



Commission for  
**Communications Regulation**

# **The provision of telephony services under the Universal Service Obligation**

## **Access at a Fixed Location**

**Consultation and Draft Decision**

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## Additional Information

All responses to this consultation should be clearly marked:- “Submissions to ComReg 14/48”, and sent by post, facsimile or email, or submitted on-line at [www.comreg.ie](http://www.comreg.ie) (current consultations), to arrive on or before 13 June 2014, to:

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## Chapter 1

# 1 Introduction

- 1.1 The Commission for Communications Regulation ('ComReg') is responsible for the regulation of the Irish electronic communications sector, in accordance with national<sup>1</sup> and EU legislation. One of ComReg's functions is to determine the need and scope of the Universal Service Obligations ('USO') for the Irish market and to decide which undertaking(s), if any, should be designated as the Universal Service Provider(s) ('USP') for particular USO(s).
- 1.2 The universal service ensures the provision of basic telecommunication services throughout the State, particularly in areas of the State (such as rural or sparsely populated areas) where the market might otherwise not deliver these services. Thus, the universal service contributes to social and economic inclusiveness and cohesiveness in society.
- 1.3 As set out in ComReg Decision D07/12,<sup>2</sup> Eircom is currently designated as the USP for two years which commenced on 1 July 2012 and ends on 30 June 2014 ('the 2012 designation'). One of the USOs placed on Eircom by the 2012 designation is to satisfy any reasonable request to provide access at a fixed location to a public communications network, including access to services such as voice and functional internet access ('FIA')<sup>3</sup>. As the end of Eircom's designation term is approaching and in light of technical changes and market developments, it is necessary and appropriate to commence a review of the provision of Access at a Fixed Location ('AFL') under USO.
- 1.4 ComReg has already consulted on measures in respect of equivalence in access and choice for users with disabilities. Other aspects of the USO such as payphones, specific measures for disabled end-users and subscriber directories are the subject of separate consultation processes.<sup>4</sup>
- 1.5 ComReg is of the preliminary view that there is a need for an AFL USO for a further three to five years.

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<sup>1</sup> Under the Communications Regulation Act, 2002 (as amended).

<sup>2</sup> ComReg (2012), "*The provision of telephony services under Universal Service Obligations*", D07/12 [http://www.comreg.ie/fileupload/publications/ComReg\\_1271.pdf](http://www.comreg.ie/fileupload/publications/ComReg_1271.pdf)

<sup>3</sup> See Regulation 3 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. 337 of 2011). ("the Universal Service Regulations")

<sup>4</sup> See [www.comreg.ie](http://www.comreg.ie) – Latest Consultations

- 1.6 In this context, the purpose of this consultation paper is to seek views on how ComReg can ensure that the universal service for AFL is implemented appropriately for this three to five year period. ComReg aims to ensure that the AFL USO is sustained, as required, and that a USP(s) is in place while at the same time ensuring that any future provision of AFL under USO continues to evolve appropriately and aligns with consumers changing needs and market developments.
- 1.7 As it is ComReg's preliminary view, that the requirement for an AFL USO is required for a further three to five years, ComReg considers that undertakings other than Eircom may be interested in being a USP during that period and therefore, ComReg wishes to incorporate an expression of interest phase into its designation process. However, ComReg also needs to ensure that, if deemed necessary, an AFL USO is maintained from 1 July 2014.
- 1.8 In this context, ComReg is of the preliminary view that it is most appropriate to designate a USP, namely Eircom, for an interim period and maintain the current AFL USO, while allowing for an expressions of interest process to be undertaken and for further consideration of individual aspects of the AFL USO to be considered during that interim period.
- 1.9 This paper therefore has a dual purpose and is structured as follows:
- **Part 1 – The need to sustain a USO for AFL from 1 July 2014:**
    - (a) To seek views on the proposed maintenance of a USO for the provision of an AFL for a period of 3 to 5 years; and
    - (b) To seek views on the designation of a USP for a period of twelve or eighteen months commencing 1 July 2014 ('interim designation').
  - **Part 2 – Future scope and designation of AFL USO:**
    - (a) To seek preliminary views on the future scope of AFL USO after the interim designation period; and
    - (b) To seek expressions of interest in being an AFL USP in the period after the interim designation period.
- 1.10 Consequently, there are two timeframes for receipt of submissions to this paper:
- i. **13 June 2014** - The deadline for responses in respect of **Part 1** – (a)The need to sustain a USO for AFL for a 3 to 5 year period and (b) an interim designation of 12 or 18 months.

- ii. **8 August 2014** - The deadline for responses in respect of **Part 2** – (a) Future scope and designation of AFL USO including any submissions regarding the (b) call for expressions of interest in relation to being a future AFL USP after the interim period.
- 1.11 When ComReg has considered the views of respondents to Part 1, and if it is decided necessary, ComReg will formally designate one, or more, undertaking(s) as USP, in relation to specified provision of AFL USO from 1 July 2014 for an interim period of twelve or eighteen months.
- 1.12 When ComReg has considered the responses regarding the scope of AFL USO beyond the interim period and when it has assessed any expressions of interest received, ComReg will consult further regarding the designation and scope following the conclusion of the interim designation period.



## Chapter 2

# 2 Executive Summary

- 2.1 The scope of universal service is defined by the Directive 2002/22/EC of the European Parliament, as amended by Directive 2009/136/EC ('the Directive'). The USO scope was designed to ensure that everyone, irrespective of location, social standing or income can access basic telecommunications services at a fixed location, thus bringing benefits to those with low incomes who have difficulty in affording a telephone service, consumers with special social needs, 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.
- 2.2 These are basic services that are considered essential for everyone. However, there is a risk that left to the operation of market forces alone, such services may not be provided to everyone. As technology and competition develops, and as consumer needs evolve, it is ComReg's duty to ensure that the AFL USO continues to meet consumers' basic telephony needs, if they are not already being met by the market.
- 2.3 The current scope of universal service in Ireland, in respect of AFL is set out in the 2012 designation and contains the following aspects:
- Provision of access at a fixed location, capable of allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit functional Internet access;
  - Geographically averaged pricing, i.e. where telephone charges (including line rental) are the same for all subscribers irrespective of their geographical location; and
  - Measures in respect of Control of Expenditure and Affordability;
- 2.4 In addition, ComReg has previously specified obligations in respect of requests for connection and reasonable access and functional internet access (ComReg Decision D09/05)<sup>5</sup>. ComReg has also specified Quality of Service Performance Targets (Decision D02/08)<sup>6</sup> in relation to the provision of specific elements of the AFL universal service.

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<sup>5</sup> ComReg (2005), 05/70, <http://www.comreg.ie/fileupload/publications/ComReg0570.pdf>

<sup>6</sup> ComReg (2008), 08/37, <http://www.comreg.ie/fileupload/publications/ComReg0837.pdf>

- 2.5 This consultation takes into consideration the national context in terms of competitive, technological and service changes that have taken place since the 2012 designation and other such changes that are likely to impact the market over the next three to five years. This review and analysis also considers an overview of the current status of AFL USO in BEREC countries.<sup>7</sup>
- 2.6 As part of the national context, this paper also considers the various Government initiatives, in respect of broadband availability, which include The National Broadband Scheme (“NBS”) and The Rural Broadband Scheme (“RBS”). In addition, ComReg has also considered the National Broadband Plan (“NBP”), which is designed to address the Government’s target to increase broadband speeds.<sup>8</sup>

## **2.1 Part 1 – (a) The need to sustain a USO for AFL for 3 to 5 years**

- 2.7 As set out in Section 3, the first part of this consultation relates to the need to sustain a USO for AFL. In this regard, ComReg considers that notwithstanding the fact that mobile penetration has increased and is high<sup>9</sup> amongst Irish consumers, most households use both mobile and fixed telephony services. Therefore, it is ComReg’s preliminary view that as this particular USO specifically relates to access at a fixed location, it is likely that mobile voice services would not currently meet the specific functionality of the obligation, including geographic reach, indoor coverage and provision of geographic numbers and pricing, without further infrastructure investment and rollout. In addition, while ComReg observes a trend towards voice with broadband bundles it may also be the case that alternative fixed networks would not fully meet the functionality of the obligation on a nationwide basis, without changes to current infrastructure and investment.

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<sup>7</sup> USO designation and scope status at EU level May 2013 - [http://www.cullen-international.com/report/7721/t8999#\\_Universal\\_service\\_obligation](http://www.cullen-international.com/report/7721/t8999#_Universal_service_obligation)

<sup>8</sup> 21 February 2003 - [http://www.dcenr.gov.ie/NR/rdonlyres/9BC3CEB7-94A3-4E39-A654-73DB85B07D45/0/Comms\\_Reg\\_Policy\\_Directions.doc](http://www.dcenr.gov.ie/NR/rdonlyres/9BC3CEB7-94A3-4E39-A654-73DB85B07D45/0/Comms_Reg_Policy_Directions.doc)

26 March 2004 - [http://www.dcenr.gov.ie/NR/rdonlyres/593C55FA-1F3B-4FCD-A527-6F708BCABAD3/0/Comms\\_Reg\\_Policy\\_Directions\\_1\\_2004.doc](http://www.dcenr.gov.ie/NR/rdonlyres/593C55FA-1F3B-4FCD-A527-6F708BCABAD3/0/Comms_Reg_Policy_Directions_1_2004.doc)

<sup>9</sup> ComReg (2014), 14/19, <http://www.comreg.ie/fileupload/publications/ComReg1419.pdf>

- 2.8 In addition, ComReg is cognisant of the Government's national broadband plans, including the NBS, the RBS and the NBP which have objectives in relation to the national availability and speed of broadband in Ireland and how they impact on the scope of the AFL USO. ComReg notes the Government's recent announcement<sup>10</sup> with respect to the NBP. Further, while "*Broadband for All*" is a stated policy objective at European level, the European Commission is still deliberating on the role of the Universal Service in meeting this policy objective.<sup>11</sup>
- 2.9 As such, ComReg is of the preliminary view that there is still a significant demand for fixed telephony services and ComReg needs to ensure that all end users have access to this basic universal service. As such, ComReg's preliminary view is that it would be premature to remove the AFL USO for the period commencing 1 July 2014.
- 2.10 ComReg is also of the preliminary view, in light of market and technological developments, ongoing consumer trends and demands and the Government's National Broadband Plan, that a USO for AFL should continue for three to five years.
- 2.11 This document seeks to outline the relevant factors in relation to the scope and the appropriate designation of a USP to provide AFL, having regard to ongoing market and regulatory developments.

## 2.2 Part 1 – (b) Interim Designation

- 2.12 ComReg is of the view that it is not possible to determine the future scope or designation of AFL for a lengthy substantial period, at this point in time without a consideration of the potential changes in aspects of scope of the AFL USO likely to be necessary in the next three to five years.
- 2.13 In addition, ComReg considers that there may be other undertakings that want to be considered as a USP and ComReg wishes to afford such undertakings an opportunity to express such an interest. ComReg considers that it needs to allow time for valid expressions of interest to be submitted from undertakings that wish to do so and for a thorough assessment of these expressions to be undertaken.

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<sup>10</sup> <http://www.dcenr.gov.ie/Press+Releases/2014/Major+fibres+build-out+to+rural+Ireland+will+be+cornerstone+of+Government+strategy.htm>

<sup>11</sup> The last European Commission Communication reporting on the scope of US has been published in November 2011 concluding that, at that stage, there was no need to change the scope of US at EU level. The European Commission is legally obliged to periodically review the scope of Universal Service and has launched the preparatory works for the next review in 2014.

2.14 Therefore, ComReg is of the preliminary view that the most appropriate approach, to accommodate an expressions of interest process and to ensure that the ongoing need for AFL USO is met, is to extend Eircom's current designation and to maintain the status quo of the scope of the AFL USO, for a period of twelve or eighteen months commencing 1 July 2014.

## **2.3 Part 2 – (a) Future Scope of the AFL USO**

2.15 The current scope of the AFL USO was designed with a conventional telecommunications environment of fixed voice-based networks in mind. However, ComReg recognises that AFL USO needs to be reviewed and to evolve as appropriate in the context of a rapidly advancing digital environment.

2.16 However, notwithstanding the various changes to the telecommunications industry, that are discussed in detail in section 4, ComReg is of the preliminary view that the current requirements and specifications of the AFL USO remain broadly relevant in the proposed short to medium term (three to five years) and may only require minor changes.

2.17 The aspects that ComReg will consider when reviewing the scope of AFL are:-

- Obligations in respect of reasonable access and functional internet access (ComReg D09/05)
- Geographically averaged pricing, i.e. where telephone charges (including line rental) are the same for all subscribers irrespective of their geographical location;
- Measures in respect of Control of Expenditure and Affordability;

Quality of Service Performance Targets in relation to the provision of specific elements of the universal service (ComReg D02/08).

2.18 In addition, in light of the previous Government Schemes to make broadband available throughout the country and the NBP which aims to provide high speed broadband nationally, it is ComReg's preliminary view that it is not appropriate to include Broadband within the scope of AFL USO at this time. As such, ComReg does not consider it necessary, at this point in time, to make any changes to the scope of the existing AFL USO in respect of Broadband.

2.19 Details regarding how these aspects of the AFL USO could evolve are considered in section 4.

- 2.20 ComReg invites stakeholders' submissions on the scope and designation (after the interim period) of AFL USO.

## **2.4 Part 2 – (b) Call for Expressions of Interest for the provision of AFL under USO**

- 2.21 Based on ComReg's preliminary view that there is a requirement for the ongoing provision of AFL USO, at least for the short to medium term (three to five years) following the conclusion of the interim designation, no undertaking should be excluded from being designated to provide all or part of the universal service, in all or part of the State.
- 2.22 In the majority of Member States, the incumbent operator provides universal services. However, ComReg recognises that other operators in Ireland may be able and willing to provide all or part of the universal service, in all or part of the State and may be able to do so at a lower cost. ComReg wishes to give such operators an opportunity to express such an interest in doing so.
- 2.23 Section 6 details what information is required to make a valid expression of interest. It also sets out the factors ComReg will take into consideration, including network reach and resilience, experience, ability to provide universal service, quality factors and cost, in designating one or more undertaking(s).
- 2.24 In the context of the current scope of AFL USO, ComReg is of the preliminary view, subject to the consideration of any expressions of interest received, that given Eircom already has the ubiquitous infrastructure in place to deliver the necessary access to all universal service consumers across the State, it would seem that at the moment Eircom and the PSTN network is best placed to continue to deliver the obligation (particularly if the scope including exclusion of Broadband remains unchanged).
- 2.25 ComReg does not have any information that would suggest that other providers, using alternative access technologies, could more efficiently replace the entire PSTN network for delivery of AFL USO throughout the State. However, it is ComReg's preliminary view that while other service providers may need to put in place additional infrastructure to allow them to deliver the AFL USO, it may be the case that other service providers could possibly satisfy reasonable requests for new connections, and maintain those connections in accordance with required quality of service standards in an equally or more effective and efficient manner. As part of the expressions of interest, ComReg seeks views in this regard.

- 2.26 If no expressions of interest to be the AFL USP are submitted by other undertakings, ComReg must consider and decide which undertaking(s) would best meet the requirements of the obligation. In accordance with the relevant legislation, ComReg is not required to secure the agreement or consent of any undertaking for it to be designated as the USP. Therefore, it is ComReg's preliminary view that if no valid expressions of interest are received on foot of this consultation, Eircom is best placed to continue to meet the AFL USO, for a three to five year period.

