also indicates that there is a level of inertia and potential loss aversion within this cohort of customers, which is open to potential exploitation.
- 551 eir's standalone retail fixed call access costs €25.78 per month⁸² (with retail fixed calls costs on a per minute basis), while eir's basic standalone publicly available telephone service (PATS) is €45.99⁸³ including line rental and (unlimited off-peak local and national) calls.
- 552 In the context of affordability, any impact on end-users is likely to vary, depending on where they are located, and the pricing strategy pursued by those operators active in the standalone fixed voice market.
- 553 End-users, who are voice-centric (i.e., primarily value fixed voice telephony service) may have less choice of service providers. This is largely due to the shift away from standalone retail fixed voice service provided over fixed narrowband access networks, and towards retail fixed voice service delivered as part of a bundle over next generation broadband.
- 554 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.

⁸² [Compare Value \(Results\) | Commission for Communications Regulation \(comreg.ie\)](#) (accessed 28 October 2021)

⁸³ [Home Phone Plans | Ireland's leading landline provider | eir.ie](#) (accessed 28 October 2021)

- 555 ComReg was of the preliminary view that maintaining GAP will result in an overall net welfare benefit. This proposed obligation relates to the designated services in accordance with Regulation 3, namely, a connection and PATS (for the avoidance of doubt, this does not apply to bundled products).
- 556 Accordingly, ComReg was of the preliminary view that geographical averaging of prices 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
- 557 Consultation 21/51 asked the following questions regarding GAP.

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

6.4.1.1 Geographical Averaging – Respondent's Submissions

- 558 Three respondents (ALTO, eir and Sky) answered Question 8.
- 559 ALTO agrees with ComReg's preliminary view that there is a need to maintain GAP stating that: "... *analysis presented by ComReg at paragraphs 258 and 259 is sensible in the short to medium term and focusses correctly on consumer welfare considerations*".
- 560 Sky concurs with this view stating that: "... *We think that ComReg's preliminary views are reasonable*".
- 561 eir disagrees stating that: "... *ComReg's consideration of GAP is superficial and, in particular, does not provide any meaningful consideration of the costs of continuing to impose the obligation on eir.... it is simply unacceptable to maintain an obligation on eir that has a material impact on our ability to compete, without taking due care to consider the issue*".
- 562 eir is of the view that: "... *that the Regulatory Impact Assessment is devoid of any quantitative assessment. However, for ComReg to reach a conclusion on net benefit it must be able to quantify the benefit and cost associated with its proposal*".

563 eir states that: “... with regard to pricing there are a number of sources of constraints on eir and that: “... ComReg’s discussion in the consultation only considers alternative fixed line providers and as such ComReg’s analysis as far as it goes is incomplete”.

564 eir is of the view that “... There are many such alternatives that ComReg has failed to consider: [i] ComReg could impose a maximum tariff for residential users to maintain affordability but also allowing the USP to exercise retail price differentiation [ii] ComReg could define a special social tariff and require that eir make it available to residential users in defined areas”.

6.4.1.2 Geographical Averaging – ComReg’s response

565 The Extant Consultation highlighted the continuing trend towards the purchase of dual, triple and quad play bundles, in preference to standalone services. For the avoidance of doubt, GAP only applies to standalone fixed voice only customers who avail of universal service, and specifically excludes bundles. Accordingly, GAP currently applies to circa [redacted] customers.

566 ComReg considers eir’s statement that ComReg has not provided any meaningful consideration of the costs incurred by eir by continuing to impose geographical averaging, which has a material impact on its ability to compete.

567 ComReg notes that on 23 June 2021 eir notified ComReg of its intention to introduce a €6 price increase (inc. VAT) for (i) new and existing consumers with Fixed Voice Plans ([redacted]) from 1 September 2021 (impacting circa [redacted] customers; and for (ii) Business Talk Voice Plans ([redacted]) (impacting circa [redacted] customers). Based on eir’s own submission to ComReg circa [redacted] standalone fixed voice customers are impacted by this price increase. While not subject to a margin squeeze test, it is highly unlikely that these customers were unprofitable prior to the implementation of the price increase. Accordingly, ComReg is of the view that these price increases appear at odds with eir’s view that GAP has a material impact on its ability to compete. If this were so, eir would be curtailed by the market in respect of any proposed price changes. Its own actions indicate otherwise.

- 568 While eir is of the view that GAP has a material impact on its ability to compete it provides no evidence to support its statement. eir is aware that standalone fixed voice price adjustments are not subject to a separate margin squeeze test. Price changes and associated impact on profitability is assessed on a long run incremental cost (LRIC) basis, on a 'bundle by bundle' basis, and the profitability on a portfolio basis on an average total cost (ATC) basis.
- 569 The number of standalone fixed line subscriptions is declining on average by 35% year on year, while the number of bundled services is increasing. Accordingly, the impact of GAP is declining exponentially as a direct result of the combined effect.
- 570 eir is of the view that ComReg's analysis is incomplete as it has only considered alternative fixed service providers, in the context of the consideration of possible price constraints on eir. ComReg rejects this view and reminds eir that (i) access at a fixed location and service is not mobile (as set out by the ECJU); and (ii) the number of fixed wireless and VOB providers and associated customers is small and ComReg is of the view that they remain insufficient to impact on eir's ability to compete in any meaningful way.
- 571 eir is of the view that ComReg has failed to consider more appropriate alternatives to GAP to address social inclusion, such as special tariffs.
- 572 On 21 December 2020 ComReg issued a Section 13D(1) statutory information requirement) to eir seeking information on (i) any special tariff(s) that it currently offers (e.g. vulnerable user scheme, low usage, etc.) related to fixed voice-only end-users, including the eligibility criteria, usage conditions, and related charges, and the numbers of consumers availing of these tariffs; and (ii) ComReg also requested eir to confirm whether it intended to retain or amend these special tariffs over the next 24 months.

573 eir states in its response⁸⁴ that: "... [redacted]". The Vulnerable User scheme was introduced in 2003 (at ComReg's request and in accordance with price cap obligations), with the aim of benefitting eir residential customers with a low level of usage. The scheme remains largely unchanged with a very low number of consumers subscribed to the scheme and consumer awareness of the scheme remains very low.

574 ComReg considers that end-users benefit more directly through the imposition of GAP, (which automatically applies to all standalone fixed voice users), than special tariffs which require end-users to (i) have an awareness of the relevant special tariff scheme (low awareness of scheme); and (ii) proactively apply for the special tariff (low take up of scheme).

575 Furthermore, ComReg notes that a special tariff scheme implicitly assumes that those who may have an affordability issue have the same service needs and calling patterns. The calling or called patterns of these end-users may vary considerably and a 'one-size-fits-all' approach may be completely inappropriate. Accordingly, ComReg remains unpersuaded by eir's arguments.

6.4.2 Tariff options

576 Tariff options or packages generally fall within two broad categories: (i) discounts and reductions for end-users who are entitled to claim the social tariffs; or (ii) a special package.

⁸⁴ eir Section 13D (1) statutory information requirement response letter of 12 February 2021.

- 577 The current public policy intervention is the Telephone Support Allowance scheme⁸⁵ comes with the remit of the Department of Social Protection. This is a weekly payment for people who live alone and are already in receipt of certain other social welfare payments. It assists the cost of communications and or home security solutions. The allowance is paid automatically to people who are in receipt of one of a number qualifying payments⁸⁶ and both the Living Alone Allowance and Fuel Allowance.
- 578 ComReg is cognisant that upon transposition of the Code the Member State shall ensure that all consumers have access at an affordable price to an available adequate broadband internet access service and to voice communications services at the quality specified in their territories, including the underlying connection, at a fixed location.
- 579 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.
- 580 In the interim, the Universal Service Regulations 2011 remain valid and in force and we are cognisant of the need for the 2011 Regulations to be read in accordance with the Code, and other relevant national and EU legislation. Accordingly, it would be inappropriate for ComReg to intervene in the market at this time.
- 581 The Extant Consultation 21/51 asked the following question regarding tariff options.

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

6.4.2.1 Tariff Options – Respondents' Submissions

- 582 ComReg received three responses to Question 9 (ALTO, eir and Sky) regarding ComReg's preliminary view to not introduce tariff options.

⁸⁵ gov.ie - Telephone Support Allowance (www.gov.ie).

⁸⁶ State Pension (Contributory) and State Pension (Non-contributory); Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension; Invalidity Pension; Disability Allowance Blind Pension; Incapacity Supplement; Deserted Wife's Benefit; Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension under the Occupational Injuries Scheme.

- 583 ALTO agrees with ComReg's preliminary view, stating: "...ComReg has clearly and cogently outlined the basis for constraints within the consultation paper and the likely imperative need for a review of the position post the transposition of the European Electronic Communications Code later on in 2021, or early 2022."
- 584 eir did not agree with ComReg's preliminary view, stating that: "...There are a range of competing services and tariffs available in the market across the State. This calls into question the need to maintain the USO regime. However, if a social tariff was designed to address the concerns identified in the GAP discussion above, it may be a better solution than GAP."
- 585 Sky stated: "...We agree with ComReg's view given the current scheme provided by the Dept of Social Protection."

6.4.2.2 Tariff Options – ComReg's Response

- 586 ComReg notes that the majority of respondents were in agreement with our preliminary view not to introduce tariff options.
- 587 ComReg notes eir's view that "... if a social tariff was designed to address the concerns identified in the GAP discussion above, it may be a better solution than GAP." ComReg's response in respect of GAP is set out in our response to question 8.
- 588 There are currently other mechanisms that ensure that basic voice services are broadly affordable for end-users, including the Department of Social Protection's Telephone Support Allowance Scheme.
- 589 We remain satisfied that due to the wide variety of plans including discount plans which eir and other operators offer, which allow end-users, including more vulnerable consumers, to benefit from discounts regardless of their varied usage patterns ComReg is satisfied that there is no need for us at this time to further exercise our universal services powers and to introduce specific tariff schemes.

- 590 There is currently nothing precluding eir from introducing social tariffs on a voluntary basis, where it believes that this is a more appropriate intervention. Indeed, ComReg notes that eir continues to offer an eir vulnerable user scheme⁸⁷ which is targeted at vulnerable users who are currently spending less than €10 (inc. VAT) each month on calls (charged at standard rates). This scheme is designed for low usage as calls are billed at double the standard rate thereafter. This scheme entitles end-users to the first €5 (inc. VAT) worth of calls free.
- 591 eir has advised ComReg in its Section 13D (1) statutory information requirement response of 12 February 2021 that (i) there were [X [REDACTED] X] customers on its vulnerable user scheme as at 31 December 2020.
- 592 ComReg notes that vulnerable consumers, who may face affordability issues, do not necessarily have the same calling profiles. Equally the current structure of eir's vulnerable user scheme is punitive, where the end-user's calling patterns exceed the targeted spending levels.
- 593 Vulnerable users are less likely to seek out these types of special tariff schemes (which require proactive subscription by the end-user), which often leads to very low subscription rates (borne out by the volumes set out above). Accordingly, ComReg is of the view that GAP may offer wider protection to this cohort, as these end-users will automatically benefit from GAP (without having to take any specific action) and meets the individual end-users' needs rather than a 'one size fits all' social tariff (which is not reflective of their individual calling patterns and may actively penalise those who have higher usage profiles).
- 594 ComReg sees no persuasive reason to alter its view based on eir's arguments. No additional information has been presented to us which would support changing our view and therefore, we have decided that a requirement to offer social tariffs should not be introduced at this time.
- 595 Nonetheless we may, in the future, review whether it is necessary to define a social tariff should circumstances justify it (for example, significant and predatory price increases).
- 596 ComReg is also cognisant of the transition from the current national regulations to the Code.

⁸⁷ Introduced in 2003.

