



Consultation Paper

The Provision of Telephony Services under Universal Service Obligations

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All responses to this consultation should be clearly marked:-
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consultations), to arrive on or before 4:00pm on 21 May 2010 to:

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

Ph: +353-1-8049600 Fax: +353-1-804 9680

Email: retailconsult@comreg.ie

Please note that ComReg will publish respondent’s submissions
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1 Foreword

On behalf of the Commission for Communications Regulation (ComReg), I am pleased to publish this consultation on the provision of telephony service in Ireland under the Universal Service Obligations. Universal service, provided for under EU and national legislation since 2003, contributes to enhancing social and economic inclusiveness and ensuring the provision of basic telecommunication services not only in areas where the market would provide, but also in those rural and very rural areas where it might not.

On 25 July 2006, ComReg's Decision 06/32¹ designated Eircom as the Universal Service Provider for a four-year period, to 30 June 2010. As the end of the current designation is approaching, it is now appropriate to address the coming period.

The current scope of universal service was designed with a conventional telecommunications environment of fixed voice-based networks in mind. As technology and competition develops and consumer needs evolve, policymakers must consider the appropriate factors to ensure that the services provided continue to satisfy those consumers' needs not already satisfied by the market.

ComReg notes that Directive 2002/22/EC of the European Parliament was amended by Directive 2009/136/EC ("Amending Directive") and notified in the Official Journal on 18 December 2009.² The Amending Directive must be transposed into Irish law by 24 May 2011. Furthermore, on 3 March 2010, the European Commission issued a public consultation (consultation on future universal service in digital era)³ which may result in changes in the scope of universal service. This consultation may result in changes in the scope of universal service; however the impact, or timing, of any changes arising from this review is not yet clear.

While 'broadband for all' is stated as a policy objective at European and national level, the European Commission continues to deliberate on the role of universal service in meeting this objective. Some countries may seek to use universal service as a mechanism to bring broadband to all its citizens, while others may seek to achieve this objective by other means, such as State-funded schemes or other broadband availability programmes. ComReg is aware of the importance of Government policy and, in particular, Government strategies and initiatives to advance the availability of broadband, such as the National Broadband Scheme.

¹ The Future Provision of Telephony Services Under Universal Service Obligations – ComReg 06/32

² 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 by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009

³ http://ec.europa.eu/information_society/policy/ecomm/library/public_consult/universal_service_2010/

ComReg will carefully consider and apply national policy as articulated by the DCENR, with respect to broadband availability, and further outputs from the European Commission, regarding universal service, in adopting a position in the subsequent consultation(s) on this issue, following on from the transposition of the Amending Directive in May 2011 and in line with the timing of any further review(s) of the scope of universal service.

The Amending Directive also paves the way for consumers with disabilities to be able to access and choose from the range of electronic communication services available to all consumers. ComReg's will continue its work on its Forum on Electronic Communications Services for People with Disabilities, which will be informed by ComReg's second survey of consumers with disabilities, to be conducted by Q2 2010 and may consult further on this matter.

In the interim, in this consultation, ComReg's approach to universal service scope and designation is in accordance with the European Communities (Electronic Communications Networks and Services) (Universal Service and Users Rights) Regulations 2003 ("the Regulations"). The Regulations transpose the 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) ("the Universal Service Directive") into Irish law.⁴ ComReg notes that broadband is not presently encompassed in the definition of universal service under the current legislation. Accordingly, this consultation refers only to narrowband connections.

ComReg now wishes to consult with consumers, industry and other interested parties (including the National Consumer Agency, the National Disability Authority, the Consumer Association of Ireland, the Chambers of Commerce Ireland and other national consumer organisations) to inform its approach to the provision of universal services for the proposed designation period, from July 2010. On behalf of ComReg, I would encourage all interested parties to respond to this consultation.

Mike Byrne
Commissioner
Commission for Communications Regulation

⁴ 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).

2 Introduction

The Commission for Communications Regulation (“ComReg”) is responsible for the regulation of the Irish electronic communications sector, in accordance with national and EU legislation. One of ComReg’s functions is to determine the scope of the Universal Service Obligations (“USO”) for the Irish market and to decide which undertaking(s) should be designated as the Universal Service Provider(s).

The Universal Service Directive aims to ensure that basic telephone services are available at an affordable price and specified quality, irrespective of geographical location, within Ireland. There are both social and economic grounds for the USO, for example, to provide services to assist vulnerable users and those in remote locations that the market might otherwise not choose to serve, thereby facilitating greater participation by those users in the market. The USO is, therefore, focused on ensuring that everyone, irrespective of location, social standing or income can access basic telecommunications services, thus bringing benefits to those with low incomes who have difficulty in affording a telephone service, consumers with disabilities who need particular services or facilities, and those in rural locations for whom the cost of gaining access to service might otherwise be unreasonable.

The Regulations have been in force since 25 July 2003 and the current USO designation on Eircom has been effective since 25 July 2006. This consultation seeks views on how the requirement to ensure universal services should be implemented in the period following 30 June 2010.

In designating one or more undertaking(s), ComReg will take a number of factors into consideration, including network reach, experience and ability to provide universal service. ComReg will also consider other relevant factors which may be identified in the course of this consultation and will also seek the consent of the Minister for Communications, Energy and Natural Resources with respect to the scope of the universal service and the designation of one, or more, undertakings. When this process is completed, ComReg will formally designate one, or more, undertaking(s) as the Universal Service Provider (USP), with specified obligations.

3 Background

On 25 July 2006, ComReg designated Eircom as the USP for the elements within the scope of universal service for a period of four years (ComReg 06/32).

In May 2008, ComReg established Quality of Service Performance Targets (ComReg 08/37 D02/08) in relation to the provision of specific elements of the universal service.

As previously stated, this review is carried out in accordance with the Regulations, under which ComReg is responsible for making decisions in the following areas:

- The scope of the obligation to provide telephone access to consumers (business and residential), including requiring a capability to permit functional internet access.
- The scope of the obligation to provide directory services, including the telephone directory and directory enquiry services.
- The scope of the obligation to provide public payphones.
- Ensuring that consumers with disabilities have access to the above services on a basis similar to that enjoyed by other consumers.
- Designating one, or more, undertaking(s) as the USP(s) for the above services.
- The provision of special tariff options for vulnerable consumers.
- Ensuring consumers can control expenditure, through measures such as itemised billing and call barring.
- Issues related to the cost and funding of the universal service.