## Chapter 3

# 3 Part 1 (a): The need to sustain a USO for AFL

## 3.1 Overview of consumer trends and challenges

3.1 The first part of this section considers whether there is a need to sustain the USO for AFL from 1 July 2014 for the next three to five years. It considers consumer trends, the various Government Broadband Initiatives and the relevant statistics that influence the need for the AFL USO. It should be noted that no final decision on the actual period, following the conclusion of the interim designation, will be made without further consultation.

3.2 One of ComReg's statutory objectives is to promote the interests of users in the Community.<sup>12</sup> ComReg, through its quarterly reports<sup>13</sup> has identified the following trends, amongst others, in relation to consumers of electronic communications services in Ireland:

- Increased take-up of electronic communications services;
- A gradual decline in retail PSTN Fixed Voice Access (FVA) subscriptions and associated retail voice traffic;
- Growing attractiveness and take up of bundled services; and
- Rapid smartphone penetration rate growth, increased usage of over the top ("OTT") services and social media.

### 3.1.1 Increased take-up of electronic communications and bundled services

3.3 While weak economic growth continues to impact purchasing decisions of Irish consumers and businesses, year on year take-up of communications products and services has grown, reflecting the importance of these services to today's consumers<sup>14</sup>.

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<sup>12</sup> Section 12 of Communications Regulation Act 2002, as amended.

<sup>13</sup> ComReg (2014), Quarterly Key Data Report, Q4 2013

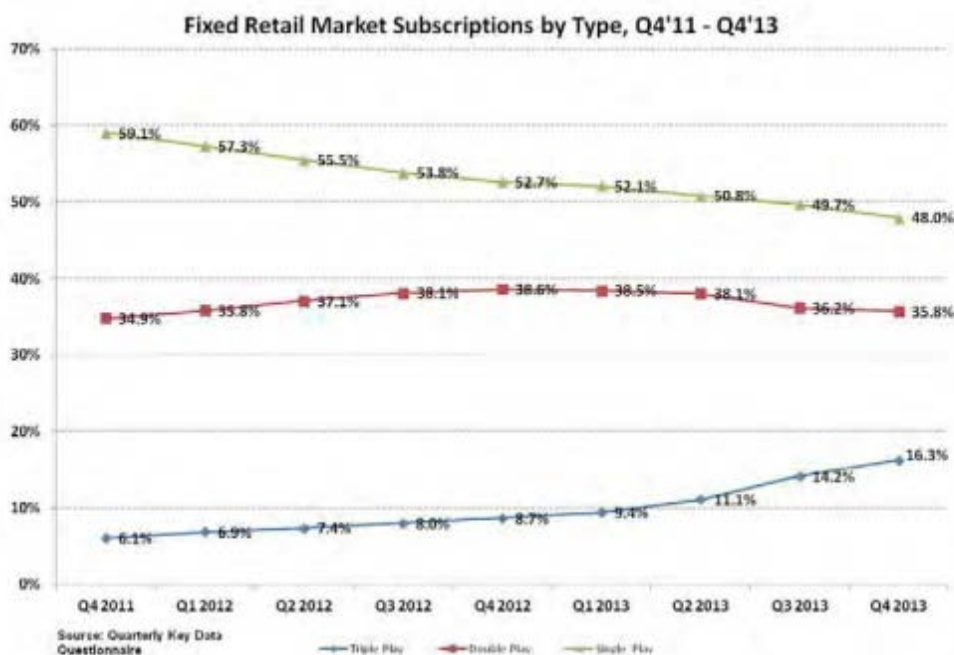
<http://www.comreg.ie/fileupload/publications/ComReg1419.pdf>

<sup>14</sup> Draft Strategy Statement for Electronic Communications 2014 – 2016, <http://www.comreg.ie/fileupload/publications/ComReg1433.pdf>

3.4 Since 2007 the rate of decline in retail fixed voice call traffic has been relatively steady, with a decrease of approximately 10.6% in Q4 2013 compared with Q4 2012, accounting for the remaining 31.0% of all voice minutes (compared to 34.9% in Q4 2012).<sup>15</sup> Similarly, fixed line retail revenues fell by 5.4%, as at Q4 2013 when compared to Q4 2012.

3.5 However, the same trend has not been observed for FVA subscriptions, whether bought on a standalone basis or as part of a bundle. At the end of Q4 2013 there were 1,529,070 fixed voice subscriptions (an increase of 1.4% on Q3 2013 and an increase of 4.4% on Q4 2012). Fixed voice subscriptions have been increasing quarter on quarter since Q1 2011. As of Q4 2013 Eircom had 51% of all fixed voice subscriptions followed by UPC (19%) and Vodafone (16%).<sup>16</sup>

3.6 **Figure 3.1: Increasing adoption of bundled products in Ireland Q4' 11 – Q4' 13**



3.7 Service packages and bundles that include fixed telephony continue to grow in popularity among households and businesses. Clearly as illustrated by Figure 3.1 from the Q4 2013 Quarterly Report<sup>17</sup>, there is a trend in terms of end users preference for “one stop shopping”.

<sup>15</sup> Based on data in the ComReg Quarterly Key Data Report, Q1 2007 and in the intervening periods up to the ComReg Quarterly Key Data Report, Q3 2013.

<sup>16</sup> ComReg (2014), Quarterly Key Data Report, Q4 2013  
<http://www.comreg.ie/fileupload/publications/ComReg1419.pdf>

<sup>17</sup> ComReg (2014), Quarterly Key Data Report, Q4 2013  
<http://www.comreg.ie/fileupload/publications/ComReg1419.pdf>



3.8 As outlined in ComReg’s Draft Strategy Statement for Electronic Communications 2014 – 2016, “Consumer preference for buying multiple communications services from a single provider has intensified in the last two years, with bundles accounting for more than 50% of all fixed subscriptions in Q3 2013. Demand for triple-play products has increased, contrasting with a decrease in single-play and double-play product adoption (see Figure 11). Several operators now offer triple play packages, and the first quadruple-play package was launched by Eircom in October 2013. We expect this trend to continue”.<sup>18</sup>

### 3.1.2 Rapid growth in Smartphone use

3.9 The number of smartphone/tablet users<sup>19</sup> increased to 2,607,507 in Q4 2013, which was an increase of 1.9% from Q3 2013 and an increase of 9.2% compared to Q4 2012. This increasing penetration of smartphone adoption, coupled with consumer demand for low cost voice and data services appears to be driving usage of OTT services in Ireland (e.g. Skype and WhatsApp)<sup>20</sup>. Further evidence may be inferred from the declining SMS/MMS volumes and increasing mobile data consumption in recent years. Moreover, Analysys Mason and others suggest that IP-based messaging will be the prevailing messaging method in the years ahead.<sup>21</sup>

3.10 These changing consumer preferences in respect of mobile technology, broadband access and bundled services highlight the need for ComReg to ensure that the universal service framework keeps in step with market developments and rapidly changing consumer needs. The requirements of disabled end-users as well as access to the emergency services in a more complex and changing telecommunications environment are being addressed through separate consultations and ComReg Decisions.

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<sup>18</sup> <http://www.comreg.ie/fileupload/publications/ComReg1433.pdf>

<sup>19</sup> Based on active 3G SIMs excluding dedicated mobile broadband SIMs

<sup>20</sup> <http://www.analysismason.com/Research/Content/Reports/OTT-communication-services-worldwide-forecasts-20132018/>

<sup>21</sup> <http://www.analysismason.com/About-Us/News/Insight/OTT-messaging-volumes-Jan2014-RDMV0/>

## 3.2 Government Broadband Initiatives

- 3.11 The Government's Framework for Sustainable Economic Renewal<sup>22</sup>, "*Building Ireland's Smart Economy*" emphasised that the need for effective communications services in Ireland is imperative in the context of global development. In its Statement of Strategy 2011 to 2014<sup>23</sup>, the Department of Communications, Energy and Natural Resources ("DCENR") sets out its core policy goal regarding the communications sector as:

*"Contribute to sustainable economic growth, jobs, competitiveness and social inclusion by: facilitating and promoting timely investment in Next Generation Broadband networks; enhanced internet engagement by citizens and business; and supporting job creation, business development and innovation, especially in the digital media sector"*

- 3.12 The "*Next Generation Broadband - Gateway to a Knowledge Ireland*" paper<sup>24</sup>, published in 2009, identified that:

*"... The availability of Next Generation broadband networks will underpin a transformation in the following areas: Economic development...: networks...; Sustainability...: Social inclusion...: Education...; Public services...: R&D and next generation Products and Services:..."*

- 3.13 The nationwide availability of broadband has been assisted so far by Government schemes which include The National Broadband Scheme ("NBS") and The Rural Broadband Scheme ("RBS").
- 3.14 The NBS objective is, as defined by DCENR, "*is to deliver broadband to certain target areas in Ireland in which broadband services were deemed to be insufficient*".
- 3.15 The RBS which is the state-subsidised roll out of broadband to areas in Ireland where it was previously unavailable has concluded.
- 3.16 The National Broadband Plan ("NBP") sets the Government's target in respect of increasing broadband speeds. The NBP states that it "*sets out the strategy to deliver high speed broadband throughout Ireland. Specifically, it will facilitate broadband download speeds of 70Mbps with a minimum of 40Mbps generally available and 30Mbps available in harder to reach rural areas*".

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<sup>22</sup>

[http://www.taoiseach.gov.ie/eng/Building\\_Ireland's\\_Smart\\_Economy/Building\\_Ireland's\\_Smart\\_Economy.pdf](http://www.taoiseach.gov.ie/eng/Building_Ireland's_Smart_Economy/Building_Ireland's_Smart_Economy.pdf)

<sup>23</sup> <http://www.dcenr.gov.ie/NR/rdonlyres/716F9A6E-BD77-4A3E-8EB2-BE6E26DD0BAE/0/DCENRStatementofStrategy20112014.pdf>

<sup>24</sup> <http://www.dcenr.gov.ie/NR/rdonlyres/F9B1D956-358D-4870-AA99-DD25A4417F59/0/NextGenerationBroadbandPaperGatewaytoaKnowledgeIreland.pdf>

- 3.17 In 2012 DCENR published “Delivering a Connected Society: A National Broadband Plan for Ireland”<sup>25</sup>. The plan aims to “*facilitate broadband download speeds of 70Mbps with a minimum of 40Mbps generally available and 30Mbps available in harder to reach rural areas*”.
- 3.18 On 25 April, DCENR released a statement<sup>26</sup> that “*The Government has given the green light to the principle of a fibre build-out which will be the cornerstone of the State’s strategy to deliver high speed broadband to rural areas. Over 1,000 rural communities have already been identified as target areas for the proposed fibre based connections*” It also stated that “*The strategy will address all parts of Ireland that cannot access commercial high speed broadband services. To this end, it will include supporting measures to accelerate end user connections to the fibre network and proposals to address the most remote areas of the country*”.
- 3.19 ComReg notes that there is no Government scheme or programme or any other mechanism in place to ensure that AFL (voice telephony) is provided to those that need it, other than under the USO.
- 3.20 However in time, in the context of the NBP, it is conceivable that the AFL could be delivered over the infrastructure which has been rolled out under the NBP, causing the requirement for a USO for AFL to be re-examined. However, ComReg envisages that the completion of this programme and review of AFL USO would be conducted after the three to five year period as contemplated in this consultation.

### 3.3 European Commission Review

- 3.21 The European Commission is legally obliged to periodically review the scope of universal service.<sup>27</sup> The last European Commission Communication reporting on the scope of US was been published in November 2011 concluding that, at that point in time, there was no need to change the scope of US at EU level. ComReg notes that the European Commission is now preparing to commence a study on 'Review of the scope of universal service'<sup>28</sup>. This study will inform the European Commission’s review and amendment, as relevant of the legislative framework in the coming years.

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<sup>25</sup> <http://www.dcenr.gov.ie/NR/rdonlyres/1EA7B477-741B-4B74-A08E-6350135C32D2/0/NBP.pdf>

<sup>26</sup> <http://www.dcenr.gov.ie/Press+Releases/2014/Major+fibre+build-out+to+rural+Ireland+will+be+cornerstone+of+Government+strategy.htm>

<sup>27</sup> In accordance with Article 15 of the Universal Service Directive.

<sup>28</sup> <http://ec.europa.eu/digital-agenda/en/news/review-scope-universal-service-%E2%80%93-study-smart-20140011>

## 3.4 The need for AFL

### 3.4.1 The continued demand for AFL

3.22 ComReg is of the preliminary view that there is a continued demand for fixed telephony both standalone and in a bundle . This is detailed below.

3.23 Demand for fixed telephony in the short to medium term continues to be significant. At the end of December 2013 there were 1,529,070 fixed voice subscriptions in Ireland, an increase of 1.4% since the last quarter and an increase of 4.4% since Q4 2012.<sup>29</sup> Due to technological convergence, alternative access networks may become alternatives in the eyes of end users and thus fixed telephony needs may be met by the market in various ways. Figure 3.1 illustrates that increasingly businesses and customers, having already made the decision to purchase broadband internet access, take FVA in a bundle. This general trend suggests that many end users value the additional features of broadband. However, the increasing take-up and prevalence of bundles would appear to have lead to a fragmentation of the customer base, for residential customers as well as business users, towards different alternatives depending on each customer's particular needs. For example,

- End-users wishing to avail primarily of broadband internet access combined in a bundle of higher value services, including voice as an “add on” service (i.e. are relatively more broadband centric where the perceived value of the fixed service has potentially moved from voice to internet access for multiple services) have additional choice in relation to their chosen supplier of fixed telephony; and
- Contrastingly, end-users wishing to avail of FVA only or primarily voice services based on PSTN and ISDN networks (and hence those who are voice-centric where the perceived value of the fixed service is voice) possibly have less choice in relation to supplier of fixed telephony.

3.24 This fracturing of the customer base may leave behind some customers who are not interested in broadband internet access or bundled services. A significant segment of end-users do not currently have/utilise a fixed broadband connection and, for that cohort of end-users, broadband with managed VOIP is unlikely to provide an alternative for their basic fixed telephony service at least in the interim period. In this context, a potential set of “vulnerable” or “captive” customers exists in Ireland – Figure 3.1 illustrates approximately 40% of fixed line phones are purchased independent of broadband and/or other services.

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<sup>29</sup> ComReg (2013), Key Quarterly Data Q4 2012, 13/25.  
<http://www.comreg.ie/fileupload/publications/ComReg1325.pdf>

- 3.25 Survey results gathered in 2012/2013<sup>30</sup> indicate that certain customer types such as elderly people, family households and businesses, remain more attached to fixed access services.<sup>31</sup> This suggests that non-price factors may be important drivers of the demand for FVA for these customers thereby limiting the extent to which they would switch to alternative networks. The Survey results furthermore indicate a relatively low incidence of switching between fixed voice suppliers, with 11% of households<sup>32</sup> and 18%/19% of business users<sup>33</sup> having reportedly switched within the previous twelve months of the survey date. Low levels of switching suggests that there is a certain amount of inertia amongst consumers (and less so with businesses) possibly explained by an increase in the prevalence of the bundling of retail services.
- 3.26 In addition, because of the specific features provided by the PSTN network available to them (functionalities and characteristics which cannot, or not easily, be replicated over other infrastructures),<sup>34</sup> either on the basis of where they are geographically and/or, dependent on their special social needs, in particular any "vulnerable" or "captive" customers cannot easily switch to another service/network (e.g., UPC's cable network, broadband networks or mobile).<sup>35</sup>
- 3.27 In the context of the continued demand for standalone fixed telephony, and the provisions of the Universal Service Regulations ensuring the basic right of end-users to AFL, ComReg must examine if the AFL would be delivered absent a USO.

