



Commission for  
**Communications Regulation**

## Consultation Document

### The Provision of the Universal Service:

Request for Funding by *eircom*

<b>Document No:</b>	<b>07/07</b>
<b>Date:</b>	<b>2 February, 2007</b>

Contents

1	Executive Summary .....	2
2	Introduction .....	4
3	Consultation Issues .....	5
3.1	INTRODUCTION.....	5
3.2	RELEVANT FUNDING PERIOD .....	5
3.3	FUTURE REQUESTS FOR FUNDING .....	6
3.4	MATTERS OUTSIDE THE SCOPE OF THIS CONSULTATION .....	8
4	Regulatory Impact Assessment.....	9
5	Next Steps and Further Consultation .....	10
6	Submitting Comments.....	12
	Appendix A – Relevant Legislation and Policy Documents .....	13

## 1 Executive Summary

This consultation document is the first in a series of consultation documents and decisions to be issued by the Commission for Communications Regulation (“ComReg”) that will address applications for funding in respect of the provision of the universal service.

The universal service in Ireland consists of the provision of a defined minimum set of services to all end-users at an affordable price. On 25 July, 2006, *eircom* was designated as the universal service provider in the State for a period of four years, ending on 30 June, 2010<sup>1</sup>.

In cases where it is clearly demonstrated that universal service obligations can only be provided at a loss, or, at a net cost which falls outside normal commercial standards, EU and domestic law obliges Member States to establish mechanisms administered by national regulatory authorities for financing the net cost of universal service obligations.

*eircom* has submitted an application for universal service funding to ComReg. Under the provisions of EU and domestic law, ComReg is legally obliged to consider this request.

Before commencing any assessment of the substance of *eircom*'s request, two preliminary matters must be addressed. The first relates to the relevant period that ComReg should assess with respect to *eircom*'s request. At the outset, ComReg must define the relevant period for which the issue of any net costs ought to be examined. Once that is done, ComReg will then be in a position to specify for what period relevant costing information from *eircom* is required, in order to examine its request.

The second preliminary issue relates to the procedures for any further applications for funding that might be made by *eircom* in the future. ComReg believes that clarity in relation to the procedures for any such future funding requests needs to be introduced.

Until these preliminary issues are satisfactorily addressed, ComReg does not propose to address the question of whether or not there may be any net cost arising as a result of the provision by *eircom* of the universal service or the question of whether any such net cost might represent an unfair burden to *eircom*. These matters will be examined by ComReg at a later date.

This consultation document contains the preliminary views of ComReg and two proposed decisions in relation to the preliminary issues. In summary, ComReg's preliminary views are that firstly, the relevant date for assessing *eircom*'s current application for funding should be its most recent financial period, commencing on 1 April, 2006, but no earlier. Secondly, ComReg is of the preliminary view that any future requests for funding that *eircom* may wish to make should be submitted on an annual basis; upon completion of *eircom*'s audited accounts and that the relevant

---

<sup>1</sup> *eircom* was previously designated as the USP in April, 1999 and on 25 July, 2003.

period for assessing such a request should be the financial period immediately preceding such a request.

ComReg invites all interested parties to submit their views in relation to the preliminary views expressed in this consultation document and the proposed decisions contained in it.

It is hoped that this consultation document and the ones that follow it will elicit helpful responses from interested parties, stimulate debate and reasoned argument and contribute to the making of soundly informed decisions in relation to the issues under consideration.

## 2 Introduction

The universal service in Ireland consists of the provision of a defined minimum set of services to all end-users at an affordable price.

On 25 July, 2006, *eircom* was designated as the universal service provider in the State for a period of four years, ending on 30 June, 2010.

In cases where it is clearly demonstrated that universal service obligations can only be provided at a loss, or, at a net cost which falls outside normal commercial standards, EU and Irish law requires the establishment of mechanisms, administered by national regulatory authorities for financing the net cost of universal service obligations. EU and Irish law also requires that if a net cost is found and if it represents an unfair burden, that funding in respect of the net cost of the universal service obligation is to be apportioned among providers of electronic communications networks and services. In such circumstances, national regulatory authorities are required by EU and Irish law to establish a sharing mechanism administered by them, or by a body independent from the universal service provider (under the supervision of the national regulatory authority).

Regulation 11 (1) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 ("the Universal Service Regulations")<sup>2</sup> provides that an undertaking designated as having universal service obligations may make a request for funding for the net costs of meeting those obligations by, in the first instance, submitting to ComReg a written request for such funding.

