



Office of the Director of  
**Telecommunications  
Regulation**

## **Designation of Universal Service Provider**

### **Decision Notice D3/99**

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## 1. Introduction

The Director of Telecommunications Regulation (“the Director”) is responsible for the regulation of the Irish telecommunications sector in accordance with national and EU legislation. One of the Director’s functions is to determine what organisation(s) should be designated as the provider of Universal Service in the telecommunications market.

The Revised Voice Telephony Directive<sup>1</sup> and the Irish regulations transposing the Directive<sup>2</sup> set out a series of measures aimed at ensuring that all reasonable requests for access to the fixed public telephone network and provision of telephone services at a fixed location are met. Universal service is defined in the Directive as

*“a defined minimum set of services of specified quality which is available to all users independent of their geographical location and, in the light of specific national conditions, at an affordable price”*

The Director is responsible under the Regulations for the designation of an operator or operators or other persons as appropriate as having an obligation to provide universal service or any element thereof. The first such designation(s) must be made by the 14<sup>th</sup> of May 1999.

**Section 2** of this paper outlines the background, including the legislative background to the universal service obligation. **Section 3** sets out the nature of the universal service obligation and **Section 4** states the universal service designation for each element of universal service. **Section 5** describes the further steps that may be taken under the legislation, including the options for establishing a funding mechanism, if required. **Section 6** summarises the conclusions of the paper and sets out relevant topics on which future consultations will take place.

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<sup>1</sup> Directive 98/10/EC of the European parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment.

<sup>2</sup> S.I. No. 71 of 1999, European Communities (Voice Telephony and Universal Service) Regulations, 1999

## 2. Legislative Background

The Office of the Director of Telecommunications Regulation (“ the ODTR”) was established in 1997 under the terms of the Telecommunications (Miscellaneous Provisions) Act, 1996 (“the 1996 Act”). The Act transferred to the Director a range of powers previously held by the Minister for Transport, Energy and Communications (now Public Enterprise).

Under the terms of the Postal and Telecommunications Services Act, 1983 (“the 1983 Act”), Telecom Éireann had the exclusive right to offer, provide and maintain telecommunications services within the State. In accordance with section 14 of the 1983 Act, Telecom Éireann was charged with meeting all reasonable requests for service. This in effect constituted an obligation to provide universal service. This section of the 1983 Act is repealed with effect from 14<sup>th</sup> May 1999.

Since the 1983 Act, a number of EU Directives have been adopted and transposed into Irish law. The relevant Directives and Regulations are:

- Directive 97/33/EC of 30 June 1997 of the European Parliament and of the Council on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP).
- Directive 98/10/EC of the European Parliament and of the Council on the application of Open Network Provision (ONP) to Voice Telephony and on Universal Service for Telecommunications in a Competitive Environment.
- European Communities (Application of Open Network Provision to Voice Telephony) Regulations, 1997 (S.I. No. 445 of 1997), transposing Directive 97/33/EC.
- European Communities (Voice Telephony and Universal Service), Regulations, 1999 (S.I. No. 71 of 1999), transposing Directive 98/10/EC.

As a newly competitive environment develops in telecommunications, the availability of a uniform set of minimum telecommunications services to all consumers has been identified as an important priority. The legislation described above formally identifies this concept of “universal service”, specifies the minimum set of services that should be included in that concept and provides a mechanism for the designation of organisation(s) to provide the service.

Of particular importance are the European Communities (Voice Telephony and Universal Service) Regulations, 1999 (“the Voice Telephony Regulations”) that were signed into law as S.I. No. 71 of 1999 on 25<sup>th</sup> March 1999, and which came into effect on the 15<sup>th</sup> April 1999.

Under the terms of these Regulations, the Director is obliged to designate one or more than one fixed operator, or other person as the case may be, as having an obligation to provide universal service or any element thereof. This designation must be made within thirty days of the coming into effect of the Regulations, that is by 14<sup>th</sup> May 1999.

### 3. Nature of Universal Service Obligation

#### 3.1 Overview

There are three elements of universal service defined in the Voice Telephony Regulations. Briefly, these are:

- Access to the fixed network and services,
- Directory Services, and
- Provision of Public Pay Telephones.

The Director is required to designate a fixed operator or operators, or other person as the case may be, to provide each of these services throughout the State. The person designated to provide network access must be a fixed operator. Another appropriate person may be designated in the case of the other services.

A fixed operator or person designated by the Director is required to maintain affordable services for users, in particular those in rural and high cost areas and vulnerable groups of users, such as the elderly, those with disabilities, and those with special needs.