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<sup>30</sup> ComReg (2012/2013), The 2012 Market Research and 2013 ICT Surveys.

<sup>31</sup> ComReg (2012), 'Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non Residential Customers', Market Review, 12/117, October 26th, para 4.178.

<sup>32</sup> 2012 Market Research, Slide 38 - 55% of residential respondents reported never having switched FSP, while 15% had done so within 1 to 3 years ago and 18% did so more than 3 years ago. The 2013 Consumer ICT Survey (slide 23) reported similar switching figures with 52% of residential respondents reported having been with their FSP for 5 or more years, while 22% for between 1 to 3 years ago and 14% between 3 to 5 years.

<sup>33</sup> 2012 Market Research, Slide 101 - 49% of business respondents reported never having switched FSP, while 21% had done so within 1 to 3 years ago and 7% did so more than 3 years ago. The 2013 Business ICT Survey (slide 22) reported somewhat similar switching figures with 46% of business respondents reported having been with their FSP for 5 or more years, while 22% for between 1 to 3 years ago and 13% between 3 to 5 years.

<sup>34</sup> These include mainly a high level of quality, security and reliability, independent power supply and the ability to deliver fax messages. These features make the PSTN networks especially suitable for specific applications such as alarm- and monitoring systems. The fact that PSTN provides electrical power makes it more robust than other solutions that rely on the normal power network and which then may not function in the event of a power cut.

<sup>35</sup> For example, users who are very price sensitive and/or do not typically benefit from a broadband connection or from a bundled offer.

### ComReg's Preliminary View

- 3.28 There are a number of factors which contribute to ComReg's preliminary view that absent an AFL USO, the basic telephony service would not be delivered by any undertaking or would not be delivered at an affordable price. For example;
- The cost of provision of a service to certain areas/customers (uneconomic areas and uneconomic customers) may be more expensive than others and without a USO it is possible that no undertaking would choose to deliver the basic AFL service to those areas/customers.
  - Certain customer groups may not be an attractive commercial proposition and without a USO, it is possible that no undertaking would choose to offer the basic AFL service to those customers.
  - In light of the points above, without a USO for geographically averaged prices the basic service may be provided, but not at an affordable price.
- 3.29 For the above reasons, a certain set of customers may be negatively affected by any removal of an AFL USO. ComReg notes that the current USP, Eircom, by virtue of its USO funding application (2009-2010) claims that there are fixed voice customers that it would not choose to serve absent a USO. In the absence of any other service provider willing or able to provide access to voice and voice service at a fixed location to every customer on a commercial basis it is ComReg's preliminary view that an AFL USO continues to be required and a 'safety net' AFL USO continues to be appropriate from 1 July 2014.
- 3.30 ComReg is also considering as set out in Part 2 of this consultation whether any change is necessary in any future form or scope of AFL USO in light of market dynamics. ComReg is of the preliminary view that mandating broadband in the context of FIA, on an interim basis, under the USO and more specifically in the context of AFL, is not at this point in time appropriate or necessary in light of advances in broadband availability on foot of the Government schemes. ComReg also notes that the future availability of high speed broadband for all through NBP may impact the need to have an AFL USO but this is at least a number of years away.
- 3.31 Given the Government broadband initiatives, the ongoing consumer trends and needs, ComReg is of the preliminary view, at this time, that a designation period of between three to five years is necessary for the AFL USO. ComReg will keep this under review. However, for the purpose of expressions of interests it is considered unlikely that, within a three to five year period, the need for the AFL USO would diminish.

- 3.32 With regard to the key areas mandated by ComReg in respect of AFL, which include the Reasonable Access Threshold (“RAT”), Functional Internet Access (“FIA”), Affordability measures such as Geographically Averaged Pricing (“GAP”) and Quality of Service (“QoS”), ComReg is of the preliminary view that it is appropriate to review these elements after the conclusion of the interim period, as set out in Chapter 4.

Q.1 Do you agree with ComReg’s preliminary view that there is a need for an AFL USO for a period of three to five years? Please provide reasons to support your view.

## Chapter 4

# 4 Part 1 (b) : Interim designation

- 4.1 ComReg is now consulting with all stakeholders including industry, the public and consumer representative bodies in order to inform its approach with respect to the designation of a USP(s) from 1 July 2014.
- 4.2 ComReg considers that given other undertakings may be interested in providing the USO and to allow time for a meaningful assessment of this and in light of ongoing developments in the market and in respect of Universal Service, it cannot, at this stage designate a USP(s) for a significant period of time. As such, it is ComReg's preliminary view that Eircom should continue, on an interim basis, as USP in respect of AFL USO, from 1 July 2014 for a period of 12 or 18 months.
- 4.3 Eircom has and continues to be the largest provider of voice access and voice services at a fixed location in Ireland. Eircom enjoys control of an extensive, ubiquitous access infrastructure that is not easily replicated by its competitors. Eircom also benefits from its large network coverage, subscriber base size and product portfolio thereby giving it the ability to exploit greater economies of scale and scope in the provision of voice access and voice services than would otherwise be achievable by potential competitors. ComReg notes that several fixed-line operators offering competing services do so via Eircom's network (competing Fixed Service Providers require access to Eircom's infrastructure in order to provide voice access and voice services). However, in some cases, fixed line operators offer competing services over their own networks, for example, UPC offers voice as part of a bundle with either broadband or TV, however, this is not on a nationwide basis.
- 4.4 Eircom, therefore, by virtue of its high degree of control and ownership of the public switched telephone network (PSTN), is capable of meeting the reasonable requests of consumers on a nationwide basis. Eircom remains the major fixed line provider in the market, with a current estimated market share of 52% of fixed voice subscriptions at the end of 2013.<sup>36</sup>
- 4.5 ComReg is of the preliminary view that the interim designation period should be for a period that is long enough to accommodate the following:
- Other providers to validly express an interest in providing the service;

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<sup>36</sup> ComReg quarterly key data report  
<http://www.comreg.ie/fileupload/publications/ComReg1419.pdf>



- ComReg to evaluate the response to consultation on the Scope of AFL post the interim period and any expressions of interest received and to determine and implement, if necessary, the most appropriate future designation method(s); and
  - A transition period, if relevant, for a new USP or USPs to put in place any necessary arrangements.
- 4.6 In light of the above, ComReg is considering a period of 12 or 18 months to accommodate the necessary steps and ComReg is seeking stakeholders views on the most appropriate period.
- 4.7 Therefore, it is ComReg's preliminary view to continue, on an interim basis, Eircom's current designation as USP for AFL for a period of twelve or eighteen months to ensure there is a USP for the provision of AFL USO in the interim period. It is ComReg's preliminary view that the scope governing the provision of AFL, as set out in the 2012 Designation, should remain in its current form for this interim designation period.
- 4.8 ComReg's objective is to ensure the availability and sustainability of a telephone service at a fixed location during a period of assessment and potentially a transition to another operator as USP.
- 4.9 The future scope and designation of USO, is also being consulted on and this is discussed in Chapter 5 of this paper. However, given that the proposal is to have an interim designation, ComReg is not proposing to alter the scope of the current AFL obligations, mandated in 2012 as part of the AFL USO, during the interim period but rather to maintain the status quo for that period.
- 4.10 In this context, ComReg is proposing that the current measures in respect of control of expenditure and affordability continue to be appropriate and should be maintained. These are:-
- *Selective Call Barring*: Provide selective call barring facilities for outgoing calls to national, mobile, international and premium rate numbers. The call barring facility in respect of premium rate numbers shall be provided free of charge to users;
  - *Phased Payment of Connection Fees*: Maintain and publish its scheme to allow for the phased payment of connection fees;
  - *Non-Payment of Bills*: Maintain and publish its disconnection policy in connection with non-payment of bills.
  - *Geographically Averaged Prices*: Apply geographically averaged prices throughout the State for the services in respect of AFL.

- 4.11 Given Eircom's current provision of these measures, ComReg's view is that the measures continue to be appropriate and necessary at this time and in light of the proposal to have an interim designation period, ComReg is of the preliminary view that the reasons why it was considered that the measures were necessary in 2012 are still valid for the interim period. These are detailed in the Regulatory Impact Assessment in section 7. However, ComReg is considering whether these requirements need to evolve after the interim period and in this respect Chapter 5 considers this.
- 4.12 It is ComReg's preliminary view that the following Decisions which relate to AFL should also remain in force:
- Obligations in respect of Requests for connection and reasonable access and functional internet access, as set out in D09/05<sup>37</sup>
  - Obligations in respect of Quality of Service Performance Targets, as set out in D02/08<sup>38</sup>
- 4.13 Given Eircom's current implementation of these obligations, ComReg's preliminary view is that the measures continue to be appropriate and necessary at this time. ComReg's preliminary view is that to alter the obligations in any way at this stage, without further detailed consideration, could create a risk for consumers reliant on the USO of AFL.
- 4.14 Annex 3 sets out the Draft Decision instrument in respect of the proposed interim designation.

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<sup>37</sup> ComReg (2005), "Provision of access at a fixed location – connections to public telephone network and provision of functional Internet Access", ComReg Document 05/70

<sup>38</sup> ComReg (2008), Quality of Service Performance Targets, ComReg Document 08/37

- Q.2 Do you agree with ComReg's preliminary view that in the short term (twelve or eighteen months) there is a need for an AFL USO? Please provide reasons to support your view.
- Q.3 What is your view on whether the interim period should be twelve or eighteen months? Which period is most appropriate? Please provide reasons to support your view.
- Q.4 Do you agree with ComReg's preliminary view that the most appropriate approach is to designate Eircom for the interim period commencing 1 July 2014? Please provide reasons to support your view.
- Q.5 Do you agree with ComReg's preliminary view that the current scope of the AFL USO continues to be appropriate for the interim period? Please provide reasons to support your view.
- Q.6 Do you agree with the text of ComReg's Draft Decision Instrument in Annex 3. Please provide reasons to support your view.

## Chapter 5

# 5 Part 2 (a): Future Scope and Designation of AFL USO

## 5.1 Overview

- 5.1 ComReg is aware that in time the market may deliver universal voice access at a fixed location in its own right, without the need for a USP. However, it is ComReg's preliminary view that there remains a requirement for AFL USO and a USP to deliver same over the short to medium term (three to five years).
- 5.2 As such, ComReg seeks views of interested parties on the potential nature and scope of a future AFL USO, as well as plausible scenarios for a designation of a suitable USP(s).
- 5.3 The current scope of the AFL USO was designed with a conventional telecommunications environment of fixed voice-based networks in mind. However, ComReg recognises that AFL USO needs to evolve as appropriate with a rapidly advancing digital environment. As set out in Chapter 3, technological and market developments indicate that users' main interests are shifting with broadband and mobile solutions increasingly in demand, as well as fixed connections. Since 2012, take up of broadband is increasing and dial-up internet is now almost obsolete. The prevalence of bundled voice and broadband services are two factors that appear to be increasing subscriber migration to VOIP as well as some substitution away from the fixed line phone to mobile for voice telephony. Through this consultation process ComReg will determine whether a 'safety net' AFL USO continues to be appropriate in the short to medium term and if so whether any change to the scope is necessary.
- 5.4 In respect of the period following the interim designation, ComReg is of the preliminary view that it is appropriate to review the existing scope of the AFL USO in Ireland in light of competitive, technological and services changes that have taken place since the 2012 designation. As such, this consultation process seeks views on:
  - The scope of the obligation to provide AFL to business and residential consumers, including the requirement of a capability to permit FIA at a specified rate and a Reasonable Access Threshold ("RAT"), as well as possible geographic aspects;
  - Measures which seek to sustain affordability;

- Measures that assist with control of expenditure; and
- Selecting and designating as appropriate one, or more, undertaking(s) as the USP(s) for services with the scope of AFL USO.

5.5 In this respect, each of the existing specified AFL USO elements and possible evolution of these is discussed in turn below.

## 5.2 Current USO scope and designation

5.6 ComReg designated Eircom<sup>39</sup> as the USP for a period of two years, until 30 June 2014.<sup>40</sup> Eircom's obligations with respect to the provision of AFL are set out in detail in D07/12 and include the following key elements set out below:

- Provision of access at a fixed location, in accordance with D09/05;
- Geographically Averaged Pricing;
- Provision of measures to assist consumers to control their expenditure;
- Obligation in respect of quality of service ('QoS') targets, in accordance with D02/08.

5.7 As stated earlier in this consultation, it is ComReg's preliminary view that Eircom should be redesignated as USP in respect of current scope of the AFL USO for the interim designation period of twelve or eighteen months. However, ComReg is considering, following that interim period, whether the current obligations should be amended and also if there are plausible alternatives in respect of USP(s).

## 5.3 Evolving the scope of AFL USO

5.8 The focus of this preliminary consultation is the fundamental requirement of the USO, whereby all "reasonable" requests for connection to the public telephone network are met by at least one operator. The provision of a quality connection and service at a fixed location is clearly important to Irish consumers. It allows people to keep in contact with family and friends and provides other services, such as, e-mail and internet access as well as access to new forms of communication, ways of doing business and access to emergency services. Its availability is therefore expected by all.

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<sup>39</sup> (ComReg 2012), *"The provision of telephony services under Universal Service Obligations"*, D07/12

<sup>40</sup> In accordance with Regulation 7 of the Universal Service Regulations. Previously Eircom was designated as the USP in 2003, 2006 and July 2010.

- 5.9 Currently, Eircom must, as a result of its USP status, provide universal ‘*connection and access to telephone services at a fixed location*’ to satisfy provision of AFL USO, amongst other USO obligations until 30 June 2014.<sup>41</sup> In respect of the provision of AFL, any connection provided by the USP must be capable of:
- Local, national and international telephone calls;
  - Facsimile (fax) communications; and
  - Data communications at data rates that are sufficient to permit functional internet access (the USP is currently required to adopt 28.8kbps as a reasonable minimum data rate).
- 5.10 In the EU, voice telephony services at a fixed location (fixed voice access, FVA, plain old telephony services or POTS) have traditionally been provided by the incumbent supplier in each Member State<sup>42</sup>.
- 5.11 In Ireland, Eircom is the largest provider of voice telephony services whether on a standalone basis or in a bundle with other services in particular broadband.<sup>43</sup> One distinctive feature of fixed narrowband access is that the PSTN technology provides for functionalities and characteristics which cannot, or not easily, be replicated over other infrastructures. These include certain quality features, security and reliability, independent power supply and the ability to deliver and receive fax messages. These features make the PSTN networks especially suitable for specific applications such as alarm and monitoring systems. The fact that PSTN provides electrical power makes it more robust than other solutions that rely on the normal power network and which then may not function in the event of a power cut.
- 5.12 However ComReg is aware that the provision of the AFL USO should be technology-neutral and therefore new, or perhaps more cost effective or efficient technologies may be in principle used to fulfil a request for AFL.

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<sup>41</sup> In accordance with Regulation 3 of the Universal Service Regulations.

<sup>42</sup> For example the UK, France, Italy and Spain.