4 Market Developments and Universal Service provision

The purpose of this consultation is to elicit views from stakeholders in relation to a number of questions regarding the scope of the USO, in particular relating to the provision of access at a fixed location, provision of public payphones, measures to facilitate consumers in exercising control their telephony expenditure, and measures for consumers with disabilities. In this Section, a number of contextual factors regarding the Irish telecommunications market, which ComReg considers relevant with respect to the scope of USO, are outlined.

Increased Consumer Choice

Consumers can avail of increased choice in the fixed telecoms market, with competing service providers offering varying levels of price and service to meet the differing requirements of consumers. By 31 December 2009, there were over 388,000 Public Switched Telephone Network (“PSTN”)⁵ and Integrated Services Digital Network (“ISDN”) lines, (or over 463,000 access paths), supplied by Eircom, on a wholesale basis (through WLR⁶ or CPS⁷), to other operators for their own customers, thus providing an indication of growing indirect access competition in the fixed market.⁸ There are approximately 50 active companies in the telecoms sector in Ireland (As at December 2009, there were 462⁹ total authorisations, including 368 fixed and wireless authorisations). Recent decisions by companies such as Vodafone and O2 to enter the fixed line market have led to greater choice for consumers, more competition and consumers and businesses are able to avail of better value for money and higher quality bundles of services by shopping around.

Revenue profile

Overall, fixed-line and mobile revenues have declined in the past 2 years, primarily due to competition on price among operators and increased use of bundles, which now represent 40% of the market, and the decline in the number of homes that have a fixed-line to just under 65%.¹⁰ While the downturn in construction has slowed the growth in fixed-line installations, it has not been a major factor in the decrease in fixed-line penetration. Drivers of this decrease are primarily the increase in mobile-only households, particularly among those in rented accommodation and younger people (under 25’s), and cable competition which now offers voice services bundled with TV and broadband. These drivers are not unique to Ireland.

⁵ PSTN is based on copper wiring and analogue voice data, whereas ISDN is a telephone network based on digital technology.

⁶ Wholesale Line Rental.

⁷ Carrier Pre-Selection.

⁸ ComReg Quarterly key data report, March 2010, <http://www.comreg.ie/fileupload/publications/ComReg1019.pdf>

¹⁰ ComReg consumer ICT Survey, March 2010, <http://www.comreg.ie/fileupload/publications/ComReg1022.pdf>

¹⁰ ComReg consumer ICT Survey, March 2010, <http://www.comreg.ie/fileupload/publications/ComReg1022.pdf>

Fixed-Line Penetration

The effects of the economic contraction in Ireland have been felt most strongly in the construction sector where the net output of housing stock decreased from 80,000 in 2007 to approx 20,000 by 2009. The decline in construction of new housing stock has, in turn, resulted in a decrease in additional demand for telecommunications infrastructure, such as fixed telephone lines. The chart below indicates the downward trend in house completions since 2004, leading to the decline in additional demands for fixed telephone lines.

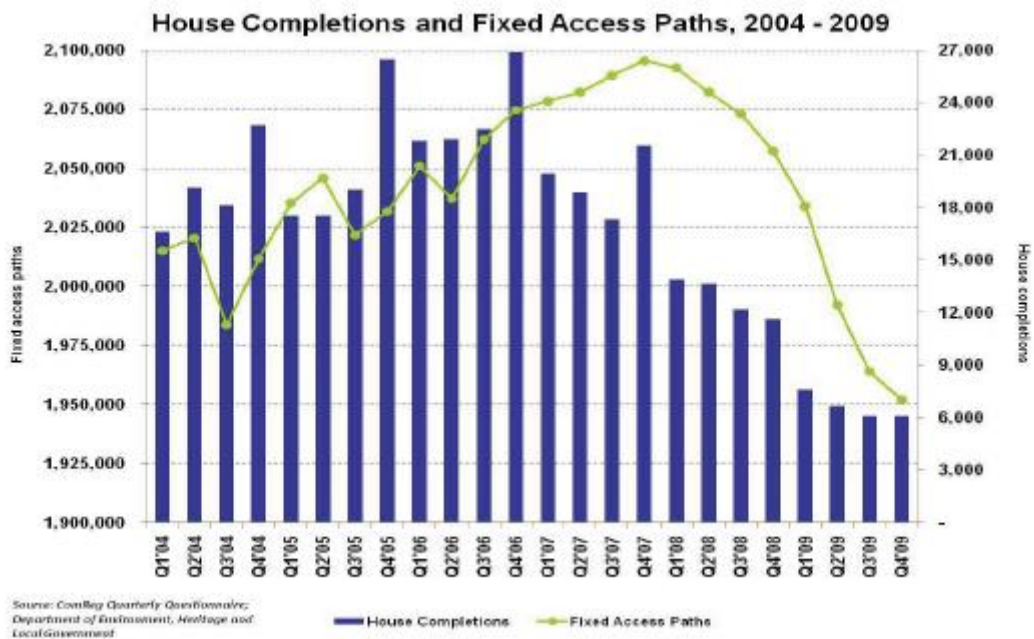


Figure 1 – House Completions and Fixed Access Paths, 2004 – 2009

Data sourced from Informa Telecoms and Media indicates that all EU15 countries (with the exception of France) have experienced a decline in fixed voice household penetration between Q3 2007 and Q3 2009, with Greece and Luxembourg experiencing the largest penetration decline. Ireland’s fixed voice subscription household penetration declined by fourteen percentage points, as illustrated in Figure 2 below¹¹.

