



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Universal Service

Provision of voice only connections and voice communications services at a fixed location

Submissions to Consultation

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Submissions Received from Respondents

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alto

alternative operators in the communications market

**Consultation: Universal Service Requirements VFL USO - Ref:
23/02**

Submission By ALTO

Date: February 21st 2023

ALTO is pleased to respond to the Consultation: Universal Service Requirements Provision of voice only connections and voice communications services at a fixed location (VFL USO) – Ref: 23/02.

ALTO welcomes this opportunity to comment on this important consultation.

Preliminary Remarks

ALTO is generally positively disposed to ComReg's conclusions in this consultation, with some small exceptions, and areas for concern or unnecessary risk – such as a lack of a significant range of wholesale VoIP offerings, an over reliance on FCS solutions versus copper, and industry concerns over extremely time lagged USO funding applications which remain subject to various legal appeals and under consideration.

We remark that the USO funding dynamic must remain in ComReg's focus for the time being and for the clear social and adequacy of reasons and rationale clearly outlined in the Consultation paper.

ALTO notes that the industry is undergoing a process of change to more modern technologies and the positions of new entrants such as NBI and Siro are clearly reflected in the analysis underpinning ComReg's review and consultation work. The pace of that change is not perhaps as swift as industry might have expected when addressing this topic in 2021.

Response to Consultation Questions:

Q. 1 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider in the context of a VFL services USO? Please give reasons to support your view.

A. 1. ALTO notes the position as analysed and set out by ComReg in the consultation paper. One very significant issue to new entrant and alternative operators is the lack of a variety of wholesale VoIP product offerings which might could accommodate the range of possible market entry strategies – this issue has been highlighted to ComReg previously by ALTO. Ireland has remained at the rear of developments in this area for some time and ComReg should seek to remediate the position possibly within wholesale markets.

Separately, ComReg should not overestimate the position of Virgin Media in the context of the supply side trends, a cautious approach to announcements and DOCSIS network for voice should be adopted and maintained.

At paragraph 80 of the Consultation Paper ComReg states that *“Next generation broadband networks may eliminate the need for service providers to maintain separate voice and data networks. They potentially facilitate economies of scope and cost savings, where both voice and data are provided over a single broadband network”*. While entities such as, Virgin Media and SIRO have signalled their intention to invest in next generation broadband networks over the next few years, planned and announced investment is not always delivered, potentially for reasons beyond the control of those whose stated intention it is to make such investments. At a time of great economic uncertainty, caused by a build-up of factors from Brexit, Covid-19, the war in Ukraine and now the cost of money with inflation and increased interest rates, there is uncertainty as to how much companies will be able to deliver on their intended investments. Continued investment in nascent projects is now not inevitable.

ALTO agrees with ComReg's conclusion set out at paragraph 83. It is a correct statement to state that those networks cannot yet be relied on to ensure the full availability of VFL services nationally.

Q. 2 Do you agree or disagree with ComReg's review of the relevant demand trends? Please give reasons to support your view.

A. 2. ALTO agrees with the ComReg review of the relevant demand trends. ALTO caveats its agreement by highlighting the limited range of wholesale VoIP offerings in the market. Assuming that VoIP or SIP services are more widely available than they are, can be an issue in the presentation of ComReg's analysis.

Q. 3 In your opinion are there other relevant factors in relation to demand trends which ComReg should consider? Please give reasons to support your view.

A. 3. ALTO submits that there appears to be a limited range of wholesale VoIP offerings in fibre only areas. Therefore, a product with specific profiles and pricing that fulfil the requirements of USO but don't necessarily require a broadband service to be the anchor service should be considered fully by ComReg. This level of detailed analysis is not clear from the demand trends as presented in the consultation paper.

Q. 4 Do you agree or disagree with ComReg's preliminary view that there is a requirement to impose new specifications for reasonable access requests for existing end-users? Please give reasons for your answer.

A. 4. ALTO agrees with ComReg's preliminary view that there is a requirement to amend the current and impose now reasonable access requests process. As stated previously, we do not believe that FCS is a viable alternative to copper. Yet this is a message that seems to be emerging again on the face of the consultation paper, albeit at relatively low levels at this time. A cautionary approach should be taken to more FCS connections on the public telephone network.

Q. 5 Do you agree or disagree with ComReg’s preliminary view that there is a requirement to re-impose threshold level applicable to new reasonable access requests, as set out in D09/21? Please give reasons for your answer.

A. 5. ALTO agrees with ComReg’s preliminary view that there is a requirement to re-impose threshold levels applicable to new reasonable access requests based on very clearly presented market evidence. The market has not moved on quickly enough to remove or jettison existing regulations.

Q. 6 Do you agree or disagree with ComReg’s approach to control of expenditure measures? Please provide reasons for your answers.

A. 6. ALTO agrees with ComReg’s preliminary views on control of expenditure measures. ALTO does so on the basis that this matter is likely to require a need for review in the coming years. However, given the risks associated with social exclusion and low implementation costs, ALTO agrees with the position suggested by ComReg currently.

Q. 7 Do you agree or disagree with ComReg’s preliminary view that there is a continued need for a VFL services USO, post 30 June 2023? Please provide reasons for your answers.

A. 7. ALTO agrees with ComReg’s preliminary view that there is a continued need for a VFL services USO, post 30 June 2023, as there is currently no other mechanism, programme, or scheme in place to ensure that the basic telephony at a fixed location. ComReg’s own evidence and clear reporting underpins this requirement. ALTO suggests that maintenance of the status quo ante is important given eircom’s clear plans to retire the copper network, as is set out in the Consultation paper and elsewhere.

Q. 8 Do you wish to express an interest in being a USP for any future provision of voice only connections and voice communications services VFL under the USO? Please set out NON-CONFIDENTIAL your reasons and any other information you deem relevant.

A. 8. As a representative organization this question is not relevant to ALTO. ALTO has advised its individual members that if they wish to express an interest they should directly respond to the Consultation.

Q. 9 ComReg is of the preliminary view that, absent of: (i) receiving any expressions of interest, or (ii) the availability of an Alternative Infrastructure provider with an Equivalent Service, that is willing to serve end-users commercially; that the current USP, eir, may be best placed to be the USP for voice only connections and voice communications services post 30 June 2023. Please provide reasons for your answer.

A. 9. ALTO agrees with ComReg's preliminary view that the current USP, eir, may be or, even is best placed to continue to be the USP for voice only connections and voice communications services post 30 June 2023. ALTO believes that in eircom's unique position of having and maintain copper network, it is sensible for ComReg to re-designate the USP as it has done previously.

Q. 10 Do you agree or disagree with ComReg's preliminary view that geographical scope of any proposed designation should be the whole of the State? Please set out reasons for your answer.

A. 10. ALTO agrees with ComReg's preliminary view that geographical scope of any proposed designation should be the whole of the State