<sup>43</sup> ComReg (2014), Quarterly Key Data Report, Q4 2013

<http://www.comreg.ie/fileupload/publications/ComReg1419.pdf>

### 5.3.1 Requests for connection and reasonable access

- 5.13 In accordance with the 2012 designation, Eircom must currently comply with the requirements in relation to the provision of AFL obligations, as set out in ComReg Decision D09/05<sup>44</sup>. Notably, Eircom must satisfy any reasonable request to provide connections to the public telephone network and access to publicly available telephone services.
- 5.14 ComReg remains concerned that some customers who require access at a fixed location would not be provided with, or would not continue to be provided with, such a service absent the USO. Such customers or areas which would not be provided with a service without a USO are termed “uneconomic customers” or “uneconomic areas”.
- 5.15 Eircom is required to consider all requests for connections if the expenditure involved in meeting the request is less than €7,000 and the cost to the applicant in such instances shall not exceed the standard connection charge. Requests for connections which involve expenditure in excess of €7,000 are to be considered reasonable if the applicant agrees to pay the standard connection charge plus incremental costs above €7,000.
- 5.16 Based on information provided by Eircom, ComReg understands that applications involving excess charges have rarely been progressed. In 2011 and 2012 ComReg understands that there were no applications for connections from customers above the RAT of €7,000.
- 5.17 In considering any possible change to the threshold, if the threshold were lowered, customers could suffer in that more customers may be obliged to assist in meeting the costs of new connections. In addition, the level of costs that consumers may have to pay to get a connection may also be greater and may not be affordable. If the threshold was to be increased, this could create an incentive for the USP to not deliver the most cost-effective solution, which may in turn affect the net cost.
- 5.18 ComReg considers that the threshold continues to provide a good balance between the interests of the majority of consumers by keeping the costs payable by them down and ensuring the needs of consumers in remote areas are met and maintaining an incentive for the USP to ensure that the most cost efficient solution is delivered. Therefore, it is ComReg’s preliminary view that the threshold (“RAT”) remains appropriate for the short to medium term.

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<sup>44</sup> ComReg (2005), “Provision of access at a fixed location – connections to public telephone network and provision of functional Internet Access”, Document 05/70

5.19 In relation to existing and new connections, ComReg's preliminary view is that that there should be no change to the requirement in respect of the provision of AFL USO, as follows:

- The USP(s) will be required to consider all requests for connections as reasonable if the expenditure involved in meeting the request is less than €7,000 and the cost to the applicant shall not exceed the standard connection charge.
- Requests for connections which involve expenditure in excess of €7,000 are to be considered reasonable if the applicant agrees to pay the standard connection charge plus the costs in excess of €7,000.

5.20 However, if an AFL USO is considered necessary after the interim designation period, ComReg may consider if it would be appropriate to impose additional obligations in relation to new connections including for example those listed below:

- Conduct a cost evaluation of the alternative technologies available to meet the USO AFL requirements;
- Conduct an evaluation of the suitability of the technologies being considered in light of Quality of Service targets of connection, fault occurrence and repairs;
- Maintain a record of the cost evaluation, detailed cost breakdown and suitability in respect of the QoS targets for the technologies considered; and
- Maintain a record of the solution chosen and appropriate reasons as to why it was chosen.

5.21 If, these new obligations are necessary to be placed on the USP(s) for the provision of the AFL USO, ComReg would, with the consent of the Minister, further specify the requirements, in accordance with its powers at Regulation 3(5)(b) of the Universal Service Regulations.

Q.7 In the context of the future scope of AFL for the three to five years, after the interim period do you agree with ComReg's preliminary view in respect of the Reasonable Access Threshold ("RAT") obligations on the USP(s)? Please give reasons to support your point of view.



## 5.3.2 Functional internet access

5.22 The current service requirement of FIA is that data communications are sufficient to permit functional internet access (the USP is currently required to adopt 28.8kbps as a reasonable minimum data rate). ComReg’s preliminary view, for the reasons set out below, is that there is no need to alter the required 28.8kbps/second data to a rate necessary to deliver broadband, in light of ongoing developments in the market and the Government’s plans in respect of broadband.

### 5.3.2.1 Broadband

5.23 The Government has implemented initiatives in respect of broadband rollout which include The National Broadband Scheme (“NBS”) and The Rural Broadband Scheme (“RBS”).

5.24 The NBS objective, as defined by DCENR, was “ *to deliver broadband to certain target areas in Ireland in which broadband services were deemed to be insufficient*”.<sup>45</sup>

5.25 The RBS is the state-subsidised roll out of broadband services to areas in Ireland where it was previously unavailable to ensure universal broadband availability.<sup>46</sup>

5.26 The National Broadband Plan (“NBP”) sets the Government’s target in respect of broadband speed. As stated by the NBP<sup>47</sup> “*sets out the strategy to deliver high speed broadband throughout Ireland. Specifically, it will facilitate broadband download speeds of 70Mbps with a minimum of 40Mbps generally available and 30Mbps available in harder to reach rural areas*”.

5.27 In November 2013 in response to Oireachtas questions the Minister stated that the Government’s National Broadband Plan “*aims to radically change the broadband landscape in Ireland by ensuring that high speed broadband is available to all citizens and businesses. This will be achieved by providing:*

- *a policy and regulatory framework that assists in accelerating and incentivising commercial investment; and*

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<sup>45</sup>

<http://www.dcenr.gov.ie/communications/communications+development/national+broadband+scheme.htm>

<sup>46</sup>

<http://www.dcenr.gov.ie/Communications/Communications+Development/Rural+Broadband+Scheme/>

<sup>47</sup>

<http://www.dcenr.gov.ie/Communications/Communications+Development/Next+Generation+Broadband/>

- *a State-led investment for areas where it is not commercial for the market to invest.”*

- 5.28 This Minister noted that *“Since the publication of the Plan, investments by the commercial sector are underway and in some instances have been accelerated in both fixed line and wireless high speed broadband services. In the fixed line segment of the market, eircom has announced plans to pass 1.4m properties with its next generation broadband service, with speeds of up to 100Mbps, while UPC has increased its entry level and maximum speeds to 120Mbps and 200Mbps respectively. Mobile operators have also made announcements regarding network upgrades and are rolling out enhanced product offerings.*
- 5.29 The DCENR released a statement<sup>48</sup> on 25 April 2014 stating that *“The Government has given the green light to the principle of a fibre build-out which will be the cornerstone of the State’s strategy to deliver high speed broadband to rural areas. Over 1,000 rural communities have already been identified as target areas for the proposed fibre based connections”.*
- 5.30 As outlined in ComReg’s Q4 quarterly key data report in 2013<sup>49</sup>, there were 1,689,052 broadband subscriptions in Ireland<sup>25</sup>. This is an increase of 0.8% since Q3 2013, and an increase of 1.3% since Q4 2012. There was an increase in total fixed line subscriptions in Q4 2013 (up by 28,586), but mobile broadband subscriptions fell again in Q4 2013 (down by 14,524 subscriptions). ComReg reports active mobile broadband subscriptions and does not include internet access over mobile handsets such as smartphones in these numbers.
- 5.31 The Q4 2013 Report<sup>50</sup> notes that *“the estimated fixed broadband household penetration rate was 60.6% in Q4 2013.* This shows that fixed line services continue to be chosen by a significant majority of households in the State.
- 5.32 The same quarterly report also notes that there was a continued decline in the share of single play subscriptions and a decline in double play subscriptions as triple play’s share of subscriptions continued to increase. 48% of fixed market retail subscriptions were single play compared to 52.7% in Q4 2012. 35.8% of subscriptions were double play (a bundle of two services) compared to 38.6% in Q4 2012 and 16.3% were triple play (a bundle of three services) compared to 8.7% in Q4 2012. This shows that user demands are shifting with single play (e.g. voice and/or access are declining), with the uptake of triple play increasing. Voice is just one application over connection and is in decline.

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<sup>48</sup> <http://www.dcenr.gov.ie/Press+Releases/2014/Major+fibre+build-out+to+rural+Ireland+will+be+cornerstone+of+Government+strategy.htm>

<sup>49</sup> ComReg (2014), Quarterly Key Data Report, Q4 2013

<http://www.comreg.ie/fileupload/publications/ComReg1419.pdf>

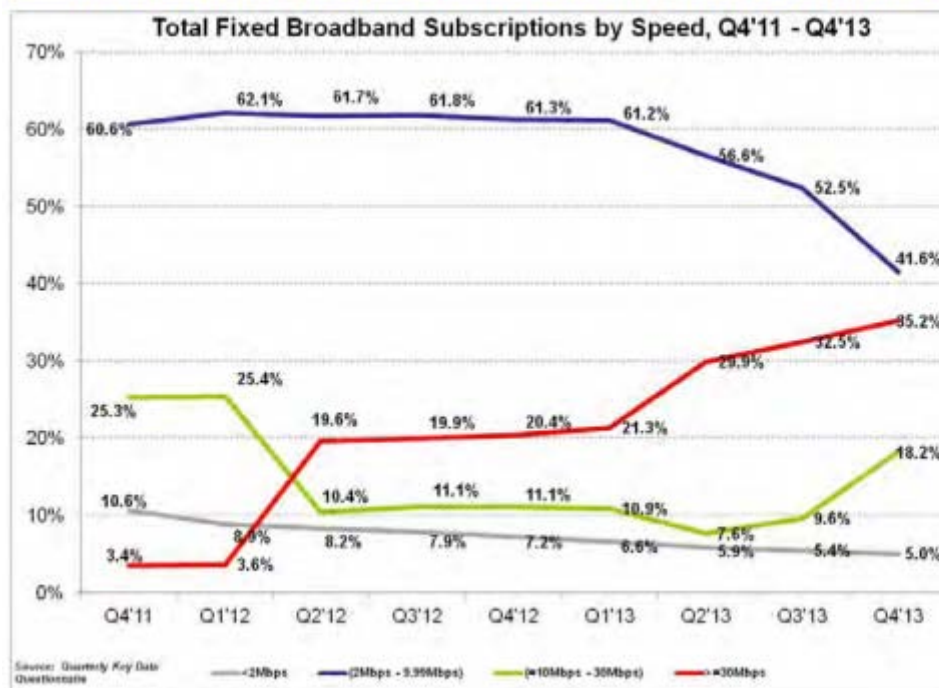
<sup>50</sup> *Ibid.*

5.33 In principle, broadband availability could be expanded through the USO. However, it is clear that the NBS, RBS and developments in spectrum and NGA are potentially very significant for increased broadband availability in Ireland in the medium term. Accordingly, because of these developments and the fact that the market is at such an important stage in its development, ComReg considers it appropriate at this point to continue to observe the effect of technological developments and market provision on broadband availability.

5.34 One such development is the roll-out of next generation networks over 2012-2013 which resulted in a significant increase in broadband speeds offered, with over 40% of broadband subscribers in Ireland now offering speeds in excess of 10 Mbps.<sup>51</sup>

**Figure 5.1: Total Fixed Broadband Subscriptions, Q4'11 – Q4'13**

**.9 – Fixed Broadband Subscriptions by Contracted Download Speeds**



<sup>51</sup> ComReg (2014), Draft Strategy Statement for Electronic Communications 2014 - 2016 <http://www.comreg.ie/fileupload/publications/ComReg1433.pdf>

- 5.35 For consumers who require broadband and do not have access, ComReg is aware of the importance of the Government's policy and, in particular, Government strategies and initiatives to advance the rollout and availability of highspeed broadband. ComReg intends to re-examine this issue carefully when the effects of many of the current market and technological developments are visible and when the DCENR's broadband plan has been further progressed. However, given the reasons stated above and subject to ComReg monitoring the impact of the Government's broadband schemes, at this stage, it is ComReg's preliminary view that the current FIA is appropriate and broadband should not be included as part of the scope AFL USO.

Q.8 In the context of the future scope of AFL for the three to five years after the interim period, do you agree with ComReg's preliminary view that it is not appropriate to alter FIA?

Please provide reasons to support your view

Q.9. In the context of the future scope of AFL for the next three to five year period after the interim period, do you agree with ComReg's preliminary view not to include Broadband in the scope of AFL USO?

Please provide reasons to support your view.

#### **5.3.2.1.1 Broadband with 'add on' voice services**

- 5.36 In fixed-telephony products, many countries have experienced an increased prevalence and take-up of bundles, for example, voice access and voice services are often sold together with broadband or other products. The most common product bundled with voice access and voice services is broadband. Consumers that purchase fixed access and voice services bundled with fixed broadband can switch to product bundles provided on alternative networks. This subset of customers, in particular, residential customers has potentially a greater choice of supply of FVA compared to those customers who want only fixed access and voice services.

- 5.37 There are a number of suppliers providing voice type services (managed VOIP)<sup>52</sup> to end users over a broadband access network usually in a bundle. For example, since 2007, UPC has been investing significantly in its cable network in Ireland<sup>53</sup> which has opened the way for direct provision of products other than pay-TV. Therefore, UPC is no longer a pure pay-TV provider rather a multi-product operator. It offers cable voice (“home phone”), though only as part of a bundle with its broadband service.
- 5.38 Currently, managed VOIP is primarily offered as part of a bundle thus it typically suits end-users that wish to also purchase broadband. For customers who do not already purchase a fixed broadband service, availing of managed VOIP would first require the purchase of a fixed broadband service. There is a large portion of customers who purchase fixed telephony on a standalone basis and/or do not value broadband, and thus are potentially ‘captive consumers’. For these consumers broadband with managed VOIP may not be an alternative for traditional fixed telephony.
- 5.39 The retail customer experience of managed VOIP is often not distinguishable from the traditional PSTN/ISDN FVA service. However, ComReg notes that some ancillary services such as monitored home alarm and fax services are not yet readily available over a broadband connection. For some customers this may represent a barrier to switching from a narrowband FVA service to a managed VOIP service until such time that these functions, or comparable features, become available over a broadband connection.
- 5.40 In addition, a significant proportion of customers cannot switch to UPC’s cable voice /“home phone” services because its network extends to approximately 45% of households. UPC’s network coverage is primarily to households with minimal provision of fixed telephony to businesses.<sup>54</sup> Overall, in the context of Eircom’s existing PSTN network and the requirement for access to be at a fixed location, in many cases, this may be the most efficient and effective solution, particularly in light of the ubiquity of the Eircom PSTN network. For the foreseeable future the fixed voice access and voice service will primarily be delivered using the Eircom PSTN network and more so for at least those customers who have a preference to purchase standalone FVA.

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<sup>52</sup> “Managed” services are provided over a managed network allowing the supplier to retain some control over the quality of the service. Managed VOIP in Ireland includes only services provided by switched licensed operators in the Republic of Ireland and does not include web based services such as Skype and Viber.

<sup>53</sup> First, to DOCSIS 2.0 standard and, more recently, to DOCSIS 3.0, for the delivery of fibre power next generation broadband services.

<sup>54</sup> This is borne out by the 2012 Market Research (slide 95), which showed that only 3% of businesses had their RFTS provided by UPC.