¹¹ComReg Quarterly key data report, March 2010, <http://www.comreg.ie/fileupload/publications/ComReg1019.pdf>

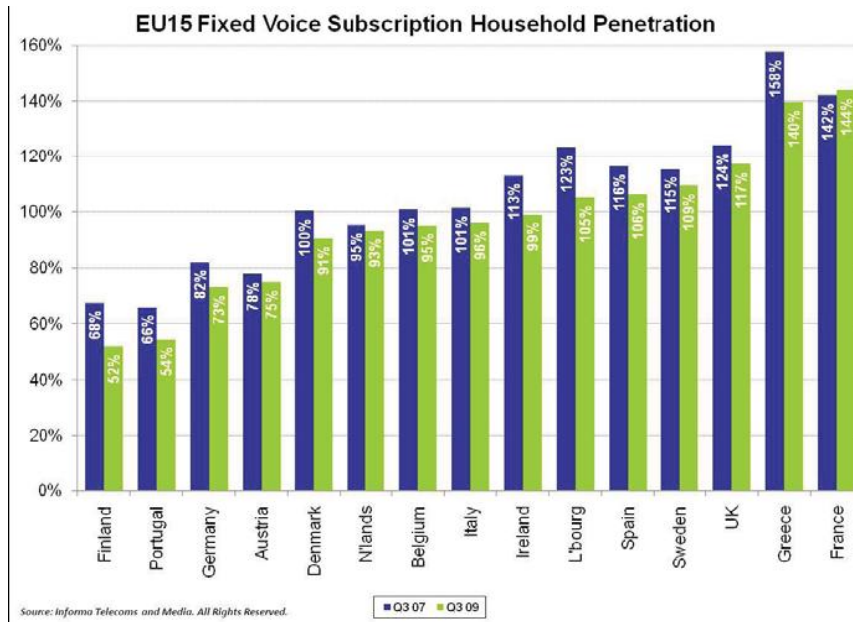


Figure 2 – EU15 Fixed Voice Subscription Household Penetration

According to ComReg’s survey data (ComReg 10/22), 7 in 10 homes in Ireland continue to use a fixed line while 9 in 10 households have access to a mobile phone and 1 in 4 fixed access lines is provided by an operator other than Eircom. There has been little change in these indicators over the past few years. Demographic factors have an impact on consumer propensity to own a fixed-line. ComReg’s recent consumer ICT survey¹² suggests that fixed-line penetration has declined by four percentage points, from 69% in Q4 2006 to 65% in Q4 2009. The survey noted that fixed-line telephone ownership at home was higher among older age groups, with 92% of 65-74 year olds having a fixed-line at home. Eircom remains the major fixed-line provider in the Irish market, with a revenue market share of 68% in Q4 2009.¹³

Mobile Penetration Rate

By the end of December 2009, mobile subscription penetration (excluding HSDPA¹⁴) was at 108%.¹⁵ ComReg’s most recent residential survey in Q4 2009¹⁶, reported that

¹² ComReg consumer ICT Survey, March 2010, <http://www.comreg.ie/fileupload/publications/ComReg1022.pdf>

¹³ ComReg Quarterly key data report, March 2010, <http://www.comreg.ie/fileupload/publications/ComReg1019.pdf>

¹⁴ High-Speed Downlink Packet Access (HSDPA)

¹⁵ Quarterly key Data December 2009 Report – <http://www.comreg.ie/fileupload/publications/ComReg09101.pdf>

Please note that mobile subscriptions in Q4 2009 and previous quarters are not strictly comparable as the definition of mobile subscriptions has been amended for the period Q2 2009. The subscriber penetration rate is based on the number of active SIM cards in the Irish market and it should also be noted that subscribers may have more than one active SIM card.

¹⁶ http://www.comreg.ie/_fileupload/publications/ComReg1022.pdf

levels of mobile phone ownership are over 90% across all age categories, with the exception of those aged 65-74 years which continue to remain lower at 74%.

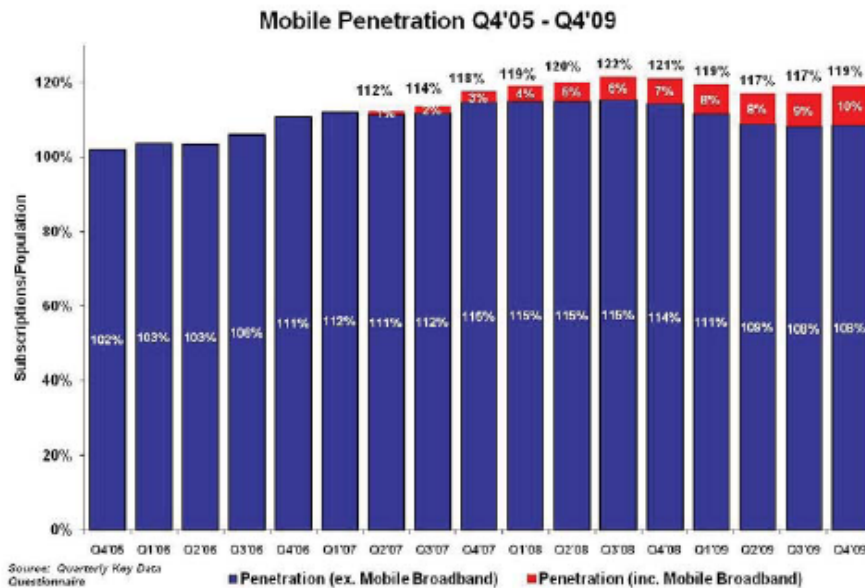


Figure 3 – Mobile Penetration Q4 2005- Q4 2009

Overall, the developments in the Irish telecommunications market indicate that there is improved choice and value for consumers in terms of number of providers, packages and bundled services across a variety of platforms. While mobile penetration has increased and fixed-line penetration has decreased, a large majority of Irish consumers continue to subscribe to a fixed-line service in their home.

5 Duration of the Designation Period

In 2006, a period of 4 years was selected as the appropriate duration for providing all of the elements of the USO. In considering the next period of designation, the following factors are relevant:

- Consideration of an interim period between the end of the current designation and the transposition of the Amending Directive, and
- The impact of the legislative changes under the Amending Directive.

The legislative basis for the designation of an undertaking to provide universal services is the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 – S.I. No. 308 of 2003, (“the Regulations”). The Regulations came into effect on 25 July 2003. The foundation for the Regulations was Directive 2002/22/EC (the “Universal Service Directive”) of 7 March 2002, part of the overall framework for the regulation of the electronic communications sector published in the Official Journal of 24 April 2002.

The EU Commission completed a review of the regulatory framework and, on 18 December 2009, issued changes to the five Directives that comprise the current framework. Accordingly, ComReg envisages that the amendments to the Universal Service Directive will be transposed by the Department of Communications, Energy and Natural Resources (“the DCENR”) by mid-2011.

ComReg also notes that on 3 March 2010, the European Commission issued a consultation regarding the scope of universal service (consultation on future universal service in digital era)¹⁷. This consultation may result in changes in the scope of universal service; however the impact, or timing, of any changes arising from this review is not yet clear. Should there be any further amendments to universal service as a result of the EC consultation, or any further reviews; any such amendments would be required to be transposed into Irish law in a period following the transposition date for the current Amending Directive.