- 597 Article 84 (1)⁸⁸ of the Code states that: “Member States shall ensure that all consumers in their territories have access at an affordable price, in light of specific national conditions, to an available adequate broadband internet access service and to voice communications services at the quality specified in their territories, including the underlying connection, at a fixed location.” Furthermore, Article 84 (3)⁸⁹ states that: “*Each Member State shall, in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers within the territory of that Member State and taking into account the BEREC report on best practices, define the adequate broadband internet access service for the purposes of paragraph 1 with a view to ensuring the bandwidth necessary for social and economic participation in society.*”
- 598 Following transposition of the Code, and in accordance with Article 85 (1)⁹⁰, ComReg shall “*monitor the evolution and level of retail prices of the services referred to in Article 84(1) available on the market, in particular in relation to national prices and national consumer income.*”
- 599 Should DECC establish that retail prices for the services referred to in Article 84 (1) are not affordable, “*they shall take measures to ensure affordability for such consumers of adequate broadband internet access service and voice communications services at least at a fixed location*”⁹¹. ComReg will support DECC regarding such considerations as requested, following transposition of the Code.
- 600 In the interim it is our understanding that there are currently no plans for the introduction of a social tariff by DECC or the Department of Social Protection.

⁸⁸ Article 84 (1)

⁸⁹ Article 84 (3)

⁹⁰ Article 85 (1)

⁹¹ Article 85 (2)

6.4.3 Control of expenditure measures

- 601 Regulation 9 of the Universal Service Regulations 2011 provides that ComReg may specify the provision of specific facilities and services, such as (i) itemised billing; (ii) selective barring for outgoing calls or premium SMS or MMS (free of charge); (iii) pre-payment systems; (iv) phased payment for connection fees; (v) non-payment of bills; (vi) tariff advice; and (vii) cost control; and that terms and conditions shall be established in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required in respect of the services requested.
- 602 Universal service is not only about enabling end-users to be connected to a fixed telephone network. It is also important that all end-users who wish to remain connected to the fixed network can do so.
- 603 It is imperative that end-users can monitor and control their expenditure to ensure that they do not find themselves unable to pay their bill and face disconnection from the network.
- 604 Many operators offer itemised billing as part of their core commercial service offerings.
- 605 Their disconnection policies are published and should be proportionate and non-discriminatory to cover non-payment of bills. They generally provide due warning of any consequent service interruption or disconnection to cover non-payment prior to any such action.
- 606 Decision D05/16 maintained control of expenditure measures for services within the scope of AFL USO, namely:
- Obligations in respect of disconnections and non-payment of bills; and
 - Obligations in respect of phased payment for connection fees

6.4.3.1 Disconnections

- 607 In the context of universal service, the USP's Disconnection Policy, and the associated number of disconnections, has an impact on the number of people connected to the fixed network. The level of disconnections may indicate the effectiveness of the existing measures. Universal service is not truly universal if many people are left without access to a telephone. We recognise however, that some disconnections may also result for other reasons, such as fraud or the deliberate non-payment of bills.
- 608 The current USP's Disconnection Policy⁹² includes notification measures for end-users who fall into payment arrears. This policy should have a positive effect by reducing the number of end-users that may have been otherwise disconnected from the network.
- 609 The Disconnection Policy should provide that, if an end-user does not pay a bill by the account due date, the USP may restrict an end-user's ability to make and receive calls except to emergency services and that the USP will endeavour to contact an end-user to remind them that a bill is overdue.
- 610 As outlined earlier, all ECS service providers already have an obligation to have and publish a Code of Practice for Complaint Handling⁹³.
- 611 Accordingly, ComReg has decided that the inclusion of this requirement, post 30 October 2021 will present no additional obligations, where a universal service obligation and designation are imposed.
- 612 However, ComReg will analyse available disconnection data and consider if any issues arise in relation to the current USP's Disconnections Policy

6.4.3.2 Phased Payment of Connection Fees

- 613 We have considered if it is necessary to prescribe any terms and conditions which should be offered or should not be permitted by the USP.

⁹² www.eir.ie/support/billing/what-happens-if-i-dont-pay-mybill/#:~:text=Disconnection%20policy,-It%20is%20our&text=This%20normally%20allows%20a%20period,that%20your%20bill%20is%20overdue.

⁹³ Electronic Communications Complaints Handling Code of Practice - Response to Consultation and Decision, Decision D04/17; Document No.17/62.

- 614 As set out above, the Code entered into force on 20th December 2018, with a transposition deadline of 21 December 2020.
- 615 Regulation 3 (5) of the Universal Service Regulations 2011 remain valid and in force. We are cognisant of the need for the 2011 Regulations to be interpreted to align with the Code, and other relevant national and EU legislation.
- 616 ComReg has decided in the context of the transposition of the Code that it will not consider special terms and conditions at this time.
- 617 However, ComReg may consider subsequently if there are any end-user issues which may benefit from specific terms and conditions.
- 618 The Extant Consultation asked the following questions regarding control of expenditure measures:

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

6.4.3.3 Control of expenditure measures– Respondents' Submissions

- 619 ComReg received three responses to Question 10 (ALTO, eir and Sky).
- 620 Both ALTO and Sky are in general agreement with ComReg's preliminary views.
- 621 ALTO states that it agrees with ComReg *"... on the basis that this matter is likely to require a need for review in the coming years. However, given the risks associated with social exclusion and low implementation costs, ALTO agrees with the position suggested by ComReg at this time."*
- 622 eir disagrees, stating: *"eir does not agree that specific measures should be imposed on the USP. They should either be imposed on all retail operators or none."*
- 623 Sky agrees, stating: *".... We think that ComReg's preliminary views are reasonable"*.

6.4.3.4 Control of expenditure measures– ComReg's response

- 624 The majority of respondents were in agreement with ComReg's preliminary views on control of expenditure measures.

625 eir is of the view that any control of expenditure measures should apply equally to all service providers as opposed to only the USP.

626 ComReg notes that all ECS service providers already have an obligation to have and publish a Code of Practice for Complaints Handling.

627 With regard to obligations in respect of phased payment for connection fees, ComReg notes eir's submission, however, we maintain the view that, absent 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.

628 Furthermore, considering that:

- i. in recent years eir has implemented a series of connection promotions whereby connection charges were set to €0; and
- ii. the vast majority (circa [X ■ X] %) of new connections⁹⁴ are in-situ connections),

ComReg is of the view that maintaining these obligations does not impose a significant burden on the USP.

629 ComReg has therefore decided that the existing obligation should be maintained, given its importance for end-users (helping to prevent social exclusion) and the low implementation costs for the USP.

6.5 QoS

630 The current QoS regime set out in D02/19⁹⁵ 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.

631 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.

⁹⁴ Period 2018- 2020.

⁹⁵ ComReg D02/19, Document No. 19/21, "Universal Service Requirements - Provision of access at a fixed location (AFL) - Quality of Service (QoS)", 13 March 2019.

- 632 ComReg will issue Information requirements (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.
- 633 ComReg may separately, from time to time, request other relevant reports.
- 634 The Extant Consultation asked the following question regarding QoS.

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

6.5.1 Quality of Service (QoS) – Respondents' Submissions

- 635 All four respondents responded to question 11.
- 636 ALTO agrees with ComReg's preliminary view and state that: *"...ALTO remains concerned with the suggestion that Urban and Rural splits of FACO could have a very detrimental effect on QoS"*.
- 637 BT also agrees and state that *"... [we] strongly agree with preliminary views to continue to monitor QoS performance. i.e, What gets measured gets done"*.
- 638 eir did not address the question posed in respect of ComReg's preliminary views to continue to monitor QoS performance for any designated undertaking and to continue to publish trends.
- 639 eir responded in respect of any future AFL USO QoS designation, disagreeing with ComReg, stating that: *"...QoS is fundamental part of the USO burden. Inappropriate changes could require open eir to increase investment in its rural copper network at a time when that network is being replaced by the rollout of NBP giving rise to stranded investments and the inefficient use of scarce capital resources which are better deployed supporting the rollout of fibre access networks"*.

- 640 *“...That is very obviously for the NBP network to take on the USO and provide these services, rather than for eir to be forced to significantly invest to continue to provide a USO based on outdated and overbuilt infrastructure at an average net cost of c.€10 million per year. The NBP will have all the technical capabilities of doing this, as well as providing more enhanced services. It is economically wrong for ComReg and its advisors to force such an outcome”.*
- 641 Sky agrees that ComReg should *“... continue with the existing QoS regime as set out in D02/19”.*

6.5.2 Quality of Service (QoS) – ComReg’s Response

- 642 The QoS regime set out in D02/19⁹⁶ came to an end on 30 June 2021.
- 643 ComReg notes that ALTO, BT and Sky are in agreement with ComReg (i) that QoS is an important aspect of AFL; regarding the importance of (ii) maintaining QoS performance; and (iii) the continued publication of QoS trends.
- 644 ComReg notes ALTO’s concern re FACO. Following the September 2021 EC Withdrawal Decision in respect of ComReg’s FACO/RFTS draft measures, the FACO market review is currently underway in accordance with ComReg consultation procedures⁹⁷. Any removal of regulatory obligations on eir arising from this market review would imply that eir would no longer be obliged to provide wholesale FACO products to Access Seekers. This may require an orderly transition of affected customers to alternative wholesale equivalent service. An AFL universal service designation will ensure that urban customers (as set out in the FACO consultation) will be able to avail of a fixed service, at a suitable quality of service, where the request is deemed reasonable.
- 645 In line with our Regulatory functions ComReg will monitor eir’s QoS performance using its statutory information gathering powers to obtain information as ComReg considers necessary (including reports, processes, and plans) to carry out its functions, during the AFL designation period. ComReg will continue to publish QoS trends. ComReg may separately, from time to time, request other relevant reports from eir.

⁹⁶ ComReg D02/19, Document No. 19/21, “Universal Service Requirements - Provision of access at a fixed location (AFL) - Quality of Service (QoS)”, 13 March 2019.

⁹⁷ ComReg Document No. 11/34, “ComReg Consultation Procedures”, 6 May 2011.

- 646 ComReg notes that eir did not address the question posed in respect of ComReg's preliminary views to continue to monitor QoS performance for any designated undertaking and to continue to publish trends. eir responded in respect of any future AFL USO QoS decision.
- 647 Consistent with the provisions of the Universal Service Regulations, ComReg's approach to universal service has been to designate an undertaking under Regulation 7, where necessary, to comply with the obligations set out in Regulation 3 and to subsequently, and if ComReg considers it necessary, specify further measures applicable to the designated undertaking as appropriate (for example as allowed under Regulation 3(5) and Regulation 10).

NON CONFIDENTIAL

7 Designation of a Universal Service Provider

648 This Chapter sets out our Decision to designate eir as the USP and our reasons for this decision.

649 We find that there is a need for an AFL USO in the State, post 30 October 2021. Accordingly, we are required to designate one, or more, undertakings to guarantee the provision of the universal services so that the whole of the State is covered⁹⁸.

650 This Chapter is structured as follows:

- Our Decision.
- Reasons for our Decision.
- Expressions of interest: Summary of the issues in the Extant Consultation, the submissions which we received, and our response to these submissions.
- Designation and associated duration: Summary of the issues in the Extant Consultation, the submissions which we received, and our response to these submissions.
- Geographical scope: Summary of the issues in the Extant Consultation, the submissions which we received, and our response to these submissions.

7.1 Our Decision

651 ComReg has decided the following:

- **Designation:** eir shall be the USP for AFL USO
- **Entire State:** there is a need for an AFL USO in the entire State.
- **Duration:** is for a relatively short period, until June 2023 in light of transposition in light of transposition of the Code and developments in the market, including the roll out of the NBP. ComReg will keep under review any AFL USO and designation in light of transposition of the Code and

⁹⁸ Regulation 7(1) of the Universal Service Regulations 2011.

development in the market, including the roll out of the NBP. Specifically, ComReg proposes to commence a review:

- (i) where changes in market conditions and technological developments are such that ComReg deems it appropriate to do so, or
- (ii) 6 months after DECC has concluded the transposition of the Code into national law,

whichever is the earlier. 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.