### 5.3.3 Quality of Service

- 5.41 ComReg Decision D02/08<sup>55</sup> prescribed legally binding performance targets, referred to in Regulations 10 in respect of Regulation 3 of the Regulations, for Eircom's Quality of Service ("QoS") in respect of the provision of AFL. These targets provide binding measures of quality measures for connections, fault rate occurrence and fault repair times.
- 5.42 Following D02/08, ComReg and Eircom established a USO QoS performance improvement programme ("PIP") for the periods 2010/2011 and 2011/2012. Eircom has a renewed PIP ("PIP2") in respect of the annual periods 2012/2013 and 2013/2014.
- 5.43 The related targets for PIP2 address timescales for connection, fault rate occurrence and fault repairs and include, in some cases, more demanding targets than those that were in place for the initial PIP. Eircom has also put in place a financial security mechanism (cash deposit) to guarantee its performance for the annual periods 2012/2013 and 2013/2014. Eircom's maximum annual financial liability is €10m for the current annual period. In addition, Eircom estimated that it would make an investment of €51m over the periods 2012/2013 and 2013/2014. For the period 2012/2013, Eircom achieved its targets for connections, fault occurrence, and certain fault repair targets.<sup>56</sup>
- 5.44 Eircom has now achieved the majority of the targets set out in ComReg Decision D02/08. In total, fifteen performance targets were set out in ComReg's Decision; nine of which relate to connection times, five relate to repair times and a glide path was put in place in relation to achieving the annual performance target of 12.5 for fault rate occurrence.
- 5.45 The most recent annual performance assessment data of 2012/2013 outlining QoS for Eircom is published in ComReg Document 14/09.<sup>57</sup> ComReg is of the preliminary view that the targets set out in D02/08 in terms of connections, fault occurrence and fault repairs are remain appropriate and are the minimum to be achieved. These targets could be applied equally to any technology or service provider who is designated to as an AFL USP.

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<sup>55</sup> [ComReg \(2008\), "Quality of Service Performance Targets",  
http://www.comreg.ie/fileupload/publications/ComReg0837.pdf](http://www.comreg.ie/fileupload/publications/ComReg0837.pdf)

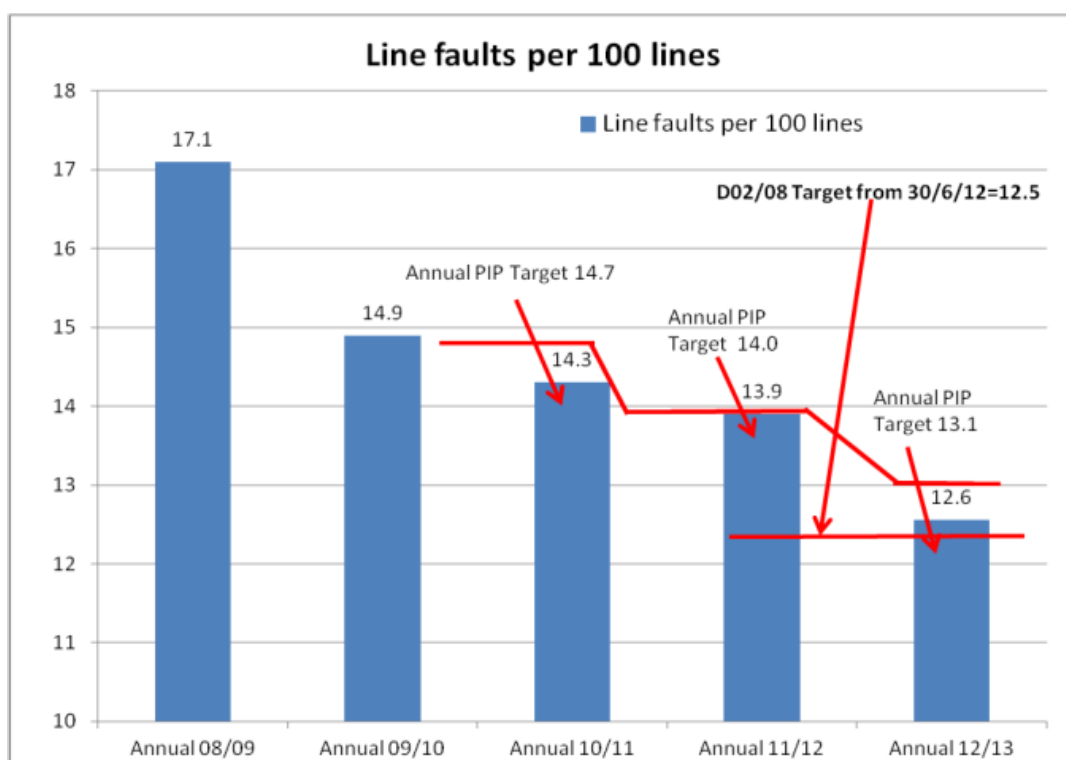
<sup>56</sup> [ComReg \(2014\), Provision of Universal Service by Eircom  
http://www.comreg.ie/fileupload/publications/ComReg1409.pdf](http://www.comreg.ie/fileupload/publications/ComReg1409.pdf)

<sup>57</sup> [ComReg \(2014\), Provision of Universal Service by Eircom  
http://www.comreg.ie/fileupload/publications/ComReg1409.pdf](http://www.comreg.ie/fileupload/publications/ComReg1409.pdf)

5.46 The annual performance compliance assessment for 2012/2013 showed that while three of the targets for connection were not achieved, the maximum margin of failure was 0.2%. Six of the nine performance targets for connections were exceeded. Eircom’s fault rate occurrence result was 12.6 for the annual period 2012/2013 which indicates that further improvement is necessary to achieve the ComReg D02/08 target of 12.5 for fault rate occurrence. In relation to fault repairs, three of the five ComReg D02/08 targets were not achieved for the annual period 2012/2013, albeit the margin of failure for one of these targets was slim.

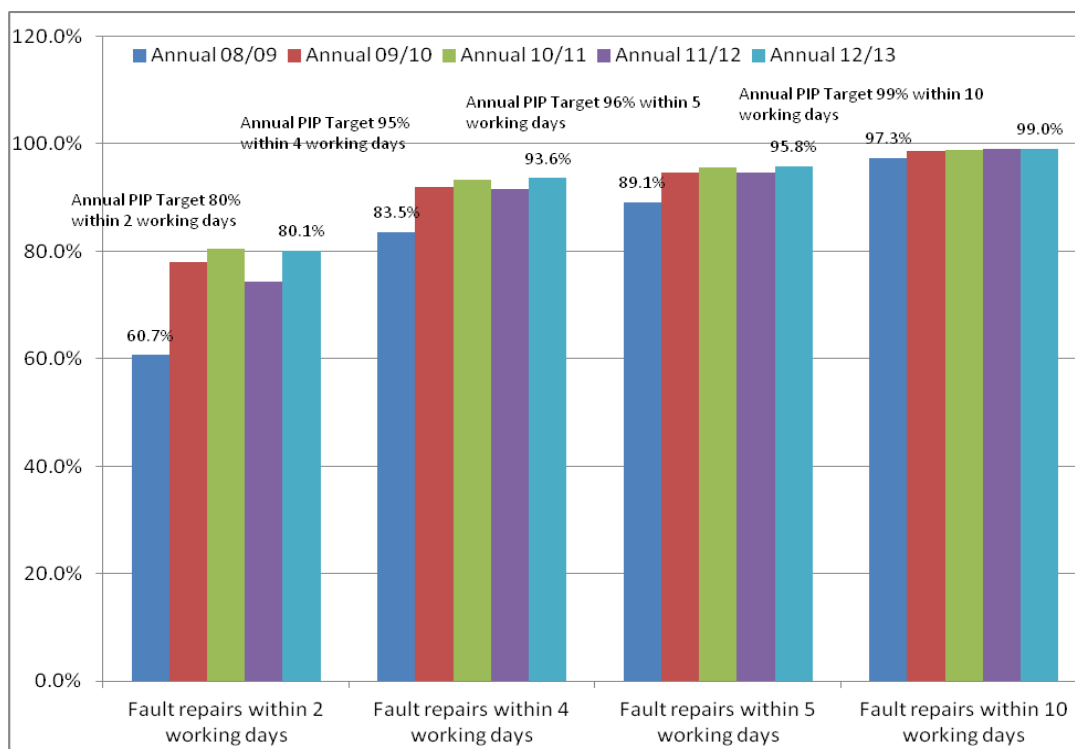
5.47 The chart below shows Eircom’s comparative performance with regard to line fault occurrence for each year since 2008:

**Figure 5.2: Eircom’s comparative performance with regard to fault occurrence for each year since 2008**<sup>58</sup>



<sup>58</sup> ComReg (2014), Provision of Universal Service by Eircom <http://www.comreg.ie/fileupload/publications/ComReg1409.pdf>

**Figure 5.3: Eircom’s comparative performance with regard to fault repairs for each year since 2008<sup>59</sup>**



5.48 ComReg is of the preliminary view that it is appropriate to maintain current standards with respect to quality of service measures. The QoS targets imposed on a USP represents a minimum standard. As the current USP, Eircom has demonstrated, in the main, that these targets are achievable. Should the market fail to meet end-user demand for basic services, in the instance of no USO, there is no guarantee that such standards will be in place to protect consumers. ComReg is of the preliminary view that this would need further analysis.

5.49 However, ComReg is of the preliminary view that additional proposed QoS targets may be necessary after the interim period to address issues in respect of service availability, call quality and the national and annual nature of the targets.

<sup>59</sup> ComReg (2014), Provision of Universal Service by Eircom <http://www.comreg.ie/fileupload/publications/ComReg1409.pdf>



Q.10 In the context of the future scope of AFL for the three to five year period after the interim period, do you agree with ComReg's preliminary view that the QoS performance targets should remain unchanged with consideration of other aspects in respect of the provision of AFL USO?

Please provide reasons to support your view.

### **5.3.4 Other elements of AFL USO**

5.50 In addition to the elements of the scope of AFL USO already discussed, ComReg's preliminary view is that the following elements, already mandated, continue to be required as part of the AFL USO:

- Affordability measures;
- Measures to assist Control of Expenditure.

5.51 As part of any expression of interest, ComReg would encourage interested parties to submit any suggestions they may have in this context.

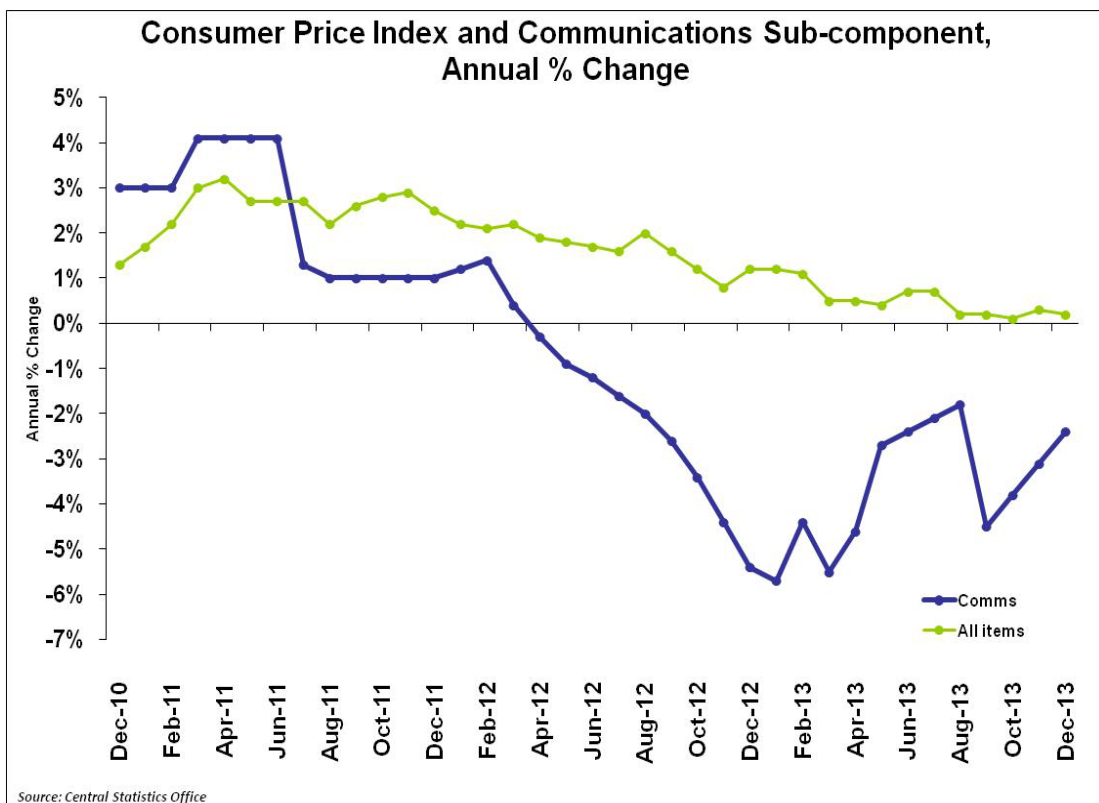
#### **5.3.4.1 Affordability**

5.52 Pursuant to the Universal Service Regulations, ComReg can require that the USP adheres to the principle of maintaining affordability for universal services, more specifically the provision of AFL, as well as common tariffs (social tariffs) as required. 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 in principle exclude the most vulnerable in the community from making a minimum use of telephony services. While communication services are a basic necessity for all consumers, ComReg considers that protections for more vulnerable customers should likely remain in place. These should aim to protect vulnerable customers from a rapid increase in overall bills.

5.53 Irrespective of the economic climate, which is showing signs of recovery, there is a trend in terms of end users preference for “one stop shopping” and better value/lower prices in terms of communications services. This is part reflected in the increasing take up of bundled services (see Figure 5.4). This has benefits in terms of both convenience (receiving a single bill) and potentially better value price to end-users. It is evident that consumers and businesses are increasingly leveraging the use of fixed line for access to services like broadband, often at a discounted price to the price of standalone fixed telephony services. Consumers and businesses can benefit in terms of more predictable bills and, when chosen correctly, real cost reductions.

5.54 In the twelve months to December 2013, the price of the average communications basket fell by 2.4%, compared with an increase of 0.2% for the prices of all consumer goods and services.<sup>60</sup> This shows communications price inflation relative to total price inflation for all consumer goods and services.

**Figure 5.4: Communications prices decreasing more than overall consumer prices**



<sup>60</sup> ComReg (2014), Quarterly Key Data Report, 14/19, <http://www.comreg.ie/fileupload/publications/ComReg1419.pdf>

5.55 In accordance with the 2012 designation, currently, Eircom must ensure affordability by way of Geographically Averaged Pricing (“GAP”) for USO services.<sup>61</sup> The 2012 designation set out that affordability was and will be until 30 June 2014 maintained by way of the following measures:

- Within the retail price cap (‘RPC’),<sup>62</sup> overall this is safeguard control on consumers bills (line rental and connection fees)
- GAP ensures that basic telephone services provided by the USP are available at an affordable price, irrespective of geographical location in Ireland.

5.56 At present, affordability is maintained through a number of different schemes, including within the RPC regime. Eircom is currently subject to a range of retail obligations including RPC<sup>63</sup> by virtue of it having been designated with Significant Market Power (‘SMP’) in the retail market for access to the public telephone network at a fixed location for residential and non-residential customers,<sup>64</sup> (referred to for convenience in this Consultation Paper as the FVA market(s)). The RPC currently provides a safeguard on consumer’s line rental and connection fees (but excludes calls).

5.57 ComReg is required to carry out periodic reviews of relevant electronic communications markets. A review of the FVA market is ongoing and ComReg has proposed that continuing to implement a RPC for basic line rental services (PSTN)<sup>65</sup> with a view to safeguarding ‘captive’ voice customers is appropriate. Ultimately, if this safeguard price cap on consumer’s line rental and connection fees is retained, this will mean inflationary increases in line rental and connection prices only (i.e. CPI-0) pending further consultation. Therefore, at this point in time it is ComReg’s preliminary view that no change is required with respect to the affordability measures, however this may be subject to change pending the outcome of the FVA market review and the requirement for a safeguard retail cap on fixed telephone line.