#### 3.2 The Nature of the Services

##### 3.2.1 Connection to the Fixed Public Telephone Network and Access to the Fixed Public Telephone service

A fixed operator designated as having a universal service obligation shall “*ensure that... any request, in so far as the fixed operator considers it reasonable, by a person for connection to the fixed public telephone network at a fixed location and access to fixed public telephone service, is met*”<sup>3</sup>. The Director may issue directions to a designated fixed operator in relation to the reasonableness of requests for connection to the network and access to services covered by the designation, and the terms under which connection and access may be provided. Such directions may also require the operator to provide access where a refusal would be unreasonable. Where a request for connection or access is turned down, there is a right of appeal to the Director.

A connection to the public fixed telephone network must be capable of allowing users to make and receive national and international calls, enabling speech, facsimile and data communications. Such a connection must be capable of transmitting data via modems at 2,400 bits per second<sup>4</sup>.

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<sup>3</sup> Regulation 9(1) of the European Communities (Voice Telephony and Universal Service), Regulations, 1999 (S.I. No. 71 of 1999)

<sup>4</sup> Annex I (Part 1) of Directive 97/33/EC of 30 June 1997 of the European Parliament and of the Council on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP).

### 3.2.2 Provision of Directory Services

A fixed operator, or other person as the case may be, designated as having a universal service obligation for the provision of directory services must, *inter alia*,

- ensure that one or more subscriber directories, setting out all subscribers of public telecommunications networks, including those with fixed, mobile and personal numbers, and who have not refused to be included in such directories, are available to users of any such networks in a form approved of by the Director, whether printed or electronic, or both, and are updated at least once in each year.
- keep a record of all subscribers in the State, including those with fixed, mobile and personal numbers, and who have not refused to be included in that record, and allow access to any information contained in such record to any person requesting such information.

### 3.2.3 Provision of Public Pay Telephones

A fixed operator, or other person as the case may be, designated as having a universal service obligation must provide public pay telephones in sufficient numbers to satisfy all reasonable needs for such services. There is provision for the Director, following consultation, to issue directions on the number of public pay phones required.

## 3.3 The Director's Functions

In accordance with the Voice Telephony Regulations<sup>5</sup>, the Director is required to designate:

- (a) one or more fixed operator(s), or other person as the case may be, as having an obligation to provide universal service or any element thereof,
- (b) the geographic area or areas of the State, which may include the whole of the State or any part thereof, within which the universal service obligation or any element thereof shall apply, and
- (c) the services to which the designation refers which shall be one or more of the services set out in section 3.1.

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<sup>5</sup> Regulation 3(2) of the European Communities (Voice Telephony and Universal Service), Regulations, 1999 (S.I. No. 71 of 1999).

## **4. Designation**

### **4.1 Overview**

The three elements of universal service for which a designation is required are set out in section 3.1.

In making the designation, the Director is required to take into account the ability of a designated fixed operator or other person to satisfy all or part of the universal service obligation. She may also take into consideration the willingness of such a fixed operator or other person to provide all or part of the universal service obligation, and any other criteria which she considers relevant.

In accordance with the legislation the Director is obliged to make the designation(s) by 14<sup>th</sup> May 1999. This is particularly important as the historical obligation on Telecom Éireann to provide universal service will be repealed effective from 14<sup>th</sup> May 1999. The purpose of making a universal service designation is to ensure the continued availability of essential telecommunications services to end users. The Director considers it important that there be no gap between the statutory obligation on Telecom Eireann pursuant to section 14 of the 1983 Act and a new designation.

Given the short timescale afforded to the Director to implement this legislation, it has been necessary to rely on readily available high-level market information in relation to market share. In addition, it has not been possible for the Director to consult on the designation in advance of making it. The Director reserves the right to carry out further market studies, public consultations or such other measures as she considers appropriate in relation to this designation, and may, in accordance with the legislation, amend, remove or make new designations as appropriate.

### **4.2 Individual Designations**

#### **4.2.1 Connection to the Fixed Public Telephone Network**

In 1998, the ODTR measured the market share of Telecom Éireann in the fixed telephone and network services market as 96%<sup>6</sup>. No other operator held a significant market share. The ODTR intends to examine market shares again in 1999, but this information is not yet available. However, experience in other countries shows that issues such as the expense and time required to build alternative fixed networks and consumer resistance to changing operators constitute significant hurdles for new operators who wish to enter the market. In the U.K. for instance, the market has been open to competition for over 10 years and British Telecom still retains approximately 85% of fixed-line customers.