652 Any individual elements of the USO may be reviewed within this designation period, if the circumstances justify it (e.g., price increases which may create affordability issues arising where connection/ rental or the costs of calling, or other circumstances, or issues may arise in relation to disconnections policy or reasonable access request or thresholds).

7.2 Reasons for Our Decision

653 One of our functions is to determine the need for, and scope of, the USOs for the Irish market and to decide which undertaking(s), if any, should be designated as the USP(s) for USO(s).

654 The current Universal Service Regulations⁹⁹ place primary responsibility on us as the independent ECS regulator for Ireland, to safeguard and ensure the provision of a minimum set of telecommunications services in the State. We may designate an undertaking, or undertakings, to satisfy any reasonable request to provide, at a fixed location, a connection to the public communications network (“PCN”) and a publicly available telephone service over the network connection that allows for originating and receiving of national and international calls.

655 ComReg’s objective is to find the most appropriate approach to ensure that AFL is available to consumers throughout Ireland. ComReg aim is to ensure that the services provided continue to meet consumers’ needs, particularly if they are not already met by the market.

⁹⁹ The European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (S.I. No. 337 of 2011) (the “Universal Service Regulations”).

656 **Designation**

657 ComReg has designated eir as the USP, based on need for an AFL USO set out in chapter 3 of the Response to Consultation and Extant Decision document.

658 As next generation broadband is not yet available nationally it affects the ability to support managed VoIP in all locations. This indicates that next generation networks cannot yet be relied on to ensure the full availability of an AFL standalone retail fixed telephony service nationally, in the short to medium term.

659 In the intervening period there is a requirement to ensure that those customers who wish to avail of access at a fixed location and a voice service should be able to do so, where the access request is deemed reasonable.

660 There remains a sizeable but declining number of standalone retail fixed telephony service subscriptions. The vast majority of these are provided over fixed narrowband access (copper) network, which remains the predominant form of retail fixed telephony service for households and businesses.

661 The lack of ubiquity of next generation networks (i.e., Virgin Media, SIRO and NBP), and the level of investment that would be required to replicate a network capable of offering retail fixed telephony service, such as eir's ubiquitous network reflects the continued importance of fixed narrowband access (copper) network (within at least the next 24 months).

662 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.

663 ComReg also notes eir's response (12 February 2021) to ComReg's Section 13D(1) statutory information requirement issued on 21 December 2020 where it provided the following responses in respect of existing and new connections, absent an AFL USO obligation, for the period July 2021 to 30 June 2023.

664 In respect of existing connections, eir state that: "[X

[REDACTED]

X]".

665 In respect of new connections, eir state that: “[]”. ComReg has considered and relies upon these statements. The above supports ComReg’s reasoning for its decision.

666 This designation obligation only crystallises where an end-user makes a reasonable access request, which is fulfilled by the USP.

667 **Entire State**

668 During this transition period, our objective is to ensure that reasonable requests for access at a fixed location are met.

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

670 ComReg has decided that any designation must be for the whole of the State, to protect all end-users throughout the State. This will ensure that any end-user in the State who requires the protections of universal service to get access to a public telephone network at a fixed location and a telephony service, receives it (where the request is reasonable).

671 eir continues to be the largest provider of connections and voice services at a fixed location in Ireland. eir has already an extensive and ubiquitous access infrastructure in place to deliver the necessary access to all universal service end-users across the State.

672 The ubiquity of eir’s network and its capability and experience and statements made dictate that while alternative networks are being rollout out and, until Equivalent Service are available, the most efficient and proportionate approach to ensure that those customers who wish to avail of access at a fixed location and a voice service should be able to do so, is to designate eir. This will guarantee the provision of the universal services so that the whole of the State is covered¹⁰⁰ during this transition period.

¹⁰⁰ Regulation 7(1) of the Universal Service Regulations.

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

674 **Duration**

675 The AFL USO designation period is for a relatively short period, until June 2023 in light of transposition in light of transposition of the Code and developments in the market, including the roll out of the NBP.

676 Specifically, ComReg proposes to commence a review:

- (i) where changes in market conditions and technological developments are such that ComReg deems it appropriate to do so, or
- (ii) 6 months after DECC has concluded the transposition of the Code into national law,

whichever is the earlier.

677 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.

7.3 Expressions of interest

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

679 In the context of alternative infrastructure and further efficiencies, it is evident that other operators in Ireland may be able and willing to provide all, or part of the AFL universal service, in all or part of the State, and may be able to do so at a lower cost.

680 ComReg is mindful that the designation method(s) adopted must ensure that any AFL USOs are provided in a cost-effective manner and may be used as a means of determining any net cost of providing AFL under USOs.

681 In the Extant Consultation undertakings were requested to consider their interest in being a USP for provision of AFL, or otherwise, and to specifically how an undertaking might ensure the effective and efficient provision of AFL (both connection and voice services). ComReg set out its preliminary view that, in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, for the reasons detailed including ubiquity, experience, and capability, for a short designation period, post 30 October 2021.

682 The Extant Consultation 21/51 asked the following question regarding expressions of interest.

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

7.4 Expressions of interest – Respondents' submissions

683 ComReg received three responses to Question 13 (ALTO, eir and Sky).

684 No respondents expressed an interest in being a USP for any future provision of AFL under the USO.

685 ALTO states that: "... it is not in a position to express a view on this question".

686 eir states that: “... eir does not wish to express an interest in being a USP however that discretion appears to have been taken away from eir. eir has demonstrated that the net cost was in the region of €10m per annum in previous years (up to 2015/16)..... An unjustified extension of the AFL USO would likely result in a net cost to eir and its shareholders in excess of €20m”; that: “eir objects to the fact that ComReg sought expressions of interest in parallel with its consultation on the scope and nature of the USO requirements...”, and that: “... the process followed by ComReg ensures that no undertaking other than eir may be de facto designation. In fact, ComReg makes it a pre-condition that they express an interest. eir believes that it is entirely discriminatory of it as eir has never expressed a willingness of discharging the USO in circumstances where the net costs of the USO has remained unshared to date”.

687 eir also states that: “... the absence of any details on what obligations will be imposed in respect of QoS. Acts as a further disincentive to any potential candidates who are presented with the invidious position being invited to volunteer to fulfil an undefined and potentially unfunded obligation. ComReg has failed to provide any clarity on how a potential net cost would be calculated... The principles of D04/11 are clearly set out in the context of services provided over a copper network which would appear to preclude interested parties to make an application using alternative technologies that may be more efficient...”

688 Sky states that: “.... we do not have the necessary infrastructure to fulfil this obligation”.

7.5 Expressions of interest – ComReg’s response

689 ComReg notes that (i) eir does not wish to express an interest in being a USP; (ii) eir is of the view that its rights have been infringed by seeking expressions of interest in parallel with the Extant Consultation document 21/51 on the scope and nature of the USO requirements; (iii) eir is of the view that the process adopted by ComReg ensures that no undertaking other than eir may de facto be designated; (iv) eir is of the view that there is a lack of clarity re QoS obligations; and (v) eir disagrees with how the net costs would be calculated.

- 690 Under the Regulations, our USO designation must be transparent: we must properly consult (publicly) on our proposals before designating the USP and we must publish reasons for our Decision. The designation mechanism and our Decision are necessary, proportionate, non-discriminatory and transparent and ComReg is satisfied that it has acted accordingly, as set in this Response to Consultation and Decision, and in particular, paragraphs 652 to 655 below.
- 691 As set out earlier, next generation broadband is not yet available nationally it affects the ability to support managed VoIP in all locations. This indicates that next generation networks cannot yet be relied on to ensure the full availability of and AFL standalone retail fixed telephony service nationally, in the short to medium term.
- 692 In the intervening period there is a requirement to ensure that those customers who wish to avail of access at a fixed location and a voice service should be able to do so, where the access request is deemed reasonable.
- 693 The ubiquity of eir's network, and its capability and experience dictate that, while alternative networks are being rollout out, and until Equivalent Service are available, the most efficient, cost effective and proportionate approach to ensure that those customers who wish to avail of access at a fixed location and a voice service should be able to do so, is to designate eir. This will guarantee the provision of the universal services so that the whole of the State is covered¹⁰¹ during this transition period.
- 694 We have considered and reviewed the data as provided to us by industry, on foot of a number of information requirements. We have also taken account of the DECC's NBP rollout and other alternative infrastructures, market trends and evolutions.

¹⁰¹ Regulation 7(1) of the Universal Service Regulations.

695 Any designation mechanism must be efficient, objective, transparent and non-discriminatory. The designation of a USP is ultimately not dependent upon an expression of interest being received by ComReg from the service provider. The designation method adopted shall ensure that the obligations are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Regulation 11. As set out at paragraph 569 the USO is allocated to an operator (eir) demonstrating the most cost-effective means of delivering access and services

696 ComReg notes eir's statement that: "... *an unjustified extension of the AFL USO would likely result in a net cost to eir and its shareholders in excess of €20m....*"

697 As set out previously, ComReg refers eir to its response (12 March 2021) to ComReg's Section 13D(1) statutory information requirement issued on 20 December 2020 where it provided the following responses in respect of existing and new connections, absent an AFL USO obligation for the period July 2021 to 30 June 2023.

698 In respect of existing connections, eir state that: "[REDACTED]".

699 In respect of new connections, eir state that: "[REDACTED]". ComReg has considered and relies upon these statements. The above supports ComReg's reasoning for its decision

700 According, ComReg fundamentally disagrees with eir's view that extension of the AFL USO would likely result in a net cost to eir and its shareholders in excess of €20m.

701 eir objects to ComReg having sought expressions of interest in the Extant Consultation from other service providers who might wish to be a USP in parallel with the Extant Consultation 21/51, on the scope and nature of the USO requirements.

- 702 ComReg does not agree with eir. ComReg is of the view that it is relevant and appropriate to seek expressions of interest in parallel to consulting on the scope and nature of the USO requirements. This provides potential USPs with the opportunity to understand and respond to proposals in parallel with any expressions of interest.
- 703 In any event, we have received **no** expressions of interest from any interested party in response to our call for expressions of interest. Neither has any interested party pro-actively approached us in the period of the previous or current USO designation (July 2016 – 30 June 2021, or 1 July 2021 to date) to (i) express an interest in providing some or all of the elements of the universal service; (ii) seek clarity on what obligations will be imposed in respect of QoS; or (iii) how D04/11 could apply to the calculation of the net cost in respect of their infrastructure.
- 704 As stated earlier ComReg 's decision to designate eir is based on inter alia, the ubiquity of eir's network, and its capability and experience and its statements in response to ComReg's Section 13D(1) statutory information requirement. While alternative networks are being rollout out, and until Equivalent Service are available, the most efficient and proportionate approach to ensure that those customers who wish to avail of access at a fixed location and a voice service should be able to do so, is to designate eir. This will guarantee the provision of the universal services so that the whole of the State is covered¹⁰² during this transition period. Accordingly, ComReg rejects eir's view that (i) its rights have been infringed by seeking expressions of interest in parallel with the Extant Consultation document 21/51, on the scope and nature of the USO requirements; and (ii) the process adopted by ComReg ensures that no undertaking other than eir may de facto be designated.
- 705 eir appears to conflate issues in relation to the designation of the USP, with the how the USP might be compensated by industry for the uneconomic provision of the universal service. This latter issue is separate from the former and, we are addressing this in a separate process (i.e., where eir has sought to receive funding¹⁰³ for the net costs of meeting USO), in which eir is engaged.
- 706 Accordingly, ComReg does not agree with eir's view.

¹⁰² Regulation 7(1) of the Universal Service Regulations.