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<sup>61</sup> As per Regulation 8 (3) of the Universal Service Regulations.

<sup>62</sup> The current RPC is an SMP obligation on Eircom and is not a USO measure.

<sup>63</sup> Decision Notice and Decision Instrument; SMP Obligation: Retail Price Cap Remedy – Fixed Narrowband Access Markets (ComReg Decision No. 03/07, Document No. 07/76, 1 October 2007).

<sup>64</sup> Corresponding to Market 1 listed in the Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and services markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (the “2007 Recommendation”), (OJ L 344, 28.12.2007, p. 65).

<sup>65</sup> The Public Switched Telecommunications Network (PSTN) and ISDN telephone lines (typically referred to as “fixed narrowband access”. This provides a single channel, originally designed to provide voice traffic but capable also of supporting fax and data modems with speeds of up to 56 kbit/s.

### **Geographically averaged pricing**

- 5.58 Regulation 8(3)<sup>66</sup> of the Universal Service Regulations provides that ComReg may, with the consent of the Minister, require a designated undertaking to apply common tariffs including geographical averaging throughout the State, in light of national conditions. This obligation was placed on the USP in 2003 and aims to ensure that basic telephone services are available at an affordable price, irrespective of geographical location, within Ireland.
- 5.59 The question may arise as to whether the current obligation is the best way of ensuring affordability of tariffs or whether this can be left to competition in some regions. ComReg may, if warranted, revisit this obligation in light of the outcome of the FVA market review.
- 5.60 The cost of providing services, especially access<sup>67</sup> can in principle vary considerably between remote rural and high density urban subscribers. Where prices (especially line rental) are averaged, there is a possibility that rural subscribers may create a net cost for the USP, i.e. some customers, especially in rural areas, will be unprofitable to serve. Essentially, these would be considered high cost subscribers who do not make sufficient use of the telephone to provide Eircom with enough revenue to cover the associated costs. Such customers then may be subsidised by customers that Eircom earns high profits from, usually low cost urban customers. However, even if the provision of access is on average profitable some level of net cost may therefore arise. In respect of any net cost, an application for funding can be made in accordance with Regulation 11 of the Universal Service Regulations. ComReg's preliminary view is that objectives in respect of GAP remain relevant and it proposes no change to this position in respect of the services included under AFL USO in the short to medium term.

Q.11 In the context of the future scope of AFL for the three to five year period after the initial period, do you agree with ComReg's preliminary view with respect to Geographically Averaged Pricing?

Please provide reasons for your view.

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<sup>66</sup> There are a number of other tariff provisions in Regulation 8

<sup>67</sup> Access is usually thought of as the connection between the customer and the MDF (sometimes called the local loop or the 'last mile' {actually, it can be more than 3 miles}), and as a service involves investments and OAM costs

## Social schemes

- 5.61 The DSP Telephone Allowance which provided consumers who qualified for the scheme with a payment towards their telephone bill (either landline or mobile phone) was removed by the Government, effective from 1 January 2014. This possibly resulted in an annual bill increase of €114 for those recipients.<sup>68</sup> However, the latter may not have been as targeted as necessary in respect of affordability given that the recipients were on a variety of plans including bundled packages.
- 5.62 Furthermore, the market has changed since the introduction of the DSP allowance, with several companies providing a range of services and rates with bundled services (television, telephone and broadband and pay-as-you-go mobiles). The trend towards bundling of services evidences that consumers are looking for ways to reduce household expenditure and for better value/lower prices. Currently Eircom voluntarily offers low usage and other special voice only tariff plans. Given the existence of these schemes, and in light of the trend towards bundles as well as the overall decline in communication prices as illustrated by Figure 5.4, it is ComReg's preliminary view that there is no need to exercise its powers in relation to specific tariff options going forward.<sup>69</sup>

### 5.3.4.2 Control of Expenditure

- 5.63 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 face disconnection from the network. In accordance with the relevant legislation, 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;

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<sup>68</sup> The DSP allowance was €9.50 per month.

<sup>69</sup> Regulation 8(2) of the Universal Service Regulations states that “*The Regulator may, in light of national conditions, specify, with the consent of the Minister, requirements to be complied with by a designated undertaking for the purpose of ensuring that such undertaking provides to consumers tariff options or packages which depart from those provided under normal commercial conditions, in particular, to ensure that those on low incomes or with special social needs are not prevented from accessing the network referred to in Regulation 3(1) or from using the services identified in Regulations 3(2), 4, 5 and 6 as falling under the universal service obligations and provided by designated undertakings.*”

- *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.

### ***Itemised billing***

5.64 In 2012 Eircom, as the USP, was required to provide a minimum level of itemised billing free of charge to subscribers subject to data privacy provisions. However, in 2013 ComReg's decision in respect of billing and billing mediums<sup>70</sup> placed obligations in relation to itemised billing on all undertakings.

5.65 Therefore, such obligations are no longer on the USP alone and will not fall within the scope of the interim or any future AFL USO.

### ***Selective call barring***

5.66 Eircom, as the USP, is currently required to offer call barring for outgoing calls to Premium Rate Services free-of-charge to subscribers. A range of other call barring options for outgoing calls is also required to be offered by Eircom as the current USP, subject to payment of a set-up fee and ongoing rental charges, including:

- National;
- Mobile; and
- International.

5.67 ComReg considers that the call-barring options available are reasonable in terms of enabling users to control their expenditure. It is ComReg's preliminary view that call barring should continue to be offered by the AFL USP pending any consideration, consultation and subsequent introduction by ComReg of an extension of such measures to all undertakings in accordance with Regulation 24 of the Universal Service Regulations.

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<sup>70</sup> ComReg (2013), "Consumer Bills and Billing Mediums",  
<http://www.comreg.ie/fileupload/publications/ComReg1352.pdf>

### ***Phased Payment for Connection Fees***

5.68 As set out in ComReg 12/71<sup>71</sup>, phased payment for connection fees is currently mandated. 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. Eircom currently provides this facility, as well as other operators, and in respect of the post interim designation, it is ComReg's preliminary view that no changes to this facility are warranted.

### ***Disconnections policy and Non-Payment of bills***

5.69 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).

5.70 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 Handling<sup>72</sup>) 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 that may have been otherwise disconnected from the network.

5.71 There is an existing obligation on all operators to publish their Disconnection Policy, as part of their Code of Practice for Complaint Handling. In a previous review<sup>73</sup>, 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 and so no such requirement was imposed.

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<sup>71</sup> ComReg (2012), "The provision of telephony services under Universal Service Obligations" [http://www.comreg.ie/fileupload/publications/ComReg\\_1271.pdf](http://www.comreg.ie/fileupload/publications/ComReg_1271.pdf)

<sup>72</sup> Available at [www.eircom.ie](http://www.eircom.ie) <http://support.eircom.net/article/codeofpractice>

<sup>73</sup> ComReg (2012), "The provision of telephony services under Universal Service Obligations" [http://www.comreg.ie/fileupload/publications/ComReg\\_1271.pdf](http://www.comreg.ie/fileupload/publications/ComReg_1271.pdf)

- 5.72 ComReg's preliminary view is that no amendment to the requirements for a USP to provide a Disconnection Policy is necessary in the foreseeable future. The Disconnection Policy should provide that, if a subscriber does not pay a bill by the account due date, the USP may restrict a subscriber's ability to make and receive calls except to emergency services and that the USP will endeavour to contact a subscriber to remind he/she that a bill is overdue.

### 5.3.5 Terms and Conditions of Contract

- 5.73 ComReg is considering if it is necessary, in accordance with Regulation 3(5) (c) of the Universal Service Regulations to prescribe any terms and conditions which should be offered or should not be permitted by the USP. For example, Eircom and other operators have introduced a mandatory Direct Debit payment method for the majority of their voice services. However, a mandatory direct debit may prevent certain consumers who do not have a bank account, from accessing these universal services. It is ComReg's preliminary view that any terms and conditions which may limit access end-users' access to universal service should be addressed and in this context ComReg may consider specification in respect of the USP's terms and conditions upon which connection and service are provided, in accordance with Regulation 3 (5) (c) of the Universal Service Regulations.

Q.12 In the context of the future scope of AFL for the next three to five year period after the interim period, do you agree with ComReg's preliminary views in respect of affordability measures, control of expenditure measures and terms and conditions to be provided by a USP? Do you have any further proposals in respect of these areas?

Please give reasons to support your view.

Any party(s) 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 proposed obligations relating to control of expenditure and what other arrangements it would put in place, if any.



## 5.4 Evolution of access infrastructure and technologies

5.74 The specific obligation of “access at fixed location” is intended to refer to the end-user’s primary location or residence<sup>74</sup> and not to a requirement for ECS providers to use fixed technology. ComReg considers that the obligation to provide AFL does not have to be provided using a specific technology. In general, there are no constraints on the technical means, whether wired or wireless, by which the connection is provided as long as the obligation is fully provided.

5.75 Essentially, the obligation to provide AFL is technologically neutral. This means that alternative technologies could be used to deliver this obligation. In this respect, there are alternative access technologies by which a fixed telephony type service can in principle be made available including, but not limited to the following ways:<sup>75</sup>

- Managed VOIP provided over CATV, the various families of Digital Subscriber Line broadband technology (‘xDSL’), FWA and alternative fibre networks;
- Unmanaged VOIP; and
- Mobile network services with additional customer premises equipment, etc.

### 5.4.1 Mobile

5.76 While current mobile services accessed by a mobile handset only do not meet the requirements for access at a fixed location, AFL can in principle be provided by a mobile ECS provider.

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<sup>74</sup> Recital 8 to the Universal Service Directive (Directive 2002/22/EC) states inter alia: “A fundamental requirement of universal service is to provide users on request with a connection to the public telephone network at a fixed location, at an affordable price. The requirement is limited to a single narrowband network connection, the provision of which may be restricted by Member States to the end-user’s primary location/residence, and does not extend to the Integrated Services Digital Network (ISDN) which provides two or more connections capable of being used simultaneously. There should be no constraints on the technical means by which the connection is provided, allowing for wired or wireless technologies, nor any constraints on which operators provide part or all of universal service obligations. Connections to the public telephone network at a fixed location should be capable of supporting speech and data communications at rates sufficient for access to online services such as those provided via the public Internet”.

<sup>75</sup> The European Commission has underlined that access to the public telephone network for the purposes of fixed telephony services may be supplied by a variety of technical means, including over broadband internet connections. See also the Explanatory Note to the Recommendation (2007), p22.

- 5.77 The 2013 Consumer ICT Survey indicates that 97% of households reported having a mobile phone, whereas only 69% of households have a fixed line telephone.<sup>76</sup> By contrast, the market research in 2012 showed that business use of a fixed line telephone is nearly universal at 95%, whereas only 59% of employees are provided with mobile telephones (45% are provided with both a fixed and a mobile telephone, while 14% are provided with a mobile telephone only) of business respondents to reporting ownership of a retail fixed telephony service (“RFTS”).<sup>77</sup>
- 5.78 Consumers most commonly make telephone calls by using either their mobile phone, or a fixed line telephone.<sup>78</sup> The majority of households and businesses prefer to use a fixed line telephone when making a call to another fixed line telephone (77% for local landlines and 80% for calling national landlines).<sup>79</sup> In contrast, the majority of residential respondents prefer to use a mobile phone when calling another mobile phone.<sup>80</sup> Businesses, however, reported a marginal preference for using a fixed line telephone rather than a mobile telephone when calling a mobile phone (49% versus 43%), but were still more likely to use a mobile when calling another mobiles compared to when calling a fixed line telephone.<sup>81</sup> The tendency for consumers to use fixed and mobile telephones for different types of calls indicates a degree of complementarity amongst these services amongst households. Indicating that fixed voice continues to be an important electronic communication service, despite the increased take up of mobile services.
- 5.79 Consumer perceptions appear to regard the call quality and reliability of retail fixed voice calls as being close to but slightly better than mobile call quality.<sup>82</sup> Having said that, poor mobile telephone network coverage, including indoors, in some locations can result in a poor call quality or an inability to make calls at all. This was also evident in responses to the 2012 Market Research, where 23% of residential respondents with a fixed line telephone noted poor mobile coverage in their home as a reason for retaining the fixed line telephone.<sup>83</sup>

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<sup>76</sup> 2013 ICT Survey. Section 2: Service Ownership

<sup>77</sup> Market Research prepared by The Research Perspective Ltd. on behalf of ComReg, August 2012 (<http://www.comreg.ie/fileupload/publications/ComReg1296a.pdf>) Slides 84 and 107.

<sup>78</sup> <http://www.comreg.ie/fileupload/publications/ComReg1296a.pdf> Slide 26

<sup>79</sup> <http://www.comreg.ie/fileupload/publications/ComReg1296a.pdf> Slide 25

<sup>80</sup> <http://www.comreg.ie/fileupload/publications/ComReg1296a.pdf> Slide 45

<sup>81</sup> <http://www.comreg.ie/fileupload/publications/ComReg1296a.pdf> Slide 106

<sup>82</sup> <http://www.comreg.ie/fileupload/publications/ComReg1296a.pdf> Slides 44 and 45

<sup>83</sup> <http://www.comreg.ie/fileupload/publications/ComReg1296a.pdf> Slide 43

5.80 Moreover, in relation to mobile coverage matters, in the context of the Multi Band Spectrum Release, ComReg document 12/25<sup>84</sup> states that “ComReg’s final position is that a minimum coverage obligation of 70% of the population should be applied to all liberalised licences”.<sup>85</sup> Some of the reasons for the 70% coverage obligation include:<sup>86</sup>

- *“actual coverage levels are expected to exceed this 70% population obligation by a considerable margin given the competitive nature of the market and the limited risk of roll-back of coverage from the existing levels;*
- *a 70% population coverage level is sufficient to provide coverage in all the townlands in Ireland with 50 inhabited houses or more. At the same time mobile network operators will have both the opportunity (through substantially reduced costs) and the incentive (through strong competition on coverage) to provide a service over a greater area;*
- *the existing GSM and 3G mobile networks have higher levels of coverage than 70%, meaning that these operators could leverage their existing network infrastructure enabling them to offer coverage levels in excess of 70% of the population.”*

5.81 In this context and still referencing ComReg document 12/25, “ComReg’s final position is that:

- *for an existing mobile operator, the 70% population coverage obligation is to be met within 3 years; and*
- *for a new entrant to the mobile market, the 70% population coverage obligation is to be met within 7 years and the 35% population coverage obligation is to be met within 3 years.”*

5.82 As such, this requirement and standard is relevant in considering a mobile ECS provider’s ability to be an appropriately efficient USP.