*eircom*, the universal service provider in the State, made a written request to ComReg for universal service funding on 11 May, 2006. ComReg, as the national regulatory authority in Ireland, is obliged under EU and domestic law to assess *eircom's* request. However, ComReg does not yet propose to examine whether or not there may be any net cost arising as a result of the provision by *eircom* of the universal service, or whether or not any such net cost might represent an unfair burden to it. Before this can commence, the preliminary issues identified for consultation in section 3 of this consultation document must first be addressed. Following a decision by ComReg in relation to these preliminary issues, ComReg will conduct a thorough review of *eircom's* financial position, both tangible and intangible and will then decide whether or not it should accept *eircom's* request for funding.

---

<sup>2</sup> The Regulations transpose in to Irish law Directive 2002/22/EC of the European Parliament and the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services.

### 3 Consultation Issues

#### 3.1 Introduction

The purpose of this consultation is to seek the views of interested parties in relation to two proposed decisions relating to universal service funding. It should be noted that the decisions that ComReg currently proposes to make are restricted to these two preliminary issues only. The proposed decisions relate to the following issues:

1. The appropriate period in respect of which *eircom* should be entitled to seek funding for its provision of the universal service; and
2. Procedures for future requests for funding by *eircom*.

In the following section, ComReg sets out its preliminary views in relation to these issues. All interested parties are invited to submit their views in relation to same.

#### 3.2 Relevant funding period

As previously noted, *eircom* has made a request for funding in respect of its provision of the universal service. *eircom* made this request on 11 May, 2006. The request was made in the context of *eircom* responding to the consultation that led to it being designated as the universal service provider in the State for the period 25 July, 2006 to 30 June, 2010. ComReg has acknowledged *eircom's* request and has committed itself to examining that request<sup>3</sup>. *eircom* has expressed the view to ComReg that it is entitled to seek retrospective compensation for the annual net costs of its universal service obligations that it claims it has incurred since *eircom* (formerly Telecom Éireann) served as the universal service provider as a commercial firm, i.e. from July, 1999.

##### *ComReg's preliminary view*

ComReg is not convinced by *eircom's* claim that it is entitled to seek retrospective compensation from July, 1999. In this regard, ComReg notes that the Universal Service Regulations do not purport to have any retrospective operation prior to 25 July, 2003<sup>4</sup> (including back as far as 1999). ComReg also notes that it received no request, for funding from *eircom* since the coming in to force of the Universal Service Regulations prior to 11 May, 2006.

ComReg suggests that the appropriate relevant period within which to assess *eircom's* request should be the financial period during which *eircom* submitted its application, namely that period commencing 1 April, 2006. Any fund would

---

<sup>3</sup> It may be noted that at this stage ComReg is not in possession of supporting information in respect of *eircom's* request. Any formal assessment of *eircom's* request can not commence until ComReg is satisfied that it has sufficient information before it, so as to enable it to commence that assessment. ComReg intends to contact *eircom* in relation to obtaining all necessary information in respect of *eircom's* request for funding.

<sup>4</sup> Except insofar as transitional obligations relating to *eircom's* position of significant market power are maintained in force, pending the removal, amendment, maintenance, or imposition of obligations following a market analysis by ComReg.

therefore apply only from 1 April, 2006. ComReg suggests that this proposal is appropriate, reasonable and practical because:

1. In order to conduct a comprehensive examination of the substantive issue, any analysis should be reconciled to the most recently available set of independently verified accounts (i.e. *eircom's* separated accounts).
2. The application of a fund to periods before 1 April, 2006, going back to 25 July, 2003, would be unfair to other operators since they would have made commercial decisions on the reasonable assumption that no fund was to be in operation. At the same time, ComReg notes that *eircom* could have submitted a request for funding at any time since 25 July, 2003, but chose not to.
3. The beginning of the proposed period for assessment i.e. 1 April, 2006, roughly coincides with the date of *eircom's* application dated 11 May, 2006.

The supporting justification for the application should be provided in a timely manner. To this end, ComReg proposes that *eircom's* full justification for its application for funding should be presented to ComReg, within one month of the publication of the relevant separated accounts, i.e. six months following the end of *eircom's* financial period<sup>5</sup>.