It is therefore reasonable to assume that, since the measurement in 1998 of Telecom Éireann's market share, Telecom Éireann still retains the greatest share of the fixed telephone and network services market. It is also true that, as the incumbent

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<sup>6</sup> ODTR Decision Notice D4/98: Significant Market Power in the Irish Telecommunications Sector.

telecommunications provider, only Telecom Éireann has a truly nationwide fixed telecommunications infrastructure capable of providing all reasonably requested connections. Furthermore, Telecom Éireann has considerable experience in providing, thus far, universal service in respect of connection to the fixed public telephone network and access to the fixed public telephone service.

The Director therefore designates Telecom Éireann as the organisation having the obligation to ensure that “any request, in so far as the fixed operator considers it reasonable, by a person for connection to the fixed public telephone network at a fixed location and access to fixed public telephone services, is met”.

### 4.2.3 Directory Services

Directory services, unlike ownership and operation of fixed networks, is an area where there are potentially lower hurdles to market entry and where competition has therefore the potential to develop more quickly. There are two elements to the provision of Directory services that are set out in the legislation:

- The provision of directory services (compilation of and access to directory information), and
- The provision of comprehensive public directories in printed or electronic form.

#### 4.2.3.1 Access to Directory Services

The Director recognises the importance of access to directory services and has made provision in the licensing regime that was introduced in December 1998, to ensure such access is enabled. The General Telecommunications Licence<sup>7</sup> requires all licensees to (subject to data protection laws):

- ensure that customers have access to directory information services offered by at least one Directory Information Service Provider,
- maintain a complete and accurate database of its customers' numbers, and
- make the information available to and co-operate with all Directory Information Service Providers in the provision of directory information;

These requirements **enable** the provision of comprehensive directory services to end users. The legislation now requires that an **obligation** be placed on one organisation or person to provide the service.

At the current stage of development of competition in the Irish market, Telecom Éireann, in line with its high market share in the fixed telephone services and network market, currently has by far the largest allocation of numbers from the national numbering plan. Telecom Éireann therefore has available to it the largest directory data-base in the State. Through its mobile subsidiary, Eircell, Telecom Éireann also has the largest allocation of mobile telephone numbers in the state. Finally, Telecom Éireann has significant experience in the provision of universal directory services for the fixed and (through its subsidiary Eircell), the mobile networks.

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<sup>7</sup> Condition 6.10 of the Pro-forma General Telecommunications Licence, ODTR Document No. 98/50R (available on the ODTR website [www.odtr.ie](http://www.odtr.ie))



Given the timescales available to her, the ability of Telecom Éireann to provide the relevant service, and the need to ensure continued services to end users, the Director considers it reasonable at this time to designate Telecom Eireann as the organisation required to provide this element of universal service. However, having regard to the development of competition in the provision of these services, the willingness of other operators to provide this element of universal service, and any other relevant issues, the Director will consider this designation further and proposes to consult on this, and other matters related to directory services in the near future (see section 6 for further details).

The Director therefore designates Telecom Éireann as the organisation that has the obligation to “keep a record of all subscribers in the State, including those with fixed, mobile and personal numbers, and who have not refused to be included in that record, and allow access to any information contained in such record to any person requesting such information”.<sup>8</sup>

#### **4.2.3.2 Public Directories**

The second aspect of this element of universal service is the provision of directories, in electronic or printed form containing all relevant subscriber numbers, both mobile and fixed. Once again, the provision of directories is a service where the hurdles to market entry may be low. In fact a number of local directory services are currently available in addition to the national directory provided by Telecom Eireann.

The requirement of the legislation is for the publication and availability of directories for all numbers, fixed and mobile. For the same reasons as those set out in paragraph 4.3.2.1, Telecom Eireann is best placed to fulfil this obligation at this time, i.e.; it has in its possession the bulk of relevant directory information and it has experience in the provision of such directories. The Regulations<sup>9</sup> also provide the means of obtaining the information from other operators i.e. all General Telecommunications licence holders and holders of mobile licence must, on request, provide the designated operator with the information required by it to fulfil its obligations. However, having regard to the development of competition in the provision of these services, the willingness of other operators to provide this element of universal service, and any other relevant issues, the Director will consider this designation further and proposes to consult on this, and other matters related to directory services in the near future (see section 6 for further details).