¹⁰³ In respect of 2015-2016.

707 The Extant Consultation asked the following question regarding expressions of interest.

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

7.6 Absent expressions of interest eir is best placed to continue to be the USP for AFL – Respondents' Submissions

708 All four respondents responded to Question 14.

709 The majority of respondents agreed with ComReg's view that, in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, in light of the preliminary proposal for an initial designation period of eighteen months – two years.

710 ALTO agrees with ComReg's preliminary view, stating that: "*... in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, in light of the preliminary proposal for an initial designation period of eighteen months – two years.*"

711 BT agrees with ComReg's view, stating that: "*... to be the USP for AFL you really need to possess a ubiquitous mass-market high-volume access network and only one operator has that in Ireland as far as we are aware. i.e., the existing USP for AFL. Hence in our view, absent receiving any expressions of interest eir is best placed to become the USP for AFL for the coming 18 months to two years.*"

712 BT caveat its view by stating: "*However, given the very considerable State Aid that has been afforded to NBI for the roll-out of broadband access within the IA, we consider and expect that ComReg should seriously look at migrating the USP for AFL within the IA to NBI once the 24 months has expired.*"

713 eir disagrees that eir is best placed to continue to be the USP for AFL for a period of 18 months to two years based on the reasoning set out in its response to the Extant Consultation document 21/51.

714 Sky agrees with ComReg's preliminary view that, in the absence of an alternative: "... eir should continue with the USO obligations."

7.7 eir is best placed to continue to be the USP for AFL (absent expressions of interest) – ComReg's Response

715 The majority of respondents to Question 14 agreed with ComReg's preliminary view that, in the absence of receiving any expressions of interest, eir is best placed to continue to be the USP for AFL for a period of 18 months – two years.

716 BT's view concurs with ComReg's view that the designation of a USP requires that operator(s) possess a ubiquitous mass-market high-volume access network. The ubiquity of eir's network, and its capability and experience dictate that, while alternative networks are being rollout out, and until Equivalent Service is available, the most efficient and proportionate approach to ensure that those customers who wish to avail of access at a fixed location and a voice service should be able to do so, is to designate eir. This will guarantee the provision of the universal services so that the whole of the State is covered¹⁰⁴ during this transition period.

717 ComReg notes BT's caveat regarding the future of AFL USO with respect to the NBI IA, once the 24 months have expired. 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.

718 In respect of voice at a fixed location, ComReg expects that as broadband continues to roll out, affordable voice offers (standalone or in a bundle) will be made available to end-users on a commercial basis. Where affordable fixed voice access and services are not provided commercially, a USO may be required, within discrete parts of the State.

719 ComReg has decided that, in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, for the reasons detailed including ubiquity, experience and capability, for any short designation period, where required post the current designation period.

¹⁰⁴ Regulation 7(1) of the Universal Service Regulations.

720 The Extant Consultation 21/51 asked the following question regarding the geographical scope of any proposed designation.

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

7.8 Designation of Universal Service Provider: Geographical Scope – Respondents' Submissions

721 All four respondents responded to Question 15.

722 ALTO agrees with ComReg's preliminary view with a caveat that: *"... This is a self-explanatory matter, but we note the complexities arising should partial designations be made or sought. That would not be an ideal situation for ComReg or industry to be placed in"*.

723 BT agrees and state that: *"... USO is national in nature as everybody has a right to a telephone service and at this time, given NBI is in the early stages of rollout, we agree the existing USP should supply a national USO AFL solution"* and that: *"... considering the major changes taking place in the industry with NBI, copper withdrawal, BB rollout and whether it should be covered by the USO, we believe a new approach is needed for the next review."*

724 eir disagrees with ComReg, stating that *"... To the extent that an AFL USO can be justified it should be targeted at areas with poor mobile coverage and/or progressively removed in the NBP IA as premises are passed by the new network"*.

725 Sky agrees with ComReg's preliminary view.

7.9 Designation of Universal Service Provider: Geographical Scope – ComReg's Response

726 The majority of respondents agree with ComReg's preliminary view.

- 727 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 is required. During this transition period, our objective is to ensure that reasonable requests for access at a fixed location are met through the most appropriate approach.
- 728 eir believes that end-users' requirements for access at a fixed location (including functional internet access) are met by mobile services so that it is neither necessary nor proportionate to designate a USP for the next two years.
- 729 This argument is misplaced. It assumes that it is appropriate to treat mobile as access at a fixed location. The terms "at a fixed location" means the opposite of the term "mobile"¹⁰⁵. Mobile communications are, by definition, excluded from the minimum set of universal services, because their provision does not presuppose access and a connection at a fixed location to a public communications network.
- 730 ComReg has acknowledged in the Extant Consultation 21/51 the changing nature of the market and the growing number of end-users who only use mobile services. The presence, quality, and affordability of alternative infrastructure, including mobile services, is a factor to be considered in conjunction with the cost to the USP of a connection, when assessing the "reasonableness" of any specific request in accordance with the current reasonable access request process.
- 731 ComReg in assessing if there is a need for an AFL in the State considered the position of mobile and concluded that mobile provision is not access at a fixed location and that it is not a sufficient substitute for AFL such that there is no longer a need for an AFL USO.

¹⁰⁵ See ComReg's more detailed response on this matter in chapter 3(ComReg's response to respondents' submissions to Q1 in the Extant Consultation document 21/51).

- 732 As set out earlier, the current market demand (set out in the Extant Consultation 21/51 at chapter 3) does not support eir's view. If this view was correct, there would be no demand for universal service fixed voice services and end-users would choose mobile services to meet their needs (migrating from fixed to mobile service or by always selecting mobile services (in preference to fixed voice services) to meet their needs). However, this is not the case, as borne out by (i) the small number of end-users continue to request access at a fixed location for voice communications services and (ii) and existing fixed voice service customers who continue to choose fixed services in preference to mobile services. End-users have the choice to commercially select mobile services where they meet their needs. However, where an end-user wishes to procure a fixed voice communication service, ComReg is obliged to ensure that such a choice is made available to the end-users, where the request is reasonable. Accordingly, ComReg disagrees with eir's view.
- 733 ComReg notes eir's view that any AFL USO should be progressively removed in the NBP intervention area as premises are passed by the new network.
- 734 ComReg agrees with eir's position in respect of new connections within the NBP intervention area, where there is an alternative retail service provider with an Equivalent Service. ComReg has decided to amend the reasonable access request process and the associated thresholds in this Decision, in response to these submissions. ComReg has decided to retain certain the RAR Process as per D015/16 subject to the amendments as set out below
- 735 The existing connections and/or PATS obligation remain. All existing connections¹⁰⁶ and/or PATS (whether active or not), are deemed to be reasonable and should continue to be supplied, (including in-situ connections). It is envisaged that the copper switch off-process will play a role in the future of such existing copper connections (post this designation period).

¹⁰⁶ Existing Connection means any Connection that is not a New Connection. New Connection means a Connection at any primary location or residence that has never been connected to the PCN (fixed).

- 736 The new connections and/or PATS obligation is now amended. The initial cost threshold of €1,000 is now removed. The automatic USP obligation to supply all reasonable access requests costing under €1,000, irrespective of whether there is an alternative infrastructure and an equivalent service available, is now removed. The USP now has an obligation to supply reasonable access requests where there is no alternative infrastructure and equivalent service available. The further tests and thresholds in the reasonable access request criteria remain unchanged.
- 737 The Equivalent Service definition is now amended to include voice and broadband services supplied in a bundle, providing the bundle meets certain existing criteria, including affordability.
- 738 Where an Equivalent Service is not affordable, or the end user requests a standalone PATS, such access requests are deemed as reasonable and must be satisfied by the USP, using the least cost technology. In this case, the least cost technology is likely to be a Fixed Cellular Solution (FCS) if there is no in-situ connection.
- 739 As proposed in the Extant Consultation, ComReg will keep under review any AFL USO and designation in light of transposition of the Code and development in the market, including the roll out of the NBP. Specifically, ComReg proposes to commence a review:
- (i) where changes in market conditions and technological developments are such that ComReg deems it appropriate to do so, or
 - (ii) 6 months after DECC has concluded the transposition of the Code into national law,
- whichever is the earlier.
- 740 On foot of this review, ComReg a new consultation process may be required.

- 741 ComReg, however, remains of the view that where a standalone fixed voice end-user is already being served by eir in the NBP intervention area, eir's USP obligations will remain, as premises are passed in the NBP intervention area, unless the end-user self-selects to migrate to an alternative retail service provider. ComReg's rationale is two-fold (i) end users who wish to migrate to an alternative retail service provider within the NBP intervention area, will do so of their own volition and eir's USP obligations will then automatically fall way (ii) existing AFL standalone fixed voice end users should not be forced to migrate to an alternative network where they are likely to incur additional connection costs which may not be affordable.
- 742 ComReg has therefore decided that the geographical scope of the AFL USO designation is State. It is important to note that this obligation only materialises when a reasonable access request is received by the USP from end-user and is fulfilled by the USP.
- 743 The Extant Consultation 21/51 asked the following question regarding the proposed designation period.

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

7.10 Designation of Universal Service Provider: Duration – Respondents' Submissions

- 744 All four respondents responded to Question 16.
- 745 ALTO agrees with ComReg's preliminary view and reiterated their suggestions made elsewhere: "... *that any designation period should only commence after ComReg has fully deliberated on the subject of copper switch-off.*" Furthermore, ALTO also stated their intention to communicate their views on copper switch-off to ComReg shortly.
- 746 BT agrees and state that 24 months "...*is needed to maintain the existing USO environment whilst work is underway to reform the USO process considering NBI and other major developments.*"

747 eir does not agree, however, to the extent that an AFL USO can be justified and against a backdrop of the Code (and, in particular, Affordable Broadband services) it states that: “... a designation period of 24 months (if an AFL USO can be justified) should provide sufficient time for a review of Affordable Broadband services to be conducted as this will inform the availability of voice services”. Furthermore, eir state that the next 24 months should be used to allow “... the sun to set on the outdated voice oriented AFL”.

748 Sky agrees with ComReg’s preliminary view and echo BT’s comments regarding eir’s Whitepaper on copper switch-off, stating: “.... Comreg should be cognisant of the eir Whitepaper and potential distortion this may cause in the market and retain an option to amend the USO accordingly”.

7.11 Designation of Universal Service Provider: Duration – ComReg’s response

749 The majority of respondents agreed with ComReg’s preliminary view that the designation period should be for a period of 24 months unless amended.

750 As outlined in our Annual Action Plan¹⁰⁷, ComReg has published a Call for Inputs document on Copper Service Switch-Off in Q3 2021. The responses to this call for inputs will be a key input to the development of ComReg’s on Copper Switch-Off Consultation document.

751 ComReg welcomes ALTO’s engagement in the consideration of copper switch off, and its response to ComReg’s call for inputs document.

752 In light of the likely timeframes associated with the copper switch off consultation and decision process, ComReg disagrees with ALTO’s view that any designation period should only commence after ComReg has full deliberated on the subject, as this would result in a lacuna period where end users’ rights are not upheld in line with ComReg’s statutory obligations.