<p style="text-align: center;"><b>Proposal for Decision No. 1: Relevant period for request for funding dated 11 May, 2006</b></p> <p>(a) The relevant period for assessing <i>eircom's</i> request for funding dated 11 May, 2006 shall be the financial period commencing 1 April, 2006. The assessment shall be based on actual cost data in respect of that period.</p> <p>(b) A full justification for <i>eircom's</i> application for funding shall be submitted in writing to ComReg, within one month of the publication of relevant separated accounts, i.e. six months following the end of <i>eircom's</i> financial period</p>
---

### 3.3 Future requests for funding

#### *ComReg's preliminary view*

The Universal Service Regulations do not specify when a universal service provider must submit requests for funding.

While ComReg notes that it is a matter for *eircom* if it wishes to make a request for funding in the future (and ComReg does not know if *eircom* will do so) the absence of such prescribed statutory procedures regarding any future requests may cause commercial and legal uncertainty for industry generally. In the absence of prescribed

<sup>5</sup> *eircom's* HCA separated accounts are published five months following the end of *eircom's* financial period.

statutory procedures, ComReg considers that it is appropriate and reasonable, in the interests of commercial and legal certainty and in the interests of orderly administrative procedure, that greater clarity and predictability be introduced in this regard. ComReg therefore suggests that it is reasonable to require that in future, *eircom* would submit requests for funding on an annual basis. ComReg also proposes that in respect of any annual request (if one is made), the calculations made in respect of the request (if any) for the previous financial period would provide a starting point for the assessment of that request, to which ComReg would have regard, except where there is a reasoned *prima facie* case to the effect that circumstances had significantly changed since the time that the previous assessment was made.

ComReg is of the preliminary view that the approach outlined above would have the benefit of lessening the information burden (at least in terms of volume) on both *eircom* and ComReg and that it should result in relatively quick decisions being reached in relation to funding requests.

**Proposal for Decision No. 2:**

**Requests for funding for financial periods subsequent to *eircom's* current financial period**

- (a) If *eircom* wishes to make a request to ComReg for funding in respect of its provision of the universal service for financial periods subsequent to *eircom's* current financial period, any such request shall be submitted to ComReg on an annual basis. Any such request (if it is made) shall be made upon completion of *eircom's* audited accounts and no later than six months following the end of *eircom's* financial period.
- (b) The period for assessment for such request (if any) under (a) shall be *eircom's* most recent financial period preceding the date of such request and a request under (a) by *eircom* shall be made on that basis.
- (c) If *eircom* wishes to make a request for funding under (a), it shall notify ComReg of its intention to submit such a request no later than one calendar month in advance of it so submitting.
- (d) Without prejudice to ComReg's statutory powers to require information from *eircom*, *eircom* shall furnish ComReg with supporting information that is sufficient to support a request for funding under (a), at the same time that it submits a request.
- (e) Failure by *eircom* to comply with (a) or (b) or (c) or (d) shall result in the request for funding being non-compliant. ComReg will not consider a request for funding that does not comply with (a) or (b) or (c) or (d).



### **3.4 Matters outside the scope of this consultation**

- This consultation does not seek the views of interested parties in relation to the following substantive issues:
- Whether or not the provision of the universal service involves any net cost to *eircom*;
- Whether or not in those circumstances, the costs of meeting the universal service represent an unfair burden on *eircom*;
- Whether or not any funding mechanism should be established, if an unfair burden is found to exist; and
- The nature of any possible funding mechanism, its design, or its operation in practice.

The approach, in broad terms, as to how these matters will be consulted upon is set out in section 5.

## 4 Regulatory Impact Assessment

S 13 (1) of the Communications Regulation Act, 2002 provides that:

“In the interests of the proper and effective regulation of the electronic communications and postal markets, the management of the radio frequency spectrum in the State and the formulation of policy applicable to such proper and effective regulation and management, the Minister may give such policy directions to the Commission as he or she considers appropriate to be followed by the Commission in the exercise of its functions. The Commission shall comply with any such direction.”

Ministerial Policy Direction No. 6 of 2003 provides as follows:

“The Commission, before deciding to impose regulatory obligations on undertakings in the market for electronic communications or for the purposes of the management and use of the radio frequency spectrum or for the purposes of the regulation of the postal sector, shall conduct a Regulatory Impact Assessment in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government’s Better Regulation programme.”<sup>6</sup>

ComReg considers that the proposed decisions in this consultation document do not entail the imposition of any regulatory obligations on undertakings and that accordingly, carrying out a formal Regulatory Impact Assessment is not required. However, it should be noted that some of the other potential decisions identified in section 3.4 of this consultation document would require Regulatory Impact Assessment.

---

<sup>6</sup> Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003.