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<sup>84</sup> Multi-band Spectrum Release, Release of the 800 MHz, 900 MHz and, 1800 MHz Radio Spectrum Bands, [http://www.comreg.ie/\\_fileupload/publications/ComReg1225.pdf](http://www.comreg.ie/_fileupload/publications/ComReg1225.pdf)

<sup>85</sup> ComReg (2012), Multi Band Spectrum Release, paragraph 5.157:  
[http://www.comreg.ie/\\_fileupload/publications/ComReg1225.pdf](http://www.comreg.ie/_fileupload/publications/ComReg1225.pdf)

<sup>86</sup> ComReg document 12/25, paragraph 5.156

- 5.83 For instance, Vodafone and Eircom operate two separate access network in parallel which would seem to suggest that the mobile network delivers a different service proposition to a fixed telephone network. The entry of mobile service providers into the FVA market would seem to reflect recognition on their part that consumers place a distinct value on mobile voice telephony as compared to fixed voice telephony and indeed, vice versa, for the fixed incumbent. Consequently, mobile services satisfy a distinct customer need. In addition, the recent emergence of fixed voice telephony and mobile being offered in bundles also suggests that end-users place a distinct complementary value on these services, rather than considering them in general to be alternative services.
- 5.84 Concerning converged fixed mobile services, one example of a Converged Service<sup>87</sup> is Vodafone's 'One Net Express' service provided over its mobile network,<sup>88</sup> but with a geographic telephone number associated with a fixed location. This highlights the possibility for a mobile operator to use non-wired or wireless-based network inputs to also provide a FVA type service. However, to date, Converged Services do not appear to be widely available and thus do not represent a suitable substitute for a significant set of end-users seeking fixed telephony. For example, the option generally for end users to purchase (technically) integrated fixed and mobile services is not yet available (e.g., *home-zone* which attributes a geographical telephone number for making and receiving calls in the home-zone and charging lower fixed termination rates). Vodafone's One Net Express product is targeted primarily at small-to-medium sized businesses rather than residential consumers.<sup>89</sup>
- 5.85 Overall, in the context of Eircom's existing PSTN network and the requirement for access to be at a fixed location, in many cases, this may be the most efficient and effective solution, particularly in light of the requirement for coverage inside the home and the allocation of geographic numbers. Notwithstanding this, ComReg understands that Eircom, the current USP, has relied on alternative technological solutions, both Fixed Cellular Solution (FCS) and Fixed Wireless Access (FWA), where appropriate for USO.
- 5.86 ComReg's preliminary view is that reliance on such alternatives technologies is appropriate to deliver AFL.

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<sup>87</sup> The extent to which a fixed line telephony service that is provided using mobile network inputs.

<sup>88</sup> The customer receives a geographic telephone number and there are contractual obligations that prevent the use of a One Net Express telephone device outside of the area associated with the geographic number allocated to the telephony device.

<sup>89</sup> Listed only in the business section of [www.vodafone.ie](http://www.vodafone.ie).

## 5.5 Current and future designation

- 5.87 The Regulations require ComReg discretion to designate one, or more, operators to guarantee the provision of the universal services 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. In this instance ComReg is considering the designation of a suitable USP(s) for the provision of AFL USO for the short to medium term. ComReg remains of the view, as per the Regulations, that 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 the majority of Member States, the incumbent operator provides universal services. However, it is possible that other operators in Ireland may be able and willing to provide all or part of the universal service, in all or part of the State and may be able to do so at a lower cost. Greater competition in the Irish market since the previous designation from 2012 to 2014 may have increased the possibility for all, or part, of the universal service to be provided by operators other than Eircom.
- 5.88 ComReg is now considering the designation mechanism for future designations with respect to the provision of AFL USO.
- 5.89 The Regulations provide that the designation method adopted must ensure that the obligations are provided in a cost effective manner and that they may be used as a means of determining the net cost of the universal service obligation. The designation mechanism must be efficient, objective, transparent and non-discriminatory.

### 5.5.1 Universal service provider

- 5.90 Eircom, by virtue of its PSTN, is capable of meeting the reasonable requests of consumers on a nationwide basis. In addition, Eircom remains the major fixed line provider in the market, with a current estimated market share of 52% of fixed line revenues at the end of 2013. ComReg notes that several fixed-line operators offering competing services do so via Eircom's network. However, in some cases, fixed line operators do offer competing services over their own networks.
- 5.91 Given the proposal for an initial designation period of twelve to eighteen months, it is ComReg's preliminary view that, in the absence of receiving any expressions of interest, that the current USP, Eircom, is more than likely best placed to continue to be the USP for AFL, for the reasons detailed including ubiquity, experience and capability, during the next designation period.

5.92 It is ComReg's intention, which is outlined in the following chapter, that during the interim period, it will allow operators to express an interest in providing AFL USO in the short to medium term, if they so choose.

### 5.5.2 Designation of the entire state

5.93 ComReg has considered whether or not it is appropriate to continue to designate USO concerning AFL to cover the entire State, whilst recognising that consumers who require the USO are not uniformly spread.

5.94 In order for ComReg to fully consider this designation for specific areas or customers, rather than on a national basis, ComReg requires details of those customers or areas that would not be served by any operator in the market and of those services or facilities that would not be provided if the USO did not exist. As the USP for many years, Eircom is best placed to provide information on the customers that it would not serve absent a USO however it maintains that information at a customer level is not available.

5.95 At this time, absent more specific details regarding services or customers that would not be served by Eircom or other operators in the market, ComReg remains concerned that certain universal services, including the provision of AFL (in accordance with specified quality of service metrics and geographically averaged prices) might not be provided to all or some customers in the State without a USO.

5.96 Therefore, as this information is not available at a detailed level, ComReg is of the preliminary view that a universal service for the entire State, (whether or not it is delivered by different designated USP(s)), remains a requirement for the short to medium term.

Q. 13 Do you agree with ComReg's preliminary view that, for the next designation period, the USP for AFL USP should be designated for the entire State?

Please provide reasons to support your view.

## Chapter 6

# 6 Part 2 (b) : Expressions of Interest

## 6.1 Background

- 6.1 In accordance with the Regulations, no undertaking should be excluded from being designated to provide all or part of the universal service, in all or part of the State. In this respect, ComReg invites undertakings to express an interest in being a USP for any future provision of AFL under the USO as relevant.
- 6.2 In the majority of Member States, including Ireland, the incumbent operator traditionally provides the universal service. In response to ComReg Consultation 13/45<sup>90</sup>, respondents stated that ComReg appear to assume that the relevant component of universal service is necessarily delivered using Eircom's fixed line network. ALTO stated that the *“Directive does not specify service provision through fixed line technology as implied by ComReg and might include other technologies”*. Vodafone stated that *“ComReg has adopted an approach to allowable costs which appears to reward eircom for economically inefficient technology choices which takes little or no account of the fact that eircom's designation of USP effectively mandates it to provide services in the national retail market on which ComReg has separately found it exercises Significant Market Power”*. With reference to the potential efficiencies gained from alternative technologies, ALTO states that *“given that the bulk of the calculated net cost relates to uneconomic customers in economic areas, there is a high probability that serving those customers using mobile technology might eliminate or very substantially mitigate any net cost to Eircom”*.
- 6.3 In this respect, as outlined in D01/14<sup>91</sup>, *“ComReg agrees that the obligation to provide access at a fixed location does not have to be provided using a specific technology. However, in the context of Eircom's existing PSTN network and the requirement for access to be at a fixed location in many cases this may be the most efficient solution.”*

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<sup>90</sup> ComReg (2013), 'Assessment of Eircom's Universal Service Fund Application for 2009-2010 - Consultation and Draft Determination',

<http://www.comreg.ie/fileupload/publications/ComReg1345.pdf>

<sup>91</sup> ComReg (2014), 'Assessment of Eircom's Universal Service Fund Application for 2009-2010 - Response to Consultation and Determination',

<http://www.comreg.ie/fileupload/publications/ComReg1403.pdf>

- 6.4 In view of respondent's comments in the context of alternative technologies and further efficiencies, it is evident that other operators in Ireland may be able and willing to provide all or part of the AFL universal service specifically in the present context, in all or part of the State and may be able to do so at a lower cost. ComReg is mindful that the designation method(s) adopted must ensure that any AFL USOs are provided in a cost effective manner and may be used as a means of determining any net cost of providing AFL under USOs.
- 6.5 Consultation 12/39<sup>92</sup>, which dealt with the scope and designation from 1 July 2012 to 30 June 2014, highlighted that the information to be provided to ComReg in the course of Eircom's application for universal service funding for the period 2009/2010<sup>93</sup> could possibly inform the designation process from 1 July 2014. It was anticipated that more information could be available on receipt of Eircom's 2009-2010 application for funding including granular data concerning potential uneconomic customers and uneconomic areas at a customer level. In Section 4.5 of D01/14, the recently published Decision in relation to request for USO funding,<sup>94</sup> it is noted that *"data on a customer level could not be sourced"* by Eircom and as such, *"Eircom applied a probability based approach to ascertaining the portion of uneconomic customers and the resulting net cost. The individual steps undertaken by Eircom included the following:*
- *Estimation of net revenue of all customers;*
  - *Estimation of the avoidable access cost distribution at an MDF level, applying line length as the cost driver;*
  - *Ascertaining the economic profile of customers by assessing the probability of the anticipated cost being less than the average anticipated revenue on an interval basis; and*
  - *Ascertaining the number of uneconomic customers and the corresponding net cost based on the findings".*
- 6.6 While Eircom customer level data is unavailable<sup>95</sup>, from a practical perspective it is possible for other undertakings to use probability analysis to arrive at a robust estimate of likely uneconomic customers in any given USO period.

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<sup>92</sup> ComReg (2012), *"The provision of telephony services under Universal Service Obligations Scope and Designation"*, Document 12/39

<sup>93</sup> Eircom submitted an application for funding for the net cost arising from the provision of the USO for the 2009-2010 period in May 2012.

<sup>94</sup> <http://www.comreg.ie/fileupload/publications/ComReg1403.pdf>

<sup>95</sup> It should also be noted that if such information was available it may be deemed confidential and therefore may not be appropriate for publication.



- 6.7 In any case, ComReg is of the preliminary view that Eircom specific information (i.e. regarding Eircom's uneconomic customers or areas) is not a requirement in order for another undertaking to be in a position to express interest in becoming a USP for provision of AFL under USO. Rather it should be feasible for an undertaking to scope out its own case for becoming a USP for provision of AFL under USO on the basis of its operator specific information, amongst others, its own network, use of technology and information as to consumer profiling and or demand.
- 6.8 As set out in section 3, ComReg is of the preliminary view that it considers it appropriate and necessary that for an interim period, Eircom's current designation be carried forward. If so determined, Eircom would continue to ensure the provision of the AFL USO for a period of twelve months or eighteen months, from 1 July 2014.
- 6.9 This interim designation would facilitate this call for expression of interest and would enable undertakings to consider in advance their interest in being a USP for provision of AFL, or otherwise, and specifically how an undertaking might ensure the effective and efficient provision of AFL (both connection and voice services over connection AFL). This would also enable ComReg to assess the appropriateness of any expressions received.
- 6.10 ComReg will carefully consider any submission that it receives from interested parties for the provision of access at a fixed location throughout the State, or a defined territory within the State for the medium term.

## **6.2 Proposed assessment methodology and selection criteria**

- 6.11 In order to ensure ComReg adopts an efficient, objective, transparent and non-discriminatory designation mechanism<sup>96</sup> it has identified the information it requires and the process to be followed upon receipt of such information. ComReg will undertake to provide updates to both stakeholders and those providers that submit expressions of interest as necessary, throughout the process.
- 6.12 Any expression of interest should clearly demonstrate the undertaking's ability and willingness to provide the AFL USO. Therefore, to allow ComReg to conduct a full and proper assessment of expressions of interest, an expression of interest to become the USP in relation to provision of AFL under USO should be accompanied by the following minimum information requirements (i) – (xi) below :

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<sup>96</sup> In accordance with Regulation 7(3) of the Universal Service Regulations

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

6.13 It is likely that expressions of interest will contain either commercially sensitive and/or confidential information. Therefore, each expression of interest should be marked as appropriate so as to allow ComReg to deal with such information in accordance with its Confidentiality Guidelines<sup>97</sup>.

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<sup>97</sup> ComReg Document No. 05/24 *Guidelines on the treatment of confidential information*, dated 23 March 2005.

- 6.14 If all of the required information, as set out above, is submitted then the expression of interest will be considered valid. If all of the required information as set out above, is not included in an expression of interest, the expression of interest will be considered invalid and will be rejected without further consideration.
- 6.15 **Valid** expressions of interest will then be assessed to ascertain whether the undertaking's proposal meets the minimum standard of what ComReg considers a potential USP should achieve. ComReg is setting a weighting of 100 points for each of the categories (i-ix) of information, set out in paragraph 6.12 above.
- 6.16 A minimum standard of 80 points for each of the categories must be achieved for an expression of interest to be valid. If a **valid** Expression of Interest meets the minimum standard of 80 points in each category, as determined by ComReg, it will be considered to be an **expression of interest which meets the minimum standard**. If a **valid** expression of interest, as determined by ComReg, does not meet the minimum standard of 80 in each category, as determined by ComReg, it will be considered an **expression of interest which does not meet the minimum standard**.
- 6.17 ComReg will inform service providers who have expressed an interest as to whether or not they have submitted a **valid** expression of interest and subsequently if the **valid** expression of interest is an **expression of interest which meets the minimum standard**.
- 6.18 Having regard to the above, if there are any expressions of interest received which meet the minimum standard in each category, as above (6.12 (i) – (x)). ComReg may, as appropriate then seek to instigate a competitive selection procedure for the provision of all or part of a universal service concerning AFL and/or ComReg may conduct a further consultation with respect to any proposed scope and designation of AFL USO, which would take into account responses from this consultation (as per section 5).

## 6.3 Costing of the USO

- 6.19 Eircom, as the designated USP currently may submit applications for USO funding. In May 2012, Eircom submitted an application for Universal Service Funding (USF) in accordance with D04/11, which ComReg subsequently assessed. On 9 January 2014, after the assessment and consultation process, ComReg determined that the net cost of €5.1m did not impose an unfair burden on Eircom, in accordance with the assessment principles and methodologies, set out in D04/11. On 12 February 2014, Eircom lodged an appeal against D01/14, this appeal is currently ongoing. ComReg will continue its work on USF including the assessment of other applications for funding it receives from the USP, as relevant, and the establishment of the principles for a universal service fund sharing mechanism.
- 6.20 As it is designated until 30 June 2014, Eircom may make applications for USO funding, should it choose to do so in respect of its financial periods 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014. Similarly, should an operator be designated as a USP, it would be entitled to make applications for USO funding, in accordance with ComReg Decision D04/11.
- 6.21 In accordance with Regulation 11 of the Universal Service Regulations any USP must apply for funding if they wish to receive funding for the net cost of meeting the obligation and the process for this is set out in ComReg D04/11.
- 6.22 The period for submission of expressions of interest runs for a period of 12 weeks from 16 May 2014 until **8 August 2014. No late Expressions of Interest will be accepted.**

## Chapter 7

# 7 Regulatory Impact Assessment ('RIA') for Part 1 (a) – Interim Designation

## 7.1 Overview

- 7.1 As part of the implementation of USO, ComReg is conducting a Regulatory Impact Assessment (RIA), in line with ComReg Document No. 07/56a, and taking into account the RIA Guidelines adopted under the Government's Better Regulation initiative.<sup>98</sup>
- 7.2 ComReg's approach to conducting a RIA is outlined in its RIA Guidelines. In relation to Universal Services, 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.
- 7.3 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 2009/36/EC.
- 7.4 ComReg's approach to the scope and designation of the provision of AFL USO is in accordance with the currently applicable legislation.
- 7.5 ComReg must ensure that the provision of AFL USO, specifically the provision of reasonable requests for access at a fixed location supporting voice and functional internet access services are made available on an affordable basis at the quality specified to all end-users independently of geographical location.
- 7.6 The Regulations give ComReg the discretion to designate one, or more, USPs.
- 7.7 ComReg's role in this context is to decide whether there is a requirement for the AFL USO and what is reasonable for an implementation of AFL USO, 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.