Taking account of the above factors, (in particular the planned transposition date of May 2011, the ongoing consultation on the scope of universal service by the European Commission and the fact that this consultation by ComReg is limited to the current legislation), ComReg is of the preliminary view that the designation should be for a limited period (that is, an approximate 2-year period, ending on 30 June 2012). ComReg is interested in seeking views on the case for alternative periods.

¹⁷

http://ec.europa.eu/information_society/policy/ecommm/library/public_consult/universal_service_2010/

Q. 1. What is your view on the factors outlined above in the context of defining an appropriate designation period? Are there other factors which should be taken into account? Please give reasons to support your point of view.

6 Designation of Universal Service Provider(s)

The Regulations require ComReg to designate one, or more, operators to guarantee the provision of the universal services, as set out in Section 3, to ensure that the whole of the State is covered. Different operators (undertakings), or sets of operators, can be designated to provide different elements of universal service, and/or to cover different parts of the State.

The Regulations and the Universal Service Directive clearly state that no undertaking is *a priori* excluded from being designated. In the majority of Member States, the incumbent operator provides universal services, while other operators may wish to take on the universal service responsibility and may be able to supply it at a lower cost. The development of greater competition in the Irish market since the previous designation may provide greater possibilities for all, or part, of the USO to be provided by operators other than Eircom.

As previously outlined, a number of factors must be considered in designating an operator or operators as the provider, or providers, for each element of the universal service. This consultation extends an invitation to all undertakings to express an interest in providing all, or part, of the universal service. Any expressions of interest should be accompanied by the following;

- An outline of technical competence and expertise in providing the service concerned
- An outline as to how the proposed obligations, as detailed in this consultation, will be fulfilled, including a full description as to how the service(s) will be provided, and
- Procedures for connection, fault management, the provision of information to consumers and the handling of complaints.

If expressions of interest are received, ComReg will consider such proposals and possible further steps in the response to this consultation.

7 Provision of Access at a Fixed Location

A fundamental requirement of the USO is that all “reasonable” requests for connection to the public telephone network are met by at least one operator. Eircom, as the USP, is currently required to satisfy any reasonable request to provide a connection to the public telephone network at any fixed location in the State.

Any connection provided by a designated undertaking must be capable of allowing consumers make, and receive, the following:

- Local, national and international telephone calls;
- Facsimile communications; and
- Data communications, at data rates that are sufficient to permit functional internet access.

7.1 Functional Internet Access

Decision Notice D9/05¹⁸ addressed the issues of connections to the public telephone network and provision of functional Internet access.

ComReg notes that broadband is not encompassed in the definition of universal service in the current legislation. Accordingly, this consultation refers only to ‘narrowband’ connections and will not address functional internet access.

While ‘broadband for all’ is a stated policy objective at European and national level, the European Commission continues to deliberate on the role of universal service in meeting this objective. It is noted that while some countries may seek to use universal service as a mechanism to bring broadband to all its citizens, others may seek to achieve this objective by other means, such as State-funded schemes or other broadband availability programmes. In this context, ComReg will take account of the role of Government policy and, in particular, Government strategies and initiatives to advance the availability of broadband, such as the National Broadband Scheme. ComReg will carefully consider and apply both national policy, as articulated by the DCENR with respect to broadband availability, and further outputs from the European Commission regarding universal service, in adopting a position on this issue.

7.2 Requests for connection

The fundamental requirement of universal service is that all reasonable requests for connection at a fixed location are met. There are many factors to be considered in ensuring that the requirements of consumers are met.

¹⁸ Universal Service Requirements-Provision of access at fixed location - connections to public telephone network and provision of functional Internet access – D9/05.

Currently, the USP is required to treat all requests for connection at a fixed location to the public telephone network, and for access to publicly available telephone services at a fixed location, as reasonable if the estimated expenditure involved in meeting the request is not greater than €7,000 and the applicant agrees to the payment of the standard connection charge.

In the majority of cases, the USP should not have any significant difficulties in providing network connections throughout the country, or defined territory within the State. Eircom, by virtue of its ownership of the public switched telephone network (PSTN), is capable of meeting the reasonable requests of consumers on a nation-wide basis. In addition, Eircom remains the major fixed line provider in the market, with a current estimated market share of 68%. ComReg notes that many fixed-line operators which offer competing services do so via Eircom's network. However, in some cases, fixed-line operators offer competing services over their own networks.

Although new housing has declined, where a dwelling is in a rural area and/or is a one-off development, the provision of a telephone connection can be disproportionately expensive. In this context, Decision Notice 09/05 stated that all requests for connection involving expenditure below €7,000 are to be considered reasonable and requests above €7,000 will still be considered reasonable providing the requesting party agrees to cover the excess connection costs above €7,000 - known as the Reasonable Access Threshold ("RAT"). It is ComReg's preliminary view that no significant developments have taken place since the previous review and that the threshold remains appropriate.

Q. 2. What is your view in relation to the current Reasonable Access Threshold? Please give reasons to support your point of view.

ComReg will carefully consider any submission that it receives from interested parties for the provision of access to a fixed location throughout the State, or a defined territory within the State. In the absence of compelling evidence to the contrary (including any expressions of interest from other operators, as indicated in Section 6), ComReg is of the preliminary view that the principal factors, including network reach, experience and ability to satisfy reasonable requests for connection, that resulted in Eircom being designated as the USP with respect to access at a fixed location in July 2006 remain present in 2010.

Q. 3. What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to access at a fixed location? Please give reasons to support your point of view.

8 Directory Services

The Regulations provide that a designated undertaking must ensure that a comprehensive directory of subscribers, whether printed or electronic or both, is made available to all consumers and is updated at least once a year, or that a comprehensive telephone directory enquiry service is made available to all consumers, including users of public payphones.

The requirement to provide a comprehensive directory enquiry service was withdrawn in 2006 as ComReg was of the view that directory enquiry services were being provided on a commercial basis and that the market could fulfil this aspect of the universal service without an undertaking, or undertakings, being legally obliged to do so by ComReg. It is noted that, to date, this issue has not been a source of consumer concern; however ComReg will continue to monitor developments.