## 5 Next Steps and Further Consultation

ComReg considers that the issues under consideration are ones that require consultation under Regulation 27 of the Universal Service Regulations and Regulation 19 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003<sup>7</sup>.

The following will be ComReg's general approach to this consultation and future consultation. It is not possible at this point to set out a timeframe for the steps envisaged. Circumstances may arise which may make it appropriate or necessary for ComReg to depart from this general approach:

- ComReg will take into account views expressed by interested parties in relation to this consultation document.
- ComReg will publish its final decision in relation to the issues that are the subject matter of this consultation.

### Steps following a decision resulting from this consultation:

- ComReg will begin and complete the process of obtaining the necessary information from *eircom*, which will enable it to assess its request for universal service funding. ComReg will commence assessing the information once this is received from *eircom*. However, ComReg may require further information from *eircom* pending the completion of its assessment. Where ComReg does not obtain all information that is reasonably required from *eircom* it may decide that *eircom's* request for funding is incomplete and to discontinue the assessment in respect of the financial period for which the request for funding was made and it shall notify *eircom* of its intention to do so. In such circumstances, no determination would be made by ComReg in respect of the financial period for which the request for funding was made.
- If ComReg determines that *eircom's* universal service obligations do not represent an unfair burden, it shall notify *eircom* of that determination, together with the reasons for the determination as soon as reasonably practicable after the determination is made.
- ComReg will make publicly available the results of the cost calculations and the conclusions of any audit or verification undertaken.
- If ComReg determines that there is a net cost arising and also an unfair burden on *eircom*, ComReg will consult with industry generally in relation to providing for an appropriate funding mechanism and will set out its

---

<sup>7</sup> These Regulations transpose in to Irish law Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

preliminary views in relation to same. ComReg will make publicly available the results of the cost calculations and the conclusions of any audit or verification undertaken.

- ComReg will take in to account views expressed in response to that consultation and ComReg will then publish its final decision.

## 6 Submitting Comments

Responses to this consultation document are to be submitted in writing to Michelle Townshend by 5.30pm, Friday, 2 March 2006.

Responses are to be submitted in either hard copy to the following address:

Ms Michelle Townshend  
Commission for Communications Regulation  
Irish Life Centre  
Abbey Street  
Freepost  
Dublin 1  
Ireland

Or by E-mail, by sending an e-mail to:

[retailconsult@comreg.ie](mailto:retailconsult@comreg.ie)

In order to promote further openness and transparency, ComReg intends to publish all respondents' submissions to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information (ComReg 05/24). Electronic submissions should be submitted in an unprotected format so that they may be appended into the ComReg submissions document for electronic publication.

Please note: ComReg appreciates that some of the issues raised in this consultation document may require respondents to provide confidential information if their comments are to be meaningful.

As it is ComReg's policy to make all responses available on its website and for inspection generally, respondents to this consultation are requested to clearly identify confidential material and place confidential material in a separate annex to their response

Such information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information (ComReg 05/24).

## Appendix A – Relevant Legislation and Policy Documents

### 1. **Directive 2002/22/EC of the European Parliament and the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ("the Universal Service Directive").**

Articles 12 and 13 of the Universal Service Directive make provision for the costing and financing of universal service obligations respectively.

### 2. **The European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003.**

Regulations 11 and 12 of the Universal Service Regulations transpose Articles 12 and 13 of the Universal Service Directive in to Irish law and make provision for the costing and financing of universal service obligations respectively.

### 3. **The Communications Regulation Act, 2002.**

ComReg is required to act in accordance with its functions and objectives under the Communications Regulation Act, 2002. S 12 defines ComReg's objectives in the exercise of its functions and informs ComReg's discretion in relation to measures that it may take in pursuance of its statutory objectives.

### 4. **Ministerial Policy Direction No. 4 of 2003.**

This Ministerial Policy Direction directs ComReg in the following terms:

"The Commission shall ensure that in making regulatory decisions in relation to the electronic communications market, it takes account of the state of the industry and in particular the industry's position in the business cycle and the impact of such decisions on the sustainability of the business of undertakings affected."<sup>8</sup>

### 5. **General Ministerial Policy Direction No.1 of 2004.**

This Ministerial Policy Direction directs ComReg amongst other things, to:

"(b) Policy direction

ComReg shall focus on the promotion of competition as a key objective. Where necessary, ComReg shall implement remedies which counteract or remove barriers to market entry and shall support entry by new players to the market and entry into new sectors by existing players..."<sup>9</sup>

---

<sup>8</sup> Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003.

<sup>9</sup> Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources, on 26 March, 2004.