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<sup>98</sup> ComReg (2007), 07/56a, Guidelines on ComReg's Approach to Regulatory Impact Assessment

- 7.8 In relation to the provision of AFL USO for an interim period commencing 1 July 2014, 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.

## 7.2 Impact assessment for Interim Designation

- 7.9 In respect of a USO for AFL from 1 July 2014 for a USO for AFL; ComReg has two options:

1. Maintain a USO for AFL
2. Remove the USO for AFL

- 7.10 For the reasons set out in Chapter 3, ComReg is of the preliminary view that a USO for AFL continues to be necessary to protect end-users. There may be a net cost to the USP(s) in providing the AFL USO. In this case, the USP(s) may seek to request funding in accordance with ComReg D04/11. This in turn may have an impact on undertakings in respect of an associated sharing mechanism if the USP(s) a net cost is determined to be an unfair burden, in accordance with D04/11.

- 7.11 In light of the objectives of the Universal Service Directive and the ongoing demand for AFL, ComReg is of the preliminary view that it is not appropriate to remove the universal service obligation for AFL.

- 7.12 In light of the preliminary view that it is appropriate to maintain a USO for AFL; ComReg has a number of further considerations

1. The period of the designation
2. Which undertaking(s) should be designated
3. The scope of the AFL USO

### **The period of the designation**

- 7.13 ComReg's preliminary view is that the need for an AFL USO will continue for a further three to five years, as detailed in Chapter 3. In this context, ComReg is of the view that other undertakings may be interested, and have the right to be considered, in becoming a USP. Therefore, ComReg wishes to allow time for valid expressions of interest to be submitted and to be evaluated by ComReg and for a potential transition period to a new USP(s).

- 7.14 ComReg is allowing until **8 August 2014** for Expressions of Interest to be submitted and ComReg is of the preliminary view that it is therefore appropriate to have an interim designation of twelve or eighteen months to allow for the full process, as appropriate, to occur.
- 7.15 With respect to the interim period, ComReg is seeking stakeholders' views as to what the appropriate length of the interim period should be (twelve or eighteen months).

### **Which undertaking should be designated**

- 7.16 As detailed in Chapter 4, ComReg is of the preliminary view that Eircom as the current USP is best placed to continue to be the USO for the interim period. Eircom is the largest provider of voice access and voice services at a fixed location in Ireland. It has an extensive infrastructure, subscriber base and product portfolio allowing for economies of scale and scope. In the absence of any other real alternatives that ComReg could consider as a USP from 1 July 2014, it is ComReg's view that it is appropriate that Eircom continue to be designated for the interim period.
- 7.17 ComReg is seeking views from stakeholders in respect of its preliminary view.

### **The scope of the AFL USO**

- 7.18 There are a number of aspects to be considered in respect of the scope of the AFL USO. These include:
- Reasonable requests for connection (D09/05)
  - Functional Internet Access (D09/05)
  - Geographic Averaged Prices
  - Measures to assist in controlling expenditure
  - Quality of Service Targets (D02/08)

### ***Reasonable requests for connection***

- 7.19 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 specify 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. In addition, the absence of a threshold could encourage consumers to submit requests which entail high costs.

- 7.20 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 public communications network, 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 considers that the current approach remains valid and proportionate for the interim period.

### ***Functional Internet Access***

- 7.21 This matter is fully discussed in Chapters 3 and 4. The consultation paper does not propose changes to FIA or the required 28.8kbp/second data to a higher rate, or to redefine FIA for the AFL USO.
- 7.22 ComReg considers that it is not appropriate, at this juncture, for broadband to be included in the interim or medium term AFL USO, primarily because (a) ComReg has to be mindful of Government policy on broadband, and (b) the market is currently subject to rapid technological developments.

### ***Geographically averaged prices***

- 7.23 The obligation for geographically averaged prices was placed on the USP in 2003 and aims to ensure that basic telephone services are available at an affordable price, irrespective of geographical location, within Ireland. These aims remain relevant with the policy objective and ComReg does not at this time propose to change this position in respect of the services included in Universal Service. Without this measure there is a danger that customers and/or areas that the USP considers uneconomic would have to pay higher prices than economic customers. However, the potential emergence of differential competitive conditions across geographic areas will be kept under review by ComReg. The question may arise as to whether the current obligation is the best way of ensuring affordability of tariffs or whether this can be left to competition in some regions. ComReg may, if warranted, revisit this obligation in the future.



### ***Quality of service targets***

ComReg considers that it is appropriate to maintain current standards with respect to quality of service measures during the interim period. The QoS targets imposed on a USP represent a minimum standard and as detailed in section 5.5.3, Eircom has demonstrated, in the main that these targets are achievable. ComReg is of the preliminary view that it is appropriate to maintain the targets for the interim period as without these targets there is no guarantee that such quality standards would be met nationally by the USP.

### **Funding Applications**

- 7.24 Pursuant to the Regulations, a USP(s) may seek to receive funding 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 funding”*.
- 7.25 Eircom’s application for a USF for 2010-2011 is due by September 2014 and applications for 2011/2012 and 2012/2013 are due in November 2014. Information regarding the net cost of each element of universal service will be provided to ComReg in the course of Eircom's applications for universal service funding for each of the periods. ComReg plans to publish details of the value of the applications, when received, as appropriate.
- 7.26 If Eircom were to be designated for the interim period, it would also be entitled to seek funding for that period.

## **7.3 Conclusion**

- 7.27 Subject to any compelling new information or views provided in response to this consultation, ComReg’s preliminary view is that the designation of Eircom in respect of the provision of AFL USP for an interim proposed in Part 1 of this Consultation Paper would be transparent, justified and proportionate, in accordance with the Universal Service Regulations and Directive and otherwise in line with Better Regulation guidance and Regulatory Impact Assessment norms.

Q. 14 Do you agree with the approach and conclusions in this draft regulatory impact assessment? Please give reasons to support your point of view.

## Chapter 8

# 8 Next steps

8.1 There are two consultation periods which both run from 16 May 2014 but end at different times, as set out below. All comments on the issues set out in this Consultation Paper are welcome.

**13 June 2014** - The deadline for responses in respect of **Part 1** – (a) The need to sustain a USO for AFL for a 3 to 5 year period and (b) an interim designation of 12 or 18 months.

**8 August 2014** - The deadline for responses in respect of **Part 2** – (a) Preliminary Consultation on the future scope and designation of AFL USO including any submissions regarding the (b) call for expressions of interest in relation to being a future AFL USP after the interim period.

8.2 The task of analysing responses received will be made easier if all comments are referenced to the specific question numbers as set out previously in the Consultation Paper and summarised in Annex 2.

8.3 Having analysed and considered the comments received, ComReg will review the proposals set out in this Consultation Paper, maintain or amend its proposals, as appropriate, including with respect to the draft measures set out in the Draft Decision Instrument at Annex 3. ComReg will then notify its proposals to DCENR as appropriate.

8.4 In order to promote further openness and transparency, ComReg will publish all responses to this Consultation Paper, subject to the provisions of ComReg's guidelines on the treatment of confidential information in ComReg Document No.05/24.<sup>99</sup> ComReg appreciates that many of the issues raised in this Consultation 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 website and for inspection generally, respondents to this Consultation Paper are requested to clearly identify confidential material within their submissions and place any such confidential material in a separate Appendix to their response. Such material will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information as set out in ComReg Document No. 05/24.

8.5 In submitting comments, respondents are also requested to provide a copy of their submissions in an unprotected electronic format in order to facilitate their subsequent publication by ComReg.

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<sup>99</sup> ComReg (2005), Guidelines on the Treatment of Confidential Information, Response to Consultation, [ComReg 05/24](#)

# Annex: 1 Glossary of Terms

A 1.1 Set out below is a glossary of terms used throughout the document.

<b>AFL</b>	Access at a Fixed Location
<b>CATV</b>	Community Access Television
<b>DCENR</b>	Departments of Communications, Energy and Natural Resources
<b>DSP</b>	Department of Social Protection
<b>FCS</b>	Fixed Cellular Solution
<b>FIA</b>	Functional Internet Access
<b>FWA</b>	Fixed Wireless Access
<b>FVA</b>	Fixed Voice Access
<b>FSP</b>	Fixed Service Provider
<b>GAP</b>	Geographically Averaged Pricing
<b>ISDN</b>	Integrated Services Digital Network
<b>NBP</b>	National Broadband Plan
<b>NBS</b>	National Broadband Scheme
<b>OTT</b>	Over the Top
<b>PIP</b>	Performance Improvement Programme
<b>PIP2</b>	Performance Improvement Programme 2
<b>POTS</b>	Plain Old Telephone Services
<b>PSTN</b>	Public Switched Telephone Network
<b>QoS</b>	Quality of Service
<b>RAT</b>	Reasonable Access Threshold

<b>RBS</b>	Rural Broadband Scheme
<b>RFTS</b>	Retail Fixed Telephony Services
<b>RFVC</b>	Retail Fixed Voice Calls
<b>RPC</b>	Retail Price Cap
<b>SMP</b>	Single Market Power
<b>USF</b>	Universal Service Funding
<b>USO</b>	Universal Service Obligations
<b>USP(s)</b>	Universal Service Providers(s)
<b>VOIP</b>	Voice over Internet Protocol
<b>VUS</b>	Vulnerable User's Scheme

## Annex: 2 Consultation Questions

A 2.1 Set out below is a comprehensive list of the consultation questions set out in this document.

A 2.2 There are two consultation periods which both run from 16 May 2014 but end at different times, as set out below. All comments on the issues set out in this Consultation Paper are welcome.

### Part 1

**13 June 2014** - The deadline for responses in respect of **Part 1** – (a) The need to sustain a USO for AFL for a 3 to 5 year period and (b) an interim designation of 12 or 18 months.

No	Question	Page
1	Do you agree with ComReg's preliminary view that there is a need for an AFL USO for a period of three to five years? Please provide reasons to support your view	23
2	Do you agree with ComReg's preliminary view that in the short term (twelve or eighteen months) there is a need for an AFL USO? Please provide reasons to support your view.	27
3	What is your view on whether the interim period should be twelve or eighteen months? Which period is the most appropriate? Please provide reasons to support your view	27
4	Do you agree with ComReg's preliminary view that the most appropriate approach is to designate Eircom for the interim period commencing 1 July 2014? Please provide reasons to support your view.	27
5	Do you agree with ComReg's preliminary view that the current scope of the AFL USO continues to be appropriate for the interim period? Please provide reasons to support your view.	27
6	Do you agree with the text of ComReg's Draft Decision Instrument in Annex 3. Please provide reasons to support your view	27

## Part 2

- 8.6 **8 August 2014** - The deadline for responses in respect of **Part 2** – (a) Preliminary Consultation on the future scope and designation of AFL USO including any submissions regarding the (b) call for expressions of interest in relation to being a future AFL USP after the interim period.

No	Question	Page
7	In the context of the future scope of AFL for the three to five years after the interim period, do you agree with ComReg's preliminary view in respect of the current Reasonable Access Threshold ("RAT") on the USP(s)?  Please give reasons to support your point of view	32
8	In the context of the future scope of AFL for the three to five years after the interim period, do you agree with ComReg's preliminary view that it is not appropriate to alter FIA?  Please provide reasons to support your view	36
9	In the context of the future scope of AFL for the next three to five years after the interim period, do you agree with ComReg's preliminary view not to include Broadband in the scope of AFL USO?  Please provide reasons to support your view.	36
10	In the context of the future scope of AFL for the three to five year period after the interim period, do you agree with ComReg's preliminary view that the QoS performance targets should remain unchanged with consideration of other aspects in respect of the provision of AFL USO?  Please give reasons to support your point of view.	41
11	In the context of the future scope of AFL for the three to five year period after the interim period, do you agree with ComReg's preliminary view with respect to Geographically Averaged Pricing ?  Please give reasons to support your view.	44
12	In the context of the future scope of AFL for the next three to five year period after the interim period, do you agree with	48

	ComReg’s preliminary views in respect of affordability measures, control of expenditure measures and terms and conditions to be provided by the USP? Do you have any further proposals in respect of these areas? Please give reasons to support your view	
<b>13</b>	Do you agree with ComReg's preliminary view that, for the next designation period, the USP for AFL USP should be designated for the entire State?  Please give reasons to support your view.	54
<b>14</b>	Do you agree with the approach and conclusions in this draft regulatory impact assessment? Please give reasons to support your view	65

# Annex: 3 Draft Decision Instrument

## Decision Instrument for the provision of Access at a Fixed Location (Part 1 (b))

### 1 Statutory functions and powers giving rise to this decision instrument

- 1.1 This Decision and Decision Instrument, made by the Commission for Communications Regulation (“ComReg”), relates to the provision of universal services in the Irish telephony market and is made:
- i. Having regard to sections 10 and 12 of the Communications Regulations Act 2002 (“the Act of 2002”);
  - ii. Pursuant to the functions and powers conferred upon ComReg under and by virtue of Regulation 7(1) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“the Regulations”);
  - iii. Having regard to Regulation 3 of the Regulations;
  - iv. Having, where appropriate, pursuant to section 13 of the Communications Regulation Acts 2002 to 2011 complied with the policy directions made by the Minister for Communications, Marine and Natural Resources<sup>[1]</sup>
  - v. Having taken account of the representations of interested parties submitted in response to ComReg document No. 14/48 and
  - vi. Having regard to the following analysis and reasoning set out in ComReg document No. [-].

### 2 Designation of a Universal Service Provider(s)

#### Provision of Access at a Fixed Location

- 2.1 In accordance with Regulation 7 of the Regulations, Eircom Limited and its subsidiaries, and any undertaking which it owns or controls, and any undertaking which owns or controls it and its successors and assigns (“Eircom”) is hereby designated as the Universal Service Provider (“the USP”) for the purpose of complying with the following obligations, as provided for by Regulation 3 of the Regulations.

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<sup>[1]</sup> Policy Directions made by Dermot Ahern TD, then Minister for Communications, Marine and Natural Resources, dated 21 February 2003 and 26 March 2004.



- 2.2 The USP shall satisfy any reasonable request to provide at a fixed location:
- i. Connections to the public telephone network; and
  - ii. Access to publicly available telephone services.
- 2.3 The USP shall comply with the requirements in relation to the obligations referred to in section 2.2 hereof, as set out in ComReg Decision D9/05<sup>100</sup>.
- 2.4 The USP shall comply with the requirements in relation to the obligations referred to in section 2.2 hereof, as set out in ComReg Decision D02/08<sup>101</sup>.

### **Geographically Averaged Pricing**

- 2.4 In accordance with Regulation 8(3) of the Regulations, Eircom, as the USP shall apply geographically averaged prices throughout the State for the services referred to in this Decision.

### **Control of Expenditure**

- 2.5 In accordance with Regulation 9 of the Regulations, Eircom, as the USP, shall do the following:
- Provide selective call barring facilities for outgoing calls to national, mobile, international and premium rate numbers. The call barring facility in respect of premium rate numbers shall be provided free of charge to users;
  - Maintain and publish its scheme to allow for the phased payment of connection fees; and
  - Maintain and publish its disconnection policy in connection with non-payment of bills.

## **3 Effective date and duration**

- 3.1 This Decision and Decision Instrument is effective from 1 July 2014 to [30 June 2015 or 1 December 2015].

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<sup>100</sup> Provision of access at a fixed location – connections to public telephone network and provision of functional internet access, dated 7 September 2005.

<sup>101</sup> Decision Notice – Response to consultation on Eircom’s Universal Service Obligation – Quality of Service Performance Targets, dated 28 May 2008.