The Regulations also state that the USP for directory services shall also maintain the National Directory Database (“the NDD”), which is a record of all subscribers of publicly available telephone services in the State who have not refused to be included in the NDD. In addition, following the entry into force of the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003, the NDD became the basis for the “opt out” register for direct marketing purposes.

Eircom has built up a considerable level of experience in managing the NDD and the “opt out” register. ComReg’s preliminary view is that Eircom may still be the most suitable undertaking to provide universal service in this area.

8.1 The requirement for a Printed Telephone Directory

As USP, Eircom is also obliged to provide a printed telephone directory. ComReg recently received representations with respect to whether subscribers should have the option of indicating a preference for receiving, or not receiving, the printed telephone directory. It is ComReg’s understanding, based on Eircom’s submission, that the provision of the printed directory on an ‘opt in’ basis would not be cost effective. ComReg also sought the views of its Consumer Advisory Panel, which noted that the printed directory provides consumers with useful information which may not be available by other similar means (for example, access to details and contact information for Government services). ComReg also notes its recent Business Survey¹⁹ observed that one quarter of all businesses consider access to a printed telephone directory as essential for their business. In addition, ComReg notes that the telephone directory is available on-line at www.eircomphonebook.ie. It is ComReg’s view that the printed directory should be provided in an efficient and effective manner, taking account of environmental sustainability issues, and ComReg is interested in receiving views on this matter.

¹⁹ ComReg Business ICT Survey, April 2010 - <http://www.comreg.ie/fileupload/publications/ComReg1033.pdf>

ComReg has also received representations from some consumers who have indicated that the print format of the listings in the printed directory (all Area Codes), which was changed in 2008, is not legible. While ComReg has not specified the format for the printed directory heretofore, it is interested to ascertain consumers' views on this issue.

ComReg will carefully consider any submissions that it receives from interested parties for the provision of the telephone directory and the maintenance of the NDD throughout the State, or a defined territory within the State. In the absence of compelling evidence to the contrary (including any expressions of interest from other operators), ComReg is of the preliminary view that, taking into account factors such as existing infrastructure, experience and ability to fulfil the directory service obligations, Eircom may be best placed to be designated again as the USP with respect to the provision of a subscriber directory, including the NDD.

Q. 4. Do you agree that the present provision of directory enquiry services on a commercial basis continues to meet the needs of consumers? Please give reasons to support your point of view.

Q. 5. What is your view regarding the continued requirement to provide a printed directory to all consumers? Please give reasons to support your point of view.

Q. 6. What is your view with respect to the legibility of the listings in the printed telephone directory? Please give reasons to support your point of view.

Q. 7. What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of a subscriber directory, including the NDD? Please give reasons to support your point of view.

9 Public Payphones

The Regulations provide that a designated undertaking shall ensure that public payphones are provided to meet the reasonable needs of consumers in terms of geographical coverage, number of telephones, accessibility of such telephones to consumers with disabilities and the quality of services. The USO payphones cover those located on the street and in other public areas available to the public at all times.

As a consequence primarily of the growth in mobile telephony, further reductions in the number of payphones in both urban and rural areas may be unavoidable due to a possible further fall in demand for public payphones. However, in effecting any reduction in the number of payphones, the USP must ensure that the USO is met and, in this respect, ComReg 06/14 – Removal/Relocation of Public Pay Telephones²⁰ sets out the process to be adopted by Eircom.

The average number of USO payphones operated by Eircom during the period October 2009 to December 2009 was 1,477.²¹ Despite the decline in numbers of payphones and use, based on usage figures submitted by Eircom to ComReg, it is apparent that payphones continue to provide a basic service to many people indicating their continued necessity. A public payphone may be valued and needed by many people without a land-line or a mobile phone or those away from home, or those whose mobile phone is out of credit, or those who, for whatever reason, choose to use a payphone instead of their mobile phone.

The Regulations define a public payphone as:

“a telephone available to the general public for the use of which the means of payment may include coins, credit cards, debit cards or pre-paid cards, including cards for use with dialling codes”.

The current requirements, therefore, oblige the USP to ensure that, where possible, all public payphones provide for a number of payment means. In addition, it must be possible to make emergency calls free-of-charge from all public payphones. The ubiquity of Eircom’s network is relevant in the context of the provision of public payphones, as the capability to provide public payphones throughout the country is clearly dependent on that ubiquity.

ComReg will carefully consider any submissions that it receives from interested parties for the provision of public payphones throughout the State, or a defined territory within the State. In the absence of compelling evidence to the contrary (including any expressions of interest from other operators), ComReg is of the

²⁰ <http://www.comreg.ie/fileupload/publications/ComReg0614.pdf>

²¹ Provision of Universal Service by Eircom, Performance Data – Q4 2009 (1 October 2009 to 31 December 2009) - <http://www.comreg.ie/fileupload/publications/ComReg1020.pdf>

preliminary view that the principal factors, including existing infrastructure, network reach and experience, that resulted in Eircom being re-designated as the USP with respect to the provision of public payphones in July 2006 remain present in 2010.

Q. 8. What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of public payphones throughout the State? Please give reasons to support your point of view.

10 Provision of Universal Service to Consumers with Disabilities

The Regulations provide for specific measures for consumers with disabilities. ComReg can specify obligations applicable to designated undertakings for the purpose of ensuring that consumers with disabilities can enjoy access to, and affordability of, publicly available telephone services equivalent to that enjoyed by other consumers.

In July 2006, the following obligations were imposed on the USP with respect to the provision of services to consumers with disabilities:

For consumers that are hearing-impaired

- Inductive couplers which allow consumers with a hearing aid set to connect the set to their telephone to allow them to hear incoming speech clearly.
- Amplifier phones which allow the user to increase the volume of incoming speech.
- Teleflash Visual Alert which shows a flashing light, or makes a loud noise when the telephone rings.

For consumers that are hearing and/or speech impaired

- A text Relay Service providing facilities for the receipt and translation of voice messages into text and the conveyance of that text to the textphone of customers of any operator, and vice versa.
- A rebate scheme whereby, as a result of the time taken to make a text telephone call, equality of payment for deaf text telephone consumers can be assured.

For consumers with limited dexterity or mobility

- Push button telephone sets with speed and automatic redial buttons allowing pre-programmed telephone numbers (typically the most called numbers) or last called telephone numbers to be dialled without having to re-enter the telephone number.
- Hands free/loudspeaker phones means that the handset does not need to be used.