¹⁰⁷ [Action Plan for Year to 30 June 2022.](#)

- 753 ComReg notes eir's view that if an AFL USO can be justified, a designation period of 24 months will allow a migration from a voice oriented to a future data-oriented regime. ComReg has addressed the justification for an AFL USO as set in this Response to Consultation and decision, and in particular ComReg's response to Question 1.
- 754 ComReg in the Extant Consultation set out ComReg's preliminary view to continue eir's current designation as USP for AFL for a period of 24 months, unless amended to ensure there is a USP for the provision of AFL USO during the transition period. (Chapter 5). No new evidence has been provided to us that suggests our views on the designation period are no longer valid
- 755 The lack of ubiquity of next generation networks (i.e., Virgin Media, SIRO and NBP), and the level of investment that would be required to replicate a network capable of offering retail fixed telephony service, such as eir's ubiquitous network reflects the continued importance of fixed narrowband access (copper) network (within at least the next 24 months). As next generation broadband is not yet available nationally it affects the ability to support managed VoIP in all locations. This indicates that next generation networks cannot yet be relied on to ensure the full availability of and AFL standalone retail fixed telephony service nationally, in the short to medium term.
- 756 As set out earlier, the timelines associated with copper switch off are likely to extend beyond the life of this designation. Accordingly, while ComReg recognise that copper switch off has the potential to cause market distortion, it is unlikely to occur within the timeframe of this designation period.
- 757 However, ComReg proposes to keep under review any AFL USO and designation in light of transposition and development in the market, including the roll out of the NBP. Accordingly, we propose:
- to commence a review, (i) where changes in market conditions and technological developments are such that ComReg deems it appropriate to do so, (ii) 6 months after DECC has concluded the transposition of the Code into national law,
 - whichever is the earlier.

8 Regulatory Impact Assessment (RIA)

8.1 Introduction

- 758 The analysis presented sets out ComReg’s final regulatory impact assessment (“RIA”). It sets out ComReg’s final assessment of the likely effect upon stakeholders and competition, of a need, if appropriate, for an AFL USO designation, and the various forms that this may take.
- 759 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.
- 760 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.
- 761 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.
- 762 These details will be used by ComReg as key inputs in the performance of its role, in respect of any potential need for a USO, where ABB IAS cannot be ensured under normal commercial circumstances or through other public policy tools.
- 763 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.

- 764 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.
- 765 The purpose the final RIA is to help identify whether ComReg's proposed regulatory approach is likely to have the desired impact in terms of promotion of the interests of end users and protecting end-user welfare in respect of AFL USO. With this response to consultation and Extant Decision, 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.
- 766 It 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.
- 767 The final RIA helps to consider the various regulatory options available to ComReg in respect of:
- The requirement for an AFL USO (the need to designate an undertaking as USP for the provision of AFL USO following the end of the current designation); and
 - The need for, and scope of, each of the obligations (reasonable access request, FIA, affordability, and control of expenditure) associated with any such AFL USO designation.
- 768 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.
- 769 ComReg's aim in conducting this final RIA is to ensure that its proposals are appropriate, proportionate, and justified considering the analysis conducted, its objectives, and the principle of proportionality.

- 770 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.
- 771 ComReg's approach to the final RIA follows the RIA Guidelines (published in August 2007¹⁰⁸ and considers the "Better Regulation" programme¹⁰⁹ 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.
- 772 ComReg is now conducting its final 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.¹¹⁰

8.2 Extant Consultation 21/51

- 773 In Chapter 8 of the Extant Consultation 21/51 ComReg carried out a draft RIA in accordance with the RIA framework, to identify a preferred option in respect of the need to designate an undertaking as USP for the provision of AFL, post 30 June 2021.
- 774 The Extant Consultation 21/51 considered the regulatory options available, in respect of the need (if any) to designate an undertaking as USP for the provision of AFL. It considered whether to maintain the AFL obligation (Option 1), or to remove the AFL obligation (Option 2). In maintaining the obligation, ComReg considered several options in respect of the various aspects of USO which are currently prescribed, namely:

¹⁰⁸ ComReg Document No. 07/56, "ComReg's approach to Regulatory Impact Assessment - Response to Consultation and Guidelines", 10 August 2007, and ComReg Document No. 07/56a, "Guidelines on ComReg's Approach to Regulatory Impact Assessment", 10 August 2007.

¹⁰⁹ 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%202011/Revised%20RIA%20Guidelines%20June%202009.pdf).

¹¹⁰ 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.

- Functional Internet Access
- Reasonableness of requests
- Affordability including GAP
- Control of expenditure

775 ComReg considered, on balance, that maintaining both (i) the AFL obligation (Option 1) and (ii) the prevailing obligations in respect of the various aspects of the USO which are currently prescribed, was the most appropriate option. The Extant Consultation 21/51 sought stakeholders' views on ComReg's draft RIA and asked the following question.

Q. 18 Do you agree or disagree with ComReg's draft regulatory impact assessment of the impact of the proposed options? Are there other implications or details that should be included?

8.3 Draft RIA – Respondents' Submissions

776 Four respondents replied to question 18 regarding ComReg's draft regulatory impact assessment of the impact of the proposed options.

777 ALTO agrees with the draft RIA and re-iterates its position in respect of the lack of wholesale VOIP offerings in the market, stating: "... *there appears to be an issue with the lack of availability of wholesale VoIP offerings on the market which might provide for more flexible options for wholesale operators and consumers...*"

778 BT also agrees with ComReg's Draft RIA for the duration of 24 months and state that beyond the 24-month timeframe: "... *ComReg should review the major market changes that are coming, including being ready for NBI to take over the obligation within the Intervention area, life without copper and what are the plans for a BB USO.*"

779 eir disagrees with ComReg's draft RIA stating: "*The Regulatory Impact Assessment ("RIA") that ComReg presents under this heading is significantly deficient due to its failure to engage in a quantitative analysis of the available regulatory options*" and that: "... *in its current format fails to meet the requirements of efficiency and objectivity identified*", citing Regulation 7 of the USR and revised guidelines concerning RIAs from the Department of the Taoiseach.

780 Sky has no comments on the draft RIA.

8.4 Draft RIA – ComReg’s Response

781 ComReg notes ALTO and BT’s agreement with ComReg’s draft RIA.

782 ComReg addresses ALTO’s concern in respect of the lack of availability of VoIP offerings in its response to question 1. ComReg also addresses BT’s concern in respect of beyond the 24 months in its response to question 1.

783 ComReg disagrees with eir’s view that the draft RIA is significantly deficient due to a lack of quantitative analysis of the regulatory options.

784 eir is of the view that a RIA is only ‘valid’ where a quantitative analysis of the regulatory options is provided, and that a qualitative analysis, in and of itself, is deficient. The revised guidelines¹¹¹ concerning RIAs from the Department of the Taoiseach are simply that. They apply to, and are used by, all Government Departments and Offices.

785 Section 2.19 of the revised guidelines sets out the position on the use of RIAs by other bodies and states: “...*Therefore, while the Government decision in relation to RIA applies only to Government Departments and Offices, these other regulators should, as a matter of best practice, use RIA as a regulatory tool to assist in identifying the costs, benefits and impacts of their regulations since these can have significant impacts. While RIA is something which is frequently associated with economic regulatory decisions and as such is a tool already used by some independent regulators e.g., ComReg who have published guidelines on their own approach to RIA, it should also be considered by officials working on other policy areas*”. They are guidelines and there is no legal requirement for ComReg to adhere to these to the ‘letter’.

¹¹¹ [gov.ie](http://www.gov.ie) - The Public Spending Code (www.gov.ie), Regulatory Impact Analysis Guidelines.

786 ComReg's own guidelines¹¹² state (at paragraphs 1.3 -1.5): "... [1.3] *Although the Government's RIA Guidelines are not legally binding on ComReg, in conducting any RIA, ComReg will take full account of those guidelines. However, the RIA Guidelines are intended to apply principally to regulation as it is carried out by the Government, i.e., by the enactment of primary or secondary legislation. ComReg's regulatory remit differs in that it regulates by issuing decisions e.g., imposing obligations or specifying requirements, and promulgating secondary legislation. Therefore, there may be occasions when the RIA Guidelines will have limited application to situations that ComReg is dealing with, having regard to ComReg's statutory functions and objectives. [1.4] The purpose of a RIA is essentially threefold: first, it is to establish whether regulation is actually necessary; second, it is to identify any positive or negative effects which might result from a regulatory measure and establish whether there is a net benefit; and third, it is to identify and assess any alternative regulatory measures.* [1.5] *ComReg will conduct a RIA in any process that may result in the imposition of a regulatory obligation, or the amendment of an existing regulatory obligation to a significant degree, or which may otherwise significantly impact on any relevant market or on any stakeholders or consumers. ComReg will conduct RIA on the majority of its policy decisions, in accordance with the policy direction*".

787 ComReg's Section 13D(1) statutory information requirement of 21 December 2020 asked eir, absent of a fixed voice universal service designation:

- a) to set out its strategy (or any proposed change in strategy) for fixed voice only customers over the period 1 July 2021 to 30 June 2023 including whether it intended to serve its existing fixed voice only customers (nationally and sub-nationally) with specific reference to customers in sub-national areas 1, 2 and 3;
- b) whether eir will continue to accept and fulfil orders for and connect all new fixed voice only access requests nationally and with specific reference to sub-national areas 1, 2 and 3? Have you identified end users (broken out by (1) consumers, and (2) end users (who are microenterprises, small and medium sized enterprises and not-for-profit organisations) who you will not connect? If yes, please set out the associated rationale for your approach towards these end users, broken out by (1) consumers and (2) end users.

¹¹² ComReg Document No. 07/56a, "Guidelines on ComReg's Approach to Regulatory Impact Assessment", 10 August 2007.

788 eir, in its response to ComReg’s Section 13D(1) statutory information requirement of 21 December 2020 stated in respect of a) above that: [REDACTED]

[REDACTED] [REDACTED].

789 eir, in its response to ComReg’s Section 13D(1) statutory information requirement of 21 December 2020 stated in respect of b) above that: [REDACTED]

[REDACTED] [REDACTED]. eir’s responses to a) and b) sets out its intent.

ComReg has considered and relies upon these statements for its RIA and decision

790 Accordingly, there is no necessity to conduct a quantitative analysis for the cost of the relevant measures.

791 Furthermore, ComReg notes that even if a more recent eir USO funding application (i.e., beyond 2015-2016) was available, eir’s USO funding applications are based on an ex-post approach (including a probabilistic Customer Model) to calculate the net cost, whereas a RIA requires an ex-ante approach.

792 Accordingly, ComReg disagree with eir’s view that the draft RIA fails to meet the “*need to carry out a full quantitative analysis*”.

793 ComReg categorically refute eir’s view that the lack of quantitative analysis within the RIA “...renders it meaningless”.

794 In summary, ComReg when conducting the RIA has regard to the RIA Guidelines, while recognising that regulation by way of issuing decisions e.g., imposing obligations or specifying requirements in addition to promulgating secondary legislation may be different to regulation exclusively by way of enacting primary or secondary legislation. Our ultimate aim in conducting a RIA is to ensure that all measures are appropriate, proportionate and justified.

795 A ‘common sense’ approach is taken towards a RIA to ensure that is proportionate and does not become overly burdensome.

8.5 Final RIA

796 The following sets out our final RIA in relation to the need for an AFL USO and the specific obligations which may be imposed. It expands on the draft RIA contained in the Extant Consultation 21/51 and aims to identify preferred options relevant to the various aspects of the USO following the end of the current designation.

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

797 ComReg has considered, in acting in the pursuit of its objectives (as set out in Section 12 of the Act of 2002 to 2011, as amended, and Regulation 16 of the Framework Regulations), the importance of promoting efficiency, sustaining competition, promoting efficient investment and innovation whilst giving the maximum benefit to end- users, elderly users and users of special needs.

798 ComReg is 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.

799 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.

800 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.

801 In respect of voice at a fixed location, ComReg expects that as broadband continues to roll out, affordable voice offers (standalone or in a bundle) will be made available to end users on a commercial basis. Where affordable fixed voice access and services are not provided commercially, a USO may be required.

