



Commission for
Communications Regulation

Universal Service Obligation- Measures in relation to Text Relay Service

Submissions received from respondent

Submissions Document

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**An Coimisiún um Rialáil Cumarsáide
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1 Eircom Group.

1 Introduction

Before addressing the substance of the consultation eircom would like to air its concerns regarding the consultation process ComReg has conducted. The current designation in respect of Text Relay Service (TRS) was imposed by ComReg on 7 July 2014 (the 2014 Decision¹). The 2014 Decision set an expiry date of 30 June 2015. It is therefore disappointing that ComReg did not issue a further consultation in respect of the future TRS until 5 March 2015 (ComReg 15/21). This has delayed progress in moving away from the legacy USO framework to consideration of the merits or otherwise of a universally provided text relay service by all undertakings.

Nonetheless, ComReg set a deadline of 7 May 2015 for responses to ComReg 51/21. ComReg has taken in excess of five weeks to merely summarise the responses to that consultation. This in turn has resulted in a very short consultation period for this consultation, as noted at paragraph 9 of the consultation, giving rise to the following issues:

- The current consultation period, in effect 9.5 working days, is incredibly short. In eircom's view consultation periods should be at least 4 weeks. Shorter periods may be justified in the case of a very serious issue which has just arisen and requires urgent attention.
- The consultation period is short because the current Designation on eircom expires in four days' time on 30 June.. eircom does not accept this as valid justification for an incredibly short consultation period. The expiration date was established by ComReg itself almost a year ago and ComReg was obviously aware of it in its planning. This provides eircom with little confidence with respect to ComReg's intentions to complete its proposed review in the next 12 months.

eircom is concerned by the lateness in the day of this consultation and the two other parallel consultations (ComReg 15/51 and ComReg 15/52) related to Universal Service Obligations (USO) regarding measures for disabled users. It has been an unfortunate feature of the USO regime in recent years that a number of important consultations have been scheduled by ComReg close to expiry dates leaving no real opportunity for meaningful consideration by stakeholders. Indeed in the current situation ComReg has allowed itself 2.5 working days to consider the responses to this consultation before deciding whether to let the current Designation lapse on 30 June or impose a new Designation. eircom expects that proper consideration will be given by ComReg to the views of respondents.

¹ Decision D09/14, ComReg 14/70

In its response to ComReg 15/21 eircom supported the principle that all undertakings should be subject to the same obligations where there is an equivalence of access measure in relation to disabled users while questioning the justification for the mandated provision of TRS as such an equivalence measure. eircom also highlighted the importance of ensuring that a significant consideration among the options presented to ComReg at that time was the lifting of the text relay USO from eircom. The protracted nature of the current review serves to unduly prolong this USO imposition on eircom.

In questioning the justification for text relay in general, eircom highlighted the increasing choice in telecommunications media including SMS and a myriad of Over the Top (OTT) data applications which are acting as a substitute for TRS. This was coupled with estimates that significant capital and operational costs would be incurred in establishing a TRS meeting the specifications set out in the consultation document ComReg 15/21.

eircom also analysed the potential demand, highlighting that a large portion of the potential user base as identified by ComReg are users that are likely (e.g. with the support of hearing aids) to use mainstream communications media, thereby rendering them unlikely to use text relay. These factors when coupled with the fact that current text relay usage is extremely low and decreasing raise significant doubts as to whether the proposed text relay proposal can withstand a thorough cost benefit analysis.

In light of the above, eircom calls for an accelerated review that thoroughly analyses demand and supply side aspects of the needs of disabled end users along with the costs of the various proposals with a view to promptly concluding the matter.

2 Response to Consultation

Q. 1 Q. 1 Are there any further issues, (in addition to responses already received as set out in Section 2) in respect of ComReg's preliminary view that it is appropriate to extend the current US TRS obligations on Eircom for a period of up to 12 months? Please provide detailed reasons and supporting evidence.

Aside from the administrative issues on ComReg's part that have been set out in the introduction to this response, eircom has identified three significant issues. These relate to USO funding, business planning with respect to text relay services and the text of the draft Decision Instrument.

USO Funding

In section 4.5 of The Regulatory Impact Assessment (RIA) of the current consultation, ComReg states:

“in light of the net cost claimed by Eircom relating to TRS for 2013-2014 was less than €50,000, ComReg is of the preliminary view that there is no impact, of designating Eircom, on other service providers including in terms of funding of any net cost, as relevant.”

The suggestion that the imposition of a cost of less than €50,000 on eircom as the USP would have no impact on other service providers presupposes that there is no possibility of eircom receiving industry funding for its USO activities. Such a conclusion is in direct conflict with eircom’s rights to request and receive funding under regulation 11 and 12 of the Universal Service and Users’ Rights Regulations² and would appear to indicate that ComReg has already reached a decision on eircom’s applications for funding for 2010/11, 2011/12, 2012/13 and 2013/14. eircom urgently seeks assurances from ComReg that it has not reached any prior conclusions in respect of these applications and any future applications for USO funding.

Business Planning

Despite having visibility of the diminishing demand for text relay services for a number of years and having rolled over the USO obligation to provide text relay services for 12 months in 2014, ComReg is now seeking to roll over the obligation for a further 12 months with no assurance that a further designation will not follow in July 2016. This piecemeal regulation is not consistent with prudent business practice, operates against the principle of regulatory certainty and is not proportionate on ComReg’s part.

eircom is currently reviewing the systems that support its text relay platform and as set out in its response to ComReg 15/21, ComReg must consider among the options presented to it, the possibility that eircom may no longer be providing a text relay call centre platform or text relay at all in the event that another entity is designated or an alternative TRS supply model is established. If we experience further delays similar to those witnessed to date in the review of the future of text relay services, eircom could be left with a stranded investment in continuing to support a text relay solution that is no longer required, either because it has been superseded or deemed obsolete. This in turn will trigger a further application for funding caused by a lack of planning on ComReg’s behalf.

As set out in the introduction to this response, the current review needs to be expedited in order to avoid an undue USO imposition on eircom and in furtherance of the principle of efficiency which lies at the heart of the USO regime³.

² European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011

³ Schedule 2 Part A of SI337 of 2011 states *“National regulatory authorities are to consider all means to ensure appropriate incentives for undertakings (designated or not) to provide universal service obligations cost efficiently.”*

Text of the draft Decision Instrument

Without prejudice to eircom's position that a further designation on eircom is not justified. eircom has reviewed the text of the draft Decision Instrument. The Section numbering of the draft Decision Instrument is incorrect. There are two Sections listed as Section 3. We assume the latter Section 3 is in fact Section 4 and we refer to it accordingly. eircom takes exception to Section 4 of the draft Decision Instrument. Section 4 seeks to preserve the USO regime that was in place prior to the proposed decision. However D09/14 is a time bound Decision which will expire on 30th June 2015. As such Section 4 should be deleted as it is not lawful.

~~"4. CONTINUATION OF OBLIGATIONS~~

~~All other obligations imposed on the USP by ComReg in relation to its universal service obligations, which were immediately in force prior to the effective date of this Decision and Decision Instrument, shall continue to have full force and effect."~~