For consumers with restricted vision

- Restricted vision telephones which can help people with restricted vision to find other numbers more easily.
- Braille billing, free-of-charge.

- Special directory enquiry arrangements which allow those consumers unable to use the telephone directory, as a result of a disability, to use a directory enquiry service, free-of charge.

In addition, the USP was required to develop and publish a Code of Practice for the provision of services to consumers with disabilities and is available on the Eircom website at

http://www.eircom.ie/bveircom/pdf/code_of_practice_disability.pdf

ComReg notes that, in some cases, the mandatory set of obligations may be less than voluntary measures being provided by operators (for example, the provision of free directory enquiry service for consumers with disabilities by operators, in addition to Eircom, as initiated by ComReg's Forum on Electronic Communications Services for People with Disabilities).

ComReg also notes that the Amending Directive aims to assist in ensuring that consumers with disabilities have access to electronic communications services equivalent to that enjoyed by the majority of consumers and that consumers with disabilities can benefit from the choice of undertakings and services available to the majority. ComReg is currently conducting a survey of consumers with disabilities with respect to telecommunications services, following which ComReg may seek to consult with interested parties in relation to proposed measures in relation to the accessibility of telecommunication services.

While noting that additional measures may be taken by the USP and/or other operators, ComReg's preliminary view is that the current set of obligations on the USP should be maintained at least for the interim period.

It should be noted that it is ComReg's preliminary view that these obligations would apply to whatever USP(s) are designated by ComReg. Any party expressing an interest in fulfilling any of the relevant elements of the USO in all, or part, of the State should address how it would fulfil these obligations.

Q. 9. Do you agree that the current set of obligations is appropriate for consumers with disabilities in the context of the current scope of universal service? Please give reasons to support your point of view.

11 Affordability

The Irish economy has experienced a major recession since the last designation in 2006. Ireland, with a relatively small market of 4.5 million people, is particularly dependent on international trade and is, therefore, particularly vulnerable to global economic trends. According to the CSO, employment fell from 2.1 million to 1.9 million by the end of June 2009, a decline of 10%, and the Central Bank estimates that unemployment will reach 14% in 2010. ComReg survey data observes that the average spend on fixed line telephone bills has dropped by 20% since Q4'06.²²

Universal service is not only about enabling people to be connected to a fixed telephone network - it is also important that all consumers who wish to remain connected to the fixed network can do so. In the context of universal service, Eircom's Disconnection Policy, and the associated number of disconnections, has an impact on the number of people connected to the fixed network. Universal service is not truly universal if many people are left without access to a telephone. (It is recognised, however, that disconnections may also result for other reasons, such as fraud or the deliberate non-payment of bills).

With regard to the relevance of disconnections to universal service, ComReg considers that this issue is important in the context of enabling subscribers to control their telephony expenditure. The level of disconnections may be a barometer of the effectiveness of the existing measures which facilitate such control. In addition to the measures outlined below, the Eircom Disconnection Policy (as set out in its Code of Practice for Complaint Handling²³) includes notification measures for subscribers who fall into payment arrears. This policy appears to continue to have a positive effect by reducing the number of subscribers being disconnected from the network.

The Regulations require designated undertakings to adhere to the principle of maintaining affordability for the set of universal services, that is, provision of access at a fixed location, directory enquiry, and public payphones. In particular, affordability has to be maintained for vulnerable user groups, such as the elderly, those on low incomes and for consumers with disabilities. From the perspective of consumers and the competitiveness of the economy generally, Irish communication costs should not exclude the most vulnerable in the community from making a minimum use of telephony services. While communications services are a basic necessity for all consumers, ComReg considers that protections for vulnerable customers should remain in place. These should aim to protect vulnerable customers from a rapid increase in overall bills.

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

²² ComReg consumer ICT Survey, March 2010, <http://www.comreg.ie/fileupload/publications/ComReg1022.pdf>

²³ Available on the Eircom website at www.eircom.ie

- Within the retail price cap regime - providing a safeguard on consumer's bills (line rental and calls). An overall basket price cap (access and domestic calls) of CPI – 0% has been imposed on Eircom since February 2007. The maximum average price increase of the services subject to the cap is the rate of inflation.
- The Department of Social Protection's (DSP)²⁴ Telephone Allowance. The DSP operates a number of schemes which are designed to protect vulnerable users (such as pensioners, widowers and defined disability groups) and ensures affordability for services. The Telephone Allowance provides consumers who qualify for the scheme with a payment towards their telephone bill (either landline or mobile phone)
- Eircom's "social benefit package", and
- Eircom's low usage scheme - Vulnerable Users Scheme ("VUS").

Q. 10. Do you consider that the current measures (outlined above) provide appropriate protection for vulnerable consumers in terms of affordability? Please give reasons to support your point of view.

Any party expressing an interest in fulfilling any of the relevant elements of the USO in all, or part of, the State should address how it would comply with current obligations relating to affordability.

²⁴ Formerly the Department of Social and Family Affairs

12 Control of Expenditure

In addition to affordability of tariffs, ComReg considers that it is imperative that subscribers are able to monitor and control their expenditure to ensure that they do not find themselves unable to pay their bill and facing disconnection from the network. ComReg can take measures to ensure that subscribers are in a position to monitor and control expenditure, including:

- **Itemised Billing:** a minimum level of itemised billing to be provided free-of-charge to consumers
- **Selective Call Barring:** the ability of the subscriber to bar outgoing calls of defined types
- **Introducing a spend threshold:** the ability to set a limit on the charges on your bill
- **Phased Payment of Connection Fees:** the facility whereby consumers can pay for their connection fees on a phased basis, and
- **Non-Payment of Bills:** ensure the availability of a Disconnection Policy.

When responding to the questions below, respondents are requested to consider whether any benefits from the measures discussed are likely to exceed the cost of provision.

12.1 *Itemised Billing*

Eircom, as the USP, is required to provide a minimum level of itemised billing free-of-charge to subscribers who request this facility. The level of itemisation provides subscribers with a list of numbers called, call cost and duration, with subtotals by call type, line and equipment rental along with full details of any relevant discounts.

ComReg considers that the current level of itemised billing is sufficient to allow consumers to verify their charges and assist in the control of their expenditure and does not consider that this facility needs to be amended at this time.

Q. 11. Do you agree with the approach with respect to call itemisation? Please give reasons to support your point of view.