- 802 Notwithstanding the anticipated new legislation, European and national legislation still requires ComReg to ensure that reasonable requests for access to basic services including voice service at a fixed location, either standalone or in a bundle are met by at least one undertaking.
- 803 ComReg must continue to ensure that this right is safeguarded.
- 804 With specific regard to the counterfactual analysis and, having regard to the respondents' views, ComReg's regulatory objectives are to mitigate the risk that without an AFL USO, uneconomic end-users may not be properly served, or served at all, at an affordable price, or with an acceptable quality of service. It is unlikely that a service provider would have any incentive to serve end-users who are unprofitable.
- 805 eir is designated as the USP for AFL for the period from July 2021 to 30 October 2021. For the reasons set out in previous chapters ComReg is of the view that there is a continued need for an AFL USO throughout the State, for maximum period of 21 months, post 30 October 2021
- 806 Our objective is to ensure that the universal service for AFL is implemented appropriately as necessary, and that any future provision of an AFL USO continues to evolve appropriately and align with end users' changing needs and market developments. ComReg's role is to ensure that end users throughout the State receive affordable AFL at an acceptable quality. Accordingly, the evidence to support a complete withdrawal of the existing AFL USOs would need to be undisputed.
- 807 ComReg is of the view that an AFL USO is necessary to protect end users. There is a risk that all end users who require access at a fixed location may not be provided with, or may not continue to be provided with, such a service, at all, or at an affordable price, absent an AFL USO, with associated obligations on the USP(s). In this respect, ComReg's aim is to ensure that all end users and customers who require a connection at a fixed location and services over that connection can get them at an affordable price.
- 808 ComReg remains concerned that some end users who require access at a fixed location would not be provided with or would not continue to be provided with such a service absent a USO. In this respect we also want to ensure all end users who require a connection can get one at a reasonable price and with sufficient quality.

- 809 Although the number of narrowband subscribers has decreased, as commercial rollouts continue and the high capacity NBP infrastructure has begun to be rolled out, there may be unacceptable short-term implications for some end users if the AFL USO is withdrawn, prior to the completion of the NBP and commercial rollout.
- 810 While safeguarding and ensuring the provision of AFL USO, we are also mindful of the objective to safeguard competition and facilitate investment to the benefit of end users.
- 811 In pursuing these objectives, ComReg recognise that regulatory measures should be kept to the minimum necessary to address the identifiable risks to universal affordable telephony services.
- 812 ComReg has carefully noted respondents' views and has reflected these, where appropriate, into the final RIA.

8.7 Step 2 – Identify and Describe the Regulatory Options

- 813 ComReg has identified and considered the regulatory options open to it to meet its objectives. The obligations which are currently imposed on the USP with respect to AFL USO and each of the individual components could be maintained, removed, or amended. A detailed description of the options with respect to the various AFL USO aspects is set out below.

8.7.1 Option 1: Maintain an AFL USO Obligation

- 814 Maintain an AFL USO post 30 October 2021 for a maximum period of 24 months. If an AFL USO is maintained, it would ensure that all end users, regardless of their geographic location would be reasonably entitled to a connection at a fixed location.
- 815 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.
- 816 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.

817 Where it is determined that an AFL USO is required, ComReg may decide to designate a single USP for the entire State. Alternatively, different operators (undertakings), or sets of operators, can be designated to provide different elements of the universal service, and/or to cover different parts of the State

818 Therefore, where an AFL USO is required, the various aspects of the USO which are currently provided for also need to be considered, namely:

- Functional Internet Access
- Reasonableness of requests
- Affordability including GAP
- Control of expenditure.

8.7.1.1 Functional Internet Access

819 The options are to maintain the status quo (Option 1) or require the continuance of basic broadband connections (Option 2)

Option 1 – maintain the status quo

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

Option 2 – require the continuance of basic broadband connections

821 This option would require the USP to continue to provide connections capable of basic broadband (i.e., at speeds of 1 Mb/s or higher) to premises where it had once been available. It would require the USP to repair any faults, but it would not require the USP to ensure there was no degradation in speed at all.

8.7.1.2 Reasonableness of requests

822 The scope of the USO is to provide access at a fixed location and provision of telephony service. 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.

823 The options considered are (i) whether to retain the status quo (Option 1) or to amend (i) the current threshold levels (Option 2a) and (ii) the definition of “Equivalent Service” (Option 2b).

Option 2: Retain the status quo

824 Maintain the current reasonable access request process and associated thresholds. There would be no change to the current reasonable access request process or associated thresholds.

Option 2a: Amend the current threshold levels

825 Amend the current threshold levels associated with the current reasonable access request process. Thresholds are a relevant factor when assessing whether a request for access at a fixed location and telephone services is reasonable or not.

826 Increasing the threshold level could extend the scope of the USO to incorporate a small cohort of end users who’s access at a fixed location costs are greater than the current €7,000 maximum threshold.

827 This would allow the vast majority of connections to be made without end users incurring any incremental costs. In this situation, those connections which are unfeasible due to their location and the high costs involved (above the highest threshold level), may still be required to contribute to the costs.

828 Reducing or removing one or more thresholds may directly affect the number of end users’ requests which come within the remit of reasonable access request process.

Option 2b: Amend the definition of Equivalent Service

829 Amend the current definition of Equivalent Service to now include a 'bundle'. This definition is a relevant factor when assessing whether an Alternative Infrastructure can provide an Equivalent Service to the end user. The inclusion of a 'bundle' in the definition of 'Equivalent Service' will directly affect the number of end-users requests which come within the remit of reasonable access request process.

8.7.1.3 Affordability (including GAP)

830 The Universal Service Regulations provide that ComReg 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.

831 The options considered are to impose an obligation to provide special tariffs (Option 1) or not to impose a special tariffs obligation (Option 2).

Option 1: Impose an obligation to provide special tariffs

832 Considers whether to impose an obligation to provide special tariff options to protect vulnerable end users.

833 To date ComReg have not mandated the provision of special tariffs.

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

834 Considers not imposing additional obligations in respect of special tariff plans.

835 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.

Geographical averaged pricing (GAP)

836 The options considered are to impose an obligation to provide GAP (Option 1) or not to impose a GAP obligation (Option 2).

837 For the avoidance of doubt, GAP only applies to standalone fixed voice only customers who avail of universal service, and specifically **excludes** bundles.

Option 1: Maintain GAP obligation

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

Option 2: Remove GAP obligation

839 The removal of GAP may allow greater pricing flexibility and the ability to differentiate between end users and areas in respect of its basic voice telephony services prices.

840 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, and high cost/low margin end users in more urban areas.

841 Removal of the GAP would not achieve the objective of social inclusiveness.

8.7.1.4 Control of expenditure

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

Option 1: Impose Obligations

843 Impose obligations on the USP in respect of a Disconnection Policy and Phased Payment for connection fees and Terms and Conditions of contract (including any appropriate amendments as required)

Option 2: Do not impose Obligations

844 Not to impose obligations for some or all existing measures.

8.7.2 Option 2: Remove an AFL USO Obligation

845 No operator would be obliged to provide AFL USO including connections to a public communications network and related components that ensure affordability and quality, where this option is implemented.

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

Measure proposed	Impact on Industry		Impact on end-user	
	Costs	Benefits	Costs	Benefits
<p>Option 1 - Maintain an AFL USO for a maximum of 24 months for the entire State</p>	<p>USP may incur costs for the provision of the USO - <i>will only be in respect of those customers it would not have served, absent an AFL USO (de minimus)</i>.</p> <p><i>USO costs will be dependent on the specific obligations proposed in respect of those customers it would not have served, absent an AFL USO (de minimus)</i></p> <p>Where: (i) a net cost of universal service is claimed by USP(s) and; (ii) an unfair burden is determined, providers of ECS may be required to contribute to a sharing mechanism to fund universal service.</p>	<p>Obligation only materialises when an end-user requests service (which is not met commercially)</p> <p>USP(s) may accrue benefits such as: (i) enhanced brand recognition, (ii) life cycle benefit (iii) ubiquity (iv) and marketing - associated within being the USP(s)</p> <p>Universal service is technology neutral providing USP(s) greater flexibility in how obligations are met.</p>	<p>Mitigates the risk of differential pricing - although proportionally AFL customers may be paying more for standalone services than those purchasing bundled services</p>	<p>Protects the existing cohort of AFL customers - ensuring continuity of service (where they choose not to migrate to other bundled services).</p> <p>Ensures the ability to obtain a new connection (reasonable request) for new consumers - ensures 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 connection charges, availability of connections capable of FIA etc., affordability including GAP; control of expenditure.</p>

	Measure proposed	Impact on Industry		Impact on end-user	
		Costs	Benefits	Costs	Benefits
FIA	<p>Option 1: Maintain current 28.8kbit/s rate</p>	<p>USP may not always be able to deploy the lowest cost technology due to FIA targets.</p> <p>There may be a net cost for the provision of uneconomic connections - D28</p>	<p>Further investment in broadband is not required - no additional financial impact on the net cost claimed - <i>will only be in respect of those customers it would not have served, absent an AFL USO (de minimus)</i>.</p> <p><i>Minimum data requirement does not preclude USP from offering higher data rates.</i></p>	<p>Some end-users may not have a line capable of FIA. (28.8 kbit/s is unsuitable for current internet usage)</p>	<p>End-users who currently have and use a line capable of FIA will not lose their ability to access the internet pending the availability of higher speed services.</p> <p>Mitigates the risk that some end users may lose basic access to internet if existing copper connections were to be replaced with FCS.</p>
	<p>Option 2: Require the continuance of basic broadband connections</p>	<p>Some level of network upgrades/extensions required in certain instances.</p> <p>Interim/temporary solutions may be required, while alternative networks are being rollout out.</p>	<p>Potential of share the access costs between two services (FIA/ voice only services)</p>	<p>Small potential increase in charges where there are proven increased costs incurred by the USP.</p>	<p>Mitigates the risk that some end-users may lose basic access if existing copper connections were to be replaced with FCS.</p> <p>Protects existing users (dial up).</p>

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	Measure proposed	Impact on Industry		Impact on end-user	
		Costs	Benefits	Costs	Benefits
Reasonable access request thresholds	Option 1: Retain the status quo	Retains the status quo.	Well understood by service providers and consumers. Evidence shows it is reasonably effective and proportionate.	The cost of connection is likely to remain the same 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.
	Option 2: Amend the threshold levels	May decrease the cost to connect a universal service connection to the USP <i>allows alternative infrastructure with an Equivalent Service to meet requests commercially</i> May decrease the net cost of the USO.	Lessens the impact of the potential cost of meeting any USO obligations - <i>will only be in respect of those customers it would not have served, absent an AFL USO (de minimus)</i> .	The cost of connection likely to remain the same for end-users. Make get more services for the same price (bundle vs standalone)	End users needs more likely to be met commercially - and more likely to have greater choice of service providers
	Option 3: Amend definition of Equivalent Service	No additional costs Reduces the likelihood of a net cost -- <i>will only be in respect of those customers it would not have served, absent an AFL USO (de minimus)</i> .	end user requests are more likely to be met commercially <i>Deregulatory and dynamic - evolving as market evolves</i>	The cost of connection is likely to remain the same for end-users.	End users needs more likely to be met commercially - and more likely to have greater choice of service providers

Universal Service Requirements: Provision of Access at a Fixed Location (AFL USO) Response to Consultation and Decision
ComReg 21/112

	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		<i>Relates to a connection and PATS service - services only where not in a bundle.</i> 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 - noting that the majority of services are now sold in a bundle 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.