The Director therefore designates Telecom Éireann as the organisation that has the obligation to “ensure that one or more subscriber directories setting out all subscribers of public telephone networks, including those with fixed, mobile and personal numbers, and who have not refused to be included in such directories, are available to

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<sup>8</sup> Regulation 10(2)(b) of the European Communities (Voice Telephony and Universal Service), Regulations, 1999 (S.I. No. 71 of 1999)

<sup>9</sup> Regulation 10(3) of the European Communities (Voice Telephony and Universal Service), Regulations, 1999 (S.I. No. 71 of 1999)

users of any such networks in a form approved of by the Director, whether printed or electronic, or both, and are updated at least once in each year<sup>10</sup>

#### **4.2.3 Provision of Public Pay Telephones**

The considerations discussed in section 4.2.1 in relation to the ubiquity of Telecom Éireann's fixed telephone network are relevant in the context of the provision of public pay telephones. As with the obligation to meet request for access to the fixed network, the ability to provide public pay telephones throughout the country is dependent on that ubiquity. For the same reasons therefore, Telecom Éireann is best placed to be able to provide public pay telephones throughout the country.

The Director therefore designates Telecom Éireann as having the obligation to "provide public pay telephones in sufficient numbers, taking into account the population density in the geographic area or areas designated by the Director... to satisfy all reasonable needs for such services throughout such area or areas".<sup>11</sup>

### **4.3 The Geographical Area and Term of the Designations**

The legislation also provides that the Director may specify the geographic area or areas of the State in which the universal service obligation applies to the designated organisation<sup>12</sup>. The telecommunications licensing regime operated by the ODTR applies to the entire geographic region of the State. The designations made by the Director in relation to Significant Market Power<sup>13</sup> also apply to the entire State. Furthermore, as set out earlier, the ODTR is relying on aggregate "high level" market data to inform this designation and that data is not available by any sub-geographic region in the State at this time. The Director therefore considers that it is appropriate that this first designation of providers of universal service should apply to the entire geographic region of the State.

The Director may withdraw a designation or any part thereof, or withdraw a designation in reference to a particular area of the State, provided that prior to the effective date of such withdrawal, she has designated at least one other fixed operator or any other person as having a universal service obligation in respect of the relevant service and/or area(s) of the State. However, there is no specified duration to the designation, and it is at the Director's discretion to review and amend any or all of the elements of the designation.

As already stated, the Director will shortly be initiating the collection of a range of market information that will assist her in carrying out a number of her functions, including re-examining the designation of universal service. In the light of that information, the Director may engage in a consultation exercise on this subject.

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<sup>10</sup>Regulation 10(2)(a) of the European Communities (Voice Telephony and Universal Service), Regulations, 1999 (S.I. No. 71 of 1999)

<sup>11</sup>Regulation 11(1) of the European Communities (Voice Telephony and Universal Service), Regulations, 1999 (S.I. No. 71 of 1999)

<sup>12</sup> Regulation 3(2)(b) of SI No 71 of 1999

<sup>13</sup> Significant Market Power in the Irish Telecommunications Market - Decision Notice D4/98; ODTR Document Number 98/47 (available on ODTR website [www.odtr.ie](http://www.odtr.ie))

However, for the purposes of certainty in the market, the Director does not currently propose to amend or remove the designation in relation to the fixed public telephone network and services and the provision of public pay telephones for one year, that is, before 14<sup>th</sup> May 2000. The Director reserves the right to re-examine this timescale in the light of market developments and her duties and obligations to regulate the market generally.

In relation to the designation for the provision of directory services, the Director considers that there is greater scope in these services for alternative providers to meet the universal service obligation. It is therefore proposed to seek views on these, and other issues related to directory services in the near future. In the light of those views the Director may amend the current designation.

## 5. Costs of the Universal Service Obligation

### 5.1 Application for Costs

Under the terms of the Voice Telephony Regulations:

- The Director must designate a fixed operator or any person to provide universal service, within 30 days of the coming into effect of the Regulations, that is by the **14<sup>th</sup> of May**, and must publish a notice of the designation in the *Iris Oifigiúil* as soon as possible thereafter. Prior to such designation, Telecom Éireann has the responsibility to provide universal service pursuant to section 14 of the Act of 1983.
- Telecom Éireann may submit to the Director a written request for funding for the stated estimated net cost of meeting this obligation in respect of the period starting 1<sup>st</sup> December 1998, and ending on such date as the Director makes her designation, that is from 1<sup>st</sup> December 1998 to 14<sup>th</sup> May 1999. This application should be calculated according to the guidelines set out in Annex III of Directive 97/33/EC. This states that “the cost of universal service obligations shall be calculated as the difference between the net cost for an organisation of operating with the universal service obligations and operating without the universal service obligations”.
- It is further stated that the calculation will be based on costs attributable to elements of the identified services which can only be provided at a loss or under cost conditions falling outside normal commercial standards, and costs attributable to providing the identified services to end-users at a loss or under cost conditions falling outside normal commercial standards including the case where those end-users would not be served by a commercial operator which did not have a universal service obligation. Revenues will be taken into account and all such revenues, and costs, should be forward looking.
- From the date of designation, a designated organisation may submit to the Director a written request for funding for the estimated net cost (in line with the principles outlined above) of the universal service in respect of the year commencing on the day the Director makes her designation. Such request must be submitted not more than **30 days** after receipt of written notice of the Director’s designation. Therefore, following this designation, it is open to Telecom Éireann to submit such a request for the year from 14<sup>th</sup> May 1999 to 13<sup>th</sup> May 2000.
- Should a request for funding be received, the Director will assess whether the universal service obligation in fact represents a net cost to the designated organisation, and will determine whether the net cost represents an unfair burden on such organisation. In doing so Director will take into account:
  - the information provided by the designated organisation in the request for funding, including the calculation of net cost,

- any audit which the Director may undertake on the calculation provided by the designated party,
- responses received within any time period specified by the Director pursuant to any relevant public consultation conducted by the Director,
- any obligations on the designated organisation(s) relating to availability and affordability of services, or to specific measures to be taken for disabled users and users with special social needs as stated laid out in the regulations,
- any other information the Director considers relevant.

Should any request for funding be received the Director will examine the request having regard to the legislative requirements summarised above and may conduct a consultation process on the estimated costs and her examination thereof.

## **5.2 Funding Options**

If, following the process outlined above, the Director makes a determination that the universal service obligation represents a net cost on the designated organisation, and where in the opinion of the Director the net cost represents an unfair burden, the Director is required to establish a mechanism for sharing the net cost of universal service. In such an event, the Regulations provide two options for the nature of the mechanism to be established. These are:

- (a) a fund administered by the Director and, at the discretion of the Director, funded by licensed telecommunications operators. The fund would reimburse the designated organisation in respect of the net cost incurred;
- (b) a supplementary charge added to the charge for interconnection to the public telecommunications network or public telecommunications services of the designated organisation.

Should the Director conclude that any universal service cost constitutes an unfair burden, she will consult on the funding options before making a decision on any preferred mechanism.

## 6. Conclusion

### 6.1 Designations

In conclusion, Telecom Éireann is designated by the Director in accordance with Regulation 3(2) of the European Communities (Voice Telephony and Universal Service) Regulations, 1999, as having the obligation to:

- ensure that “any request, in so far as the fixed operator considers it reasonable, by a person for connection to the fixed public telephone network at a fixed location and access to fixed public telephone services, is met”,
- “ensure that one or more subscriber directories, setting out all subscribers of public telecommunications networks, including those with fixed, mobile and personal numbers, and who have not refused to be included in such directories, are available to users of any such networks in a form approved of by the Director, whether printed or electronic, or both, and are updated at least once in each year, and
- keep a record of all subscribers in the State, including those with fixed, mobile and personal numbers, and who have not refused to be included in that record, and allow access to any information contained in such record to any person requesting such information”,
- “provide public pay telephones in sufficient numbers, taking into account the population density in the geographic area or areas designated by the Director... to satisfy all reasonable needs for such services throughout such area or areas”.

This obligation is applicable in the whole of the State.

### 6.2 Further consultations

#### 6.2.1 Directory Services

The Director proposes to hold a public consultation on directory services, including the issues set out in section 4.2.3 of this paper. This consultation paper will be issued in the near future and will request views on, *inter alia*, the current market for directory services, the willingness of any organisation to provide these services universally, the ability of those organisations to provide such services, the likely extent and pace of development of competition in these markets and such other issues as may be of relevance. If any interested party wishes to submit suggestions as to the scope of this consultation, views should be sent to:

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### **6.2.2 Other elements of USO**

Following a larger exercise in gathering market data in relation to the wider market, the Director may consult in the future on other elements of universal service and the designations currently set out in this paper.

### **6.2.3 Funding of USO**

If, following this designation, the Director receives a request for funding of the Universal Service Obligation, she may, having regard to her examination of that request consult on the request.

If, following the examination of any request for such funding, the Director proposes to introduce a funding mechanism in relation to USO, she will carry out a public consultation on the funding mechanism that may be put in place.

/ENDS