12.2 *Selective Call Barring*

Eircom is required to offer call barring to Premium Rate Services free-of-charge to subscribers. A range of other call barring options is also offered, subject to payment of a set-up fee and ongoing rental charges, including:

- Premium Rate, International, Cross Channel and National.

- Premium Rate, International and Cross Channel.
- Premium Rate and International.
- Premium Rate and Mobile.

ComReg considers that the call barring options available are reasonable in terms of enabling users to control their expenditure and that consumers who wish to bar access to particular services should be able to do so without incurring a charge for such a request. ComReg does not propose to make any amendments to the call barring options at present, however may do so in relation to the charges imposed for such services.

Q. 12. Do you consider that the call barring options are sufficient to enable consumers to control their expenditure? Please give reasons to support your point of view.

Q. 13. What is your view in relation to charges for availing of call barring options as a means of controlling expenditure? Please give reasons to support your point of view.

12.3 Setting of Spend Threshold

ComReg considers that consumers may benefit from a mechanism that would enable them to limit the cost of their telephone bill, for example, by means of a facility whereby a subscriber could set a credit limit on his/her account. This would operate in a manner similar to a credit card - however, once the limit is reached, the subscriber would be informed and asked whether further outgoing calls should be permitted (that is, the subscriber would be empowered to decide on permissible usage).

Q. 14. What is your view on the possibility of facilitating consumers to set a credit limit on their telephone account as an aid to control expenditure? Please give reasons to support your point of view.

12.4 Phased Payment for Connection Fees

In a previous universal service review, phased payment for connection fees was introduced. The core aim of the USO is to ensure that as many people as possible can get access to telephony services and the phasing of connection fees ensures that consumers are not prohibited from early connection because of an inability to pay the total connection charge in one payment. The scheme is implemented using a

direct debit option. ComReg does not propose to make any changes to this scheme at this time.

12.5 Non-Payment of bills

As stated earlier, there is an existing obligation on all operators to publish their Disconnection Policy, as part of their Code of Practice for Complaint Handling. In the previous review, ComReg considered whether the USP should have a more detailed Disconnection Policy. However, ComReg decided that a balance had to be struck between protecting consumers from unwarranted disconnections and commercial interests.

ComReg is not proposing to amend Eircom's Disconnection Policy. This policy provides that, if you do not pay your bill by the account due date, Eircom may restrict your ability to make and receive calls and which also provides that, while doing this, Eircom will endeavour to contact you to remind you that your bill is overdue.

Any party expressing an interest in fulfilling any of the relevant elements of the USO in all, or part of, the State should address how it would comply with current obligations relating to control of expenditure and what other arrangements it would put in place.

Q. 15. Do you consider that Eircom's current Disconnection Policy is reasonable? Please give reasons to support your point of view.

13 Costing and Financing of Universal Service

Pursuant to the Regulations, a USP may seek to receive compensation for the net cost of meeting the USO obligation concerned where, on the basis of such net cost calculation; ComReg determines that the undertaking in question is subject to an unfair burden.

Regulation 11 (1) provides that: *“Where an undertaking designated as having an obligation under Regulation 3, 4, 5, 6, 8 or 9 seeks to receive funding for the net costs of meeting the obligation concerned, it may submit to the Regulator a written request for such funding.”*

ComReg will seek to develop its approach to this issue, taking account of the views of all stakeholders.

14 Submitting Comments

The consultation period will run from 22 April 2010 to 21 May 2010, during which the Commission welcomes written comments on any of the issues raised in this paper. It is requested that responses to the consultation be received at ComReg by 4:00 pm on 21 May 2010.

All comments are welcome; however, it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

Having analysed and considered the comments received, ComReg will publish a Response to Consultation. In order to promote further openness and transparency, ComReg will publish all respondent's submissions to this consultation, subject to the provisions of ComReg's Guidelines on the treatment of confidential information – ComReg 05/24. We would request that electronic submissions be submitted in an unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

ComReg appreciates that some of the issues raised in this paper 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 web-site, and for inspection generally, respondents 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 – Regulatory Impact Assessment

As part of the process of evaluating the most efficient and appropriate approach for ensuring the implementation of USO, ComReg is conducting a Regulatory Impact Assessment (RIA), in line with ComReg document 07/56a,²⁵ and taking into account the RIA Guidelines adopted under the Government's Better Regulation initiative.

ComReg must use all reasonable, proportionate measures to promote the interests of citizens by ensuring that citizens have access to universal service as specified in Directive 2002/22/EC. ComReg must also ensure that the needs of specific users, in particular, users with disabilities, are addressed.

ComReg's approach to universal service scope and designation is in accordance with the currently applicable legislation.

ComReg must ensure that the services listed below are made available on an affordable basis at the quality specified to all end-users independently of geographical location.

1. Provision of reasonable requests for access at a fixed location supporting voice and functional internet access. (ComReg has discretion in so far as it can determine what is reasonable);
2. Provision of directories in the form decided by ComReg;
3. Provision of public payphones, if necessary, to meet the reasonable needs of end-users as assessed by ComReg;
4. Provision of certain services or equipment to disabled users where deemed appropriate by ComReg;

The Regulations place responsibility on ComReg to designate one, or more, Universal Service Providers (USP/s). Regulation 7(1) states “...*the Regulator shall designate one or more undertakings, for such period as may be specified by the Regulator, to comply with an obligation referred to in Regulation 3, 4(1)(a), 4(1)(b), 4(3), 5 or 6 and, where applicable, Regulation 8(2), so that the whole of the territory may be covered.*”

ComReg's approach to conducting a RIA is outlined in its RIA Guidelines. In relation to Universal Service, where ComReg is charged with implementing a statutory obligation, it will assess each case individually and determine whether a RIA is necessary and justified, having regard to its degree of discretion and the principles of reasonableness and proportionality.

In relation to Universal Service, ComReg's discretion is limited and hence, in contrast to the cases normally contemplated under the RIA Guidelines, there is not a wide range of regulatory options to choose amongst. ComReg's role is more to

²⁵ Guidelines on ComReg's Approach to Regulatory Impact Assessment - ComReg 07/56a.

decide what is reasonable as an implementation of the Universal Service, rather than to assess the merits of the underlying policies embedded in legislation. Thus, it is not necessary to outline a range of options and to make an assessment of the impacts of each on stakeholders. Rather, ComReg outlines how its proposals will impact on stakeholders and chooses the most proportionate means of achieving the stated aims in the Universal Service Directive and the Universal Service Regulations.