Universal Service Requirements: Provision of Access at a Fixed Location (AFL USO) Response to Consultation and Decision
ComReg 21/112

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

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Measure proposed	Impact on Industry		Impact on end-user	
	Costs	Benefits	Costs	Benefits
<p>Option 2: Remove AFL USO post 30 October 2021</p>	<p>Possible reduction in the number of customers connected to the network.</p> <p>Possible higher 'cost to serve' per customer.</p> <p>No possible contribution to the costs of serving unprofitable customers (profitability unknown at point of connection to the network - <i>established on an ex-post basis</i>)</p>	<p>No costs incurred associated with the provision of the USO.</p> <p>No net cost claim.</p> <p>Commercial freedom re customers and retail pricing.</p> <p>Retain only profitable customers.</p>	<p>Basic telephony service may not be delivered to all end-users by any undertaking.</p> <p>Basic telephony service may not be delivered and an affordable price or acceptable quality.</p> <p>End-users may suffer, for example, through less favourable terms and conditions and/or service levels, due to the absence of a universal service obligation and competition.</p> <p>Some end-users may not be able to get a connection to the network and some existing connections and services may be discontinued.</p> <p>Availability, affordability and quality of basic telephony service may deteriorate for end-users</p>	<p>Competition in urban areas may intensify</p> <p>Possibility of differential pricing resulting in cheaper prices in more competitive areas</p>

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

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

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

853 Market trends (chapter 3 of the Extant Consultation 21/51) 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. 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).

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

855 The committed investment by commercial enterprises coupled with intervention by the State via the National Broadband Plan¹¹⁵ 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.

¹¹⁵ in those parts of the country where private companies have no plans to invest.

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

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

- Functional Internet Access
- Reasonableness of requests
- Affordability including GAP
- Control of expenditure.

and the form that any AFL USO might take.

8.10 Functional internet access (FIA)

858 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.

859 ComReg decided to specify as a requirement on the USP, that the data rate must not be less than 28.8 kbit/s, 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.

860 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.

861 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.

- 862 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.
- 863 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.
- 864 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.
- 865 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.
- 866 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.
- 867 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.
- 868 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.

869 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.

870 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.

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

8.11 Reasonableness of requests

872 ComReg recognises that the number of standalone fixed voice end users continue to decline, as end users migrate to bundled product offerings. However, there remains a cohort of end users for whom AFL remains relevant. Chapter 3 of the Extant Consultation 21/51 explored the composition of this cohort of end users and whether it was predominantly composed of existing customers or new end users. This identified that the vast majority (circa [X ■ X] %) of this cohort are existing customers with an ever-decreasing number of new connection requests. The data also demonstrated that:

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

873 As set out earlier (in D05/16), the reasonable access request process did not take into account the potential existence of alternative infrastructure with an Equivalent Service, below the cost threshold of €1,000.

- 874 ComReg has carefully considered responses to the Extant Consultation. ComReg has therefore decided, (where there is no in-situ connection) to remove the current €1,000 threshold below which eir, as the USP, automatically must serve end users.
- 875 Removing the automatic €1,000 threshold ensures that where there is (i) no eir in-situ connection and (ii) there is an alternative infrastructure available (iii) that alternative infrastructure has an available equivalent service, the end users request is deemed not reasonable and eir, as the USP, does not have to fulfil it.
- 876 We consider that this is a proportionate approach that takes on board eir's view that any approach must be dynamic to ensure unnecessary investment is not mandated.
- 877 This will prevent inefficient infrastructure and service duplication, which ensures the lowest possible cost is incurred in the provision of AFL USO.
- 878 ComReg has decided to amend the Equivalent Service definition to now include a 'bundle'. This recognises the increasing prevalence of bundles and will ensure that where an alternative service provider only sells an equivalent service as part of a bundle (i.e., no standalone service is available), the bundle, where it is equivalent in respect of quality of service and affordability, will now meet the Equivalent Service definition. This will remove the obligation on eir, as the USP, to fulfil this type of request.
- 879 This approach is deregulatory. It will increase the likelihood that requests for a connection and voice service will be met commercially, while having the practical effect of further relaxing the extent to which eir, as the USP, will be obliged to fulfil requests. It will also have the potential to reduce any associated net cost.
- 880 The USO is only required to provide a new connection in cases where there are no suitable alternative infrastructures and equivalent service present. The USP has the freedom to use the lowest cost technology and the most efficient method to meet the reasonable requests of end users. This is likely to be FCS. This should prevent inefficient infrastructure duplication, and therefore, mean lower costs to provide AFL USO.
- 881 Based on the evidence, ComReg is of the view (that subject to these amendments), the reasonableness of requests approach is deregulatory and dynamic in achieving ComReg's objectives.

8.12 Affordability including GAP

- 882 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.
- 883 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.
- 884 This becomes increasingly important, absent of a retail price cap (discussed in Chapter 4 of the Extant Consultation 21/51).
- 885 ComReg has decided that maintaining GAP will result in an overall net welfare benefit, benefiting both competition and end users. This obligation relates to the designated services in accordance with Regulation 3, namely, a connection and PATS (For the avoidance of doubt, this does not apply to bundled products).
- 886 Accordingly, ComReg has decided 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.

8.13 Control of expenditure

- 887 As set out at chapter 4 of the Extant Consultation 21/51 all ECS service providers already have an obligation to have and publish a Code of Practice for Complaint Handling¹¹⁶.
- 888 Accordingly, ComReg has decided that the inclusion of this requirement, post 30 October 2021 would present no additional obligations, where a universal service obligation and designation are imposed.
- 889 Many service providers offer phased payment of connection fees on a commercial basis.

¹¹⁶ Electronic Communications Complaints Handling Code of Practice - Response to Consultation and Decision, Decision D04/17; Document No.17/62.

- 890 In recent years eir, as the USP, has implemented a series of ‘connection’ promotion offers whereby connection charges were set to €0. Therefore, no end-user needed to rely on the phased payment plan. This provides end users with a tangible benefit where seeing connection to the network and has low implementation costs for the USP (where (i) connection fees are set to €0 and where (ii) the vast majority (circa [X ■ X] %) of new connections¹¹⁷ are in-situ connections.
- 891 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.
- 892 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.
- 893 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.
- 894 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.
- 895 ComReg has decided that it would be inappropriate for ComReg to intervene in the market as this time.

¹¹⁷ Period 2018-2020.

9 Decision Instrument

896 This chapter sets out the following:

Our decision

Reasons for our decision

Summary of respondents' submissions on the Extant Consultation 21/51

Our responses

9.1 Our Decision

897 Our final Decision Instrument is at chapter 10

9.2 Reasons for the decision

898 The purpose of the Decision Instrument is to consolidate and to formalise the policy decisions that we have made as legally binding and enforceable in order for us to be able to ensure the provision of AFL USO and thereby protect the interests of end users in the State.

899 Chapter 7 of the Extant Consultation 21/51 set out a draft Decision Instrument and asked the following question:

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

9.3 Draft Decision Instrument: Respondents' Submissions

900 Four respondents replied to question 17.

901 ALTO states that it: *"...does not propose to offer any comments on the draft Decision instrument"*.

902 BT agrees with the draft Decision Instrument. BT reiterate its position that: *"...reform of the USO arrangement in Ireland is needed and ask ComReg to commence this ASAP. We also believe that ComReg should actively, if not already underway consider how the USO will apply in the NBP intervention area. We believe NBI as a State Funded supplier for BB should take up the obligation in the intervention area."*

903 Both eir and Sky state that they have no comments on the draft Decision Instrument.

9.4 Draft Decision Instrument: ComReg's response

- 904 ComReg notes that there are no specific comments received in respect of the draft Decision Instrument.
- 905 ComReg notes BT's comments in respect of the consideration of how the USO will apply in the NBP Intervention area, and its view that NBI as a State Funded supplier for BB should take up the obligation within the Intervention area.
- 906 As set out previously in the Extant Consultation document 21/51 ComReg has liaised with DECC in relation to the transposition of the Universal Service Provisions of the Code, and ComReg understands that the definition of adequate broadband internet access service and the procedure for the imposition of associated affordability measures will be progressed following transposition. It is anticipated that ComReg will have a role in implementing a USO(s), if appropriate.
- 907 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.
- 908 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.
- 909 These details will be used by ComReg as key inputs in the performance of its role, in respect of any potential need for a USO, where ABB IAS cannot be ensured under normal commercial circumstances or through other public policy tools.
- 910 Accordingly, ComReg has decided that it would be inappropriate for ComReg to intervene in the market at this time.

10 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 section 6 of the Communications Regulation Act 2002 (as amended”) (“the Act”), 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, and 9 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011;
 - (iii) Having, pursuant to section 13 of the Act, complied with the Ministerial Policy Directions where applicable;
 - (iv) Having regard to The European Electronic Communications Code – EECC Directive (EU) 2018/1972 (“the Code”);
 - (v) Having had regard to the views of interested parties, including Undertakings and the submissions they made in response to ComReg Document No. 21/51
 - (vi) Having had regard to the analysis and reasoning set out in ComReg Document No. 21/71, and Decision D05/21
 - (vii) Having had regard to the analysis and reasoning set out in ComReg Document No. 21/112, and Decision D09/21.

2 APPLICATION SCOPE AND DURATION

- 2.1 This Decision Instrument maintains ComReg Decision Instrument D05/16 Universal Service Requirements Provision of access at a fixed location (AFL USO) as amended by ComReg Decision Instrument D05/21 Universal Service Requirements Provision of access at a fixed location (AFL USO): Interim Designation subject to the following further amendments as follows:

- (a) In subsection 2.1 by adding the words ““Bundle” means grouping a fixed voice service and fixed broadband service as a package” after “Alternative Infrastructure”
- (b) In subsection 2.1 by inserting the words “or Bundle,” in the definition of “Equivalent Service”, after the words “standalone PATS”
- (c) In subsection 5.3 by deleting the words “Requests for New Connections and/or PATS where cost will not exceed €1,000”
- (d) In subsection 5.4 by deleting the words, “A request by an end-user is reasonable and the USP shall satisfy it, if the USP, estimates reasonably that the cost of satisfying it, will not exceed €1,000 (excluding V.A.T.)”
- (e) In subsection 5.5 by substituting the words “and if the USP estimates reasonably that the cost of satisfying the request will exceed €1,000 (excluding V.A.T.),” for the words: “and an Equivalent Service is available from the USP or the USP can show evidence that an Alternative Infrastructure and an Equivalent Service is available” and inserting the words “and 5.7.” after the words “of 5.6”
- (f) adding a new subsection “5.7 A request by an End-User for a New Connection and/or PATS at a Fixed Location is reasonable, where:
- an Equivalent Service is not available; or
 - End-User rights are exercised to request a standalone PATS; and
 - the Alternative Infrastructure is the USP’s (subject to 5.6);
- the USP shall satisfy it”
- after subsection 5.6.
- (g) In subsection 12.1 by substituting “June 30th, 2023” for “30th October, 2021”

2.2 The amendments to D05/16 as set out above are set out as a redline in the Annex to this Decision Instrument.

3 EFFECTIVE DATE:

3.1 This Decision and Decision Instrument is effective from 31/10/2021 (“the Effective Date”).

ROBERT MOURIK
COMMISSIONER,

THE COMMISSION FOR COMMUNICATIONS REGULATION

Made on this the 29 day of October 2021

NON CONFIDENTIAL

Annex 1: D05/16 as amended

This revised version of ComReg document 21/112 corrects an error in section numbering in sections 2, 4, 5, 6 and 7 of “Annex 1: D05/16 as amended”.

1. STATUTORY FUNCTIONS AND POWERS

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

1.2. This Decision and Decision Instrument is made:

- i. Pursuant to and having regard to the functions and objectives of ComReg set out in sections 10 and 12 of the Act and Regulations 12, 13 and 16 of the Framework Regulations;
- ii. Pursuant to the functions and powers conferred upon ComReg by Regulations 3, 7, 8, 9, and 10 of the Universal Service Regulations;
- iii. Having regard to Directive 2002/21/EC, Directive 2002/22/EC, and Directive 2009/136/EC;
- iv. Having pursuant to section 13 of the Act, complied with the Ministerial Policy Directions where applicable;
- v. Having had regard to the views of interested parties, including Undertakings and the submissions they made in response to ComReg Document No. 14/48, ComReg Document No. 15/89, ComReg Document No. 15/124; and ComReg Document No. 16/ 31; and
- vi. Having had regard to the analysis and reasoning set out in ComReg Document No. 15/89, ComReg Document No. 16/ 31, and Decision D05/16 (which shall, where the context admits or requires, be construed together with this Decision Instrument).