Impact assessment

ComReg recognises that any regulatory decision must be a reasoned decision, in line with obligations under the Regulations. In view of a designation of a USP, the potential key impact of the proposed scope of various different aspects of universal service on a USP, operators and consumers is set out in the following sections.

1. ComReg has discretion in relation to providing access at a fixed location, with regard to setting a threshold for what would constitute a reasonable request. At one level, ComReg could find that all requests are reasonable. However, this would have a large impact on the USP who would be faced with the prospect of very large costs that it cannot itself control. Moreover, the absence of a threshold would encourage consumers to build in more and more remote places as the costs for so doing would be borne by other parties. For these reasons, ComReg remains of the view that the existence of a threshold is important. While a USP would be required to provide a connection to the PSTN, ComReg has previously issued guidance on what might be termed a reasonable request and the threshold of €7,000 defined in D09/05 gives a USP protection where the costs involved in providing such access are high. Thus, consumers can obtain a connection at the standard rate so long as the costs of so doing do not exceed this threshold. Any costs incurred above this threshold in the provision of a connection are paid by the applicant. ComReg is minded to consider that the current approach remains valid and proportionate at this juncture, subject to any compelling new information submitted in the consultation.
2. The operation and maintenance of the National Directory Database (NDD) by a USP would be cost-neutral as it is funded by the licence fees for the provision of the information to directory enquiry service providers and printed directories. While the printing and distribution of a paper directory may involve some direct cost, it is highly probable that it would also confer advantage through advertising and brand awareness.
3. In terms of public payphone availability, a network of payphones is already extant. While mobile telephony growth and other factors may contribute to a reduction in demand for public payphones, the procedure for the removal of non commercial payphones²⁶ gives flexibility to a USP to manage any operation and maintenance costs involved. In addition, a network of payphones may confer advantage through

²⁶ ComReg document 06/14 sets out the process to be adopted for the removal/relocation of payphones in the public interest.

advertising, brand awareness and product availability (e.g., Wi-Fi hot spots based at payphones).

In addition, ComReg has discretion with respect to certain specific obligations relating to access for disabled consumers, affordability and control of expenditure. While these may involve some costs to a USP, in each case ComReg sees benefits to consumers from these provisions (such as providing consumers with greater information and control over how they purchase, and use, telephony services).

4. It is considered that obligations imposed for Consumers with Disabilities should not add substantial cost to a USP in view that this USO component may be less than or broadly equal to voluntary measures provided by operators. In contrast, should such an obligation be withdrawn, and should operators simultaneously withdraw their voluntary measures, the impact on consumers with disabilities would be severe.
5. ComReg considers that many measures currently in place to control expenditure are sufficient (e.g. itemised billing and disconnection policies). ComReg may propose to amend some measures in the future. The associated cost of maintaining these obligations in their current format is likely to be relatively minor as operators, in general, offer these services to customers. In contrast, the impact of withdrawing these measures on customers struggling to control their expenditure could be significant. The impact of possible new measures, such as setting a spend threshold, is unlikely to lead to significant additional costs, however the impact of any potential scheme would be assessed prior to any final decision.

Conclusion

Subject to any compelling new information or views provided in response to this consultation, ComReg's preliminary view is that the implementation of the Universal Service proposed in the Consultation Paper would be transparent, justified and proportionate, and otherwise in line with Better Regulation guidance and Regulatory Impact Assessment norms. Furthermore, any costs may be outweighed by benefits corresponding to universal service provision. However, pursuant to the Regulations, a USP may seek to receive compensation for the net cost of meeting the USO obligation concerned where, on the basis of appropriate net cost calculation, ComReg determines that the undertaking in question is subject to an unfair burden. Regulation 11 (1) provides that: "*Where an undertaking designated as having an obligation under Regulation 3, 4, 5, 6, 8 or 9 seeks to receive funding for the net costs of meeting the obligation concerned, it may submit to the Regulator a written request for such funding.*"

Q. 16. Do you agree with the approach and conclusions in this regulatory impact assessment? Please give reasons to support your point of view.

Appendix B – Legislation

The principal legislation governing the area of Universal Service is set out in:

1. European Communities (Electronic Communications Network and Services) (Universal Service and Users' Rights) Regulations, S.I.308 of 2003.
2. Communications Regulations Act, 2002, No. 20 of 2002.
3. 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).

Appendix C – Consultation Questions

List of Questions

Q. 1. What is your view on the factors outlined above in the context of defining an appropriate designation period? Are there any other factors which should be taken into account? Please give reasons to support your point of view.

Q. 2. What is your view in relation to the current Reasonable Access Threshold? Please give reasons to support your point of view.

Q. 3. What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to access at a fixed location? Please give reasons to support your point of view.

Q. 4. Do you agree that the present provision of directory enquiry services on a commercial basis continues to meet the needs of consumers? Please give reasons to support your point of view.

Q. 5. What is your view regarding the continued requirement to provide a printed directory to all consumers? Please give reasons to support your point of view.

Q. 6. What is your view with respect to the legibility of the listings in the printed telephone directory? Please give reasons to support your point of view.

Q. 7. What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of a subscriber directory, including the NDD? Please give reasons to support your point of view.

Q. 8. What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of public payphones throughout the State? Please give reasons to support your point of view.

Q. 9. Do you agree that the current set of obligations is appropriate for consumers with disabilities in the context of the current scope of universal service? Please give reasons to support your point of view.

Q. 10. Do you consider that the current measures (outlined above) provide appropriate protection for vulnerable consumers in terms of affordability? Please give reasons to support your point of view.

Q. 11. Do you agree with the approach with respect to call itemisation? Please give reasons to support your point of view.

Q. 12. Do you consider that the call barring options are sufficient to enable consumers to control their expenditure? Please give reasons to support your point of view.

Q. 13. What is your view in relation to charges for availing of call barring options as a means of controlling expenditure? Please give reasons to support your point of view.

Q. 14. What is your view on the possibility of facilitating consumers to set a credit limit on their telephone account as an aid to control expenditure? Please give reasons to support your point of view.

Q. 15. Do you consider that Eircom's current Disconnection Policy is reasonable? Please give reasons to support your point of view.

Q. 16. Do you agree with the approach and conclusions in this regulatory impact assessment? Please give reasons to support your point of view.