2. DEFINITIONS AND INTERPRETATION

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

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

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

“Alternative Infrastructure” means the network of an Undertaking, other than the fixed network of the USP, which at the time a request is made by an End-User to the USP for a Connection and/or PATS, is able to provide an Equivalent Service to the End-User;

“Bundle” means grouping a fixed voice service and fixed broadband service as a package;

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

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

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

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

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

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

“Directive 2009/136/EC” means Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“State” means Ireland;

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

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

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

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

3. APPLICATION AND SCOPE

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

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

4. THE USP AND GEOGRAPHICAL SCOPE

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

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

5. CONNECTIONS, PATS, AND REASONABLENESS OF REQUESTS

CONNECTIONS

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

PATS

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

REASONABLENESS OF REQUESTS

Existing Connections and/or PATS

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

New Connections and/or PATS

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

~~5.4 A request by an End-User for a New Connection and/or PATS at a Fixed Location is reasonable and the USP shall satisfy it, if the USP estimates reasonably that the cost of satisfying it will not exceed €1,000 (excluding V.A.T.).~~

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

5.5 A request by an End-User for a New Connection and/or PATS at a Fixed Location is not reasonable, and the USP need not satisfy it, if there is Alternative Infrastructure serving the End-User premises **and an Equivalent Service is**

available from the USP or the USP can show evidence that an Alternative Infrastructure and an Equivalent Service is available, ~~and if the USP estimates reasonably that the cost of satisfying the request will exceed €1,000 (excluding V.A.T.),~~ save for the provisions of 5.6 and 5.7.

5.6 If the Alternative Infrastructure is a mobile network and the End-User communicates their opinion to the USP in a Durable Medium, that it does not, or will not provide an Equivalent Service, then the following shall apply:

- i. the USP shall notify ComReg in writing, no later than two weeks after the USP has received the said communication from the End-User; and
- ii. ComReg will adjudicate as soon as possible on whether or not the request for a Connection and/or PATS is reasonable, having regard to all of the relevant circumstances, the views of the End-User and the USP and the provisions of this Decision Instrument, in particular this Section 5.
- iii. If the End-User and the USP have agreed that the Alternative Infrastructure proposed by the USP can and will provide an Equivalent Service, and the End-User requests a different technology, which is technically feasible, to satisfy their request for a Connection and/or PATS, that request is reasonable and the USP shall satisfy it, if the End- User has agreed to pay the incremental costs for the different technology

5.7 **A request by an End-User for a New Connection and/or PATS at a Fixed Location is reasonable, where:**

- an Equivalent Service is not available; or
- End-User rights are exercised to request a fixed standalone PATS and
- the Alternative Infrastructure is the USP's (subject to 5.6 above);

the USP shall satisfy it.

Requests for New Connections where there is no Alternative Infrastructure

If at the time of the request by an End-User to the USP for a New Connection and/or PATS there is:

- i. no Alternative Infrastructure serving the End-User Premises; and
- ii. the USP estimates reasonably that the cost of satisfying it will not exceed €7,000 (excluding V.A.T.)

that request is reasonable and the USP shall satisfy it.

- 5.8 If at the time of the request by an End-User to the USP for a New Connection and/or PATS there is:
- i. no Alternative Infrastructure serving the End-User Premises; and
 - ii. the USP estimates reasonably that the cost of satisfying it will exceed €7,000 (excluding V.A.T.); and
 - iii. the End-User has agreed to pay the costs that exceed €7,000 (inclusive of V.A.T.)

that request is reasonable and the USP shall satisfy it.

Records of Connections and/or PATS

- 5.9 The USP shall maintain records in a written form, of all requests made to it by End-Users for Connections and/or PATS, for **2 years** from the date that the request was first made. These records shall contain the following information:
- i. the name of the End-User;
 - ii. the address and Eircode of the End-User;
 - iii. the date of the End-User's request;
 - iv. what the End-User requested;
 - v. the USP's reasons as to how it has complied with Section 5; and
 - vi. the USP's reasons as to whether or not (and how) a Connection or PATS which uses wireless technology ensures Minimum Indoor Availability.

Processes

- 5.10 The USP shall, no later than **2 months** from the Effective Date, submit to ComReg a draft written statement setting out the USP's proposals in relation to the following (the "Draft Process Statement"):
- i. the USP's breakdown of the costs of, and suitability of, the alternative technologies (including the optimal cost technology available) chosen by the USP to satisfy reasonable requests for AFL by End-Users; having regard to the USP's quality of service targets specified in ComReg Decision D02/08;
 - ii. the USP's reasons for why a particular alternative technology was chosen by the USP to satisfy reasonable requests for AFL by End-Users;
 - iii. the creation and maintenance by the USP of written records in relation to the matters referred to in (i), (ii), and (iii);

- iv. adequate information on works proposed by the USP to satisfy requests by End-Users for AFL (which information shall be provided in writing to End-Users);
- v. the creation and maintenance by the USP of written records to evidence that any alternative technology chosen by the USP to satisfy reasonable requests for AFL by End-Users use of the Minimum Indoor Availability and that the End-User has agreed to the alternative technology chosen by the USP;
- vi. the creation and maintenance by the USP of written records containing details of the Alternative Infrastructure for the purposes of Section 5 and the End-User's agreement that the Alternative Infrastructure will satisfy their request for the provision of AFL by the USP;
- vii. the creation and maintenance by the USP of written records to demonstrate that the Connection and PATS provided by an Alternative Infrastructure will offer a tariff package or packages which are broadly in line with those prices offered by USP for Connection and/or PATS; and
- viii. a draft code of practice for handling complaints by End-Users in relation to requests for AFL (which code of practice shall be made available in a Durable Medium to End-Users).

5.11 Upon receipt of the Draft Process Statement, ComReg may either approve it and notify the USP of this, or may disapprove it, with summary reasons therefor, in which case ComReg may require the USP to promptly re-submit a revised Draft Process Statement(s). Upon receipt of a revised Draft Process Statement, ComReg may either approve it or to disapprove it with reasons and notify the USP, Once ComReg approves a revised Draft Process it shall take effect as final (the "Process Statement").

5.12 The USP shall comply with the Process Statement in all respects.

Cost Estimates

5.13 For the purposes of the cost estimates referred to in this Section 5, the USP shall base these on the optimal cost technology that can be employed by the USP (using Good Industry Practice) for a Connection and/or PATS to the Fixed Location (by means of an overhead connection, where possible). These estimates shall include only those costs which can be attributed to the requesting End-User.

5.14 The USP shall, when satisfying reasonable requests by End-Users for Connections and for PATS:

- i satisfy all reasonable requests and inform each End-User how it will do so, the time within which the request will be satisfied, unless a prior survey is

required, in which case the USP shall inform the End-User when the survey will be commenced and completed;

- i. adopt and publish easily accessible and transparent information and procedures to ensure that all End-Users can receive and access information on the progress of their requests; and
- ii. using Good Industry Practice, avoid the use of technologies that would result in a Connection not achieving a minimum data rate of 28.8 kilobits per second (“kbit/s”).

6. PERFORMANCE TARGETS RELATED TO FIA

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

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

7. REPORTING

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

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

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

Geographically Averaged Pricing

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

Control of Expenditure

8.2 The USP shall:

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

9. REVOCATION AND SAVER

9.1 ComReg Decision No. D09/05 is hereby revoked.

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

- i. 31 December 2016; or
- ii. the date upon which a decision by ComReg on the USP's quality of service obligations related to the provision of AFL becomes fully operative.

10. STATUTORY POWERS NOT AFFECTED

10.1 Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or the duties conferred on it under any

primary or secondary legislation in force prior to or after the Effective Date of this Decision Instrument.

11. MAINTENANCE OF OBLIGATIONS AND SEVERANCE

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

12. EFFECTIVE DATE, DURATION, AND REVIEW

- 12.1 Subject to Section 12.2, this Decision and Decision Instrument is fully effective from 29 July 2016 and shall remain in full force and effect until ~~30 October 2021~~, **June 30th 2023**, unless amended by ComReg.
- 12.2 Sections 5.5 – 5.9 shall come into operation immediately upon the Process Statement taking effect in accordance with Section 5.11.
- 12.3 ComReg will commence a review 3 months after the Department has concluded the National Broadband Plan contract award process and decide whether or not to commence a new consultation process in relation to AFL USO in the State and publish an information notice regarding this.

JEREMY GODFREY

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

Annex 2: 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.

Annex 3: The Code

PART III

SERVICES

TITLE I

UNIVERSAL SERVICE OBLIGATIONS

Article 84

Affordable universal service

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

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

4. When a consumer so requests, the connection referred to in paragraph 1 and, where applicable, in paragraph 2 may be limited to support voice communications services.

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

Article 85

Provision of affordable universal service

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

packages pursuant to paragraph 2 are fully transparent and are published and applied in accordance with the principle of non-discrimination. National regulatory authorities in coordination with other competent authorities may require such tariff options or packages to be modified or withdrawn.

4. Member States shall ensure, in light of national conditions, that support is provided, as appropriate, to consumers with disabilities, and that other specific measures are taken, where appropriate, with a view to ensuring that related terminal equipment, and specific equipment and specific services that enhance equivalent access, including where necessary total conversation services and relay services, are available and affordable.
5. When applying this Article, Member States shall seek to minimise market distortions.
6. Member States may extend the scope of application of this Article to end-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations.

Article 86

Availability of universal service

1. Where a Member State has established, taking into account the results, where available, of the geographical survey conducted in accordance with Article 22(1), and any additional evidence where necessary, that the availability at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services cannot be ensured under normal commercial circumstances or through other potential public policy tools in its national territory or different parts thereof, it may impose appropriate universal service obligations to meet all reasonable requests by end-users for accessing those services in the relevant parts of its territory.
2. Member States shall determine the most efficient and appropriate approach for ensuring the availability at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. Member States shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.
3. In particular, where Member States decide to impose obligations to ensure for end-users the availability at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services, they may designate one or more undertakings to guarantee such availability

throughout the national territory. Member States may designate different undertakings or sets of undertakings to provide an adequate broadband internet access service and voice communications services at a fixed location or to cover different parts of the national territory.

4. When Member States designate undertakings in part or all of the national territory to ensure availability of services in accordance with paragraph 3 of this Article, they shall use an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated. Such designation methods shall ensure that an adequate broadband internet access service and voice communications services at a fixed location are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligations in accordance with Article 89
5. When an undertaking designated in accordance with paragraph 3 of this Article intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform the national regulatory or other competent authority in advance and in a timely manner, in order to allow that authority to assess the effect of the intended transaction on the provision at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services. The national regulatory or other competent authority may impose, amend or withdraw specific obligations in accordance with Article 13(2).

Article 87

Status of the existing universal service

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

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

Article 88

Control of expenditure

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

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

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

Article 89

Cost of universal service obligations

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

For that purpose, national regulatory authorities shall:

- a. calculate the net cost of the universal service obligations, taking into account any market benefit which accrues to a provider of an adequate broadband internet access service as defined in accordance with Article 84(3) and voice

communications services as set out in Articles 84, 85 and 86 or the continuation of the existing universal service as set out in Article 87, in accordance with Annex VII; or

- b. make use of the net costs of providing universal service identified by a designation mechanism in accordance with Article 86(4).
2. The accounts and other information serving as the basis for the calculation of the net cost of universal service obligations under point (a) of the second subparagraph of paragraph 1 shall be audited or verified by the national regulatory authority or a body independent of the relevant parties and approved by the national regulatory authority. The results of the cost calculation and the conclusions of the audit shall be publicly available.

Article 90

Financing of universal service obligations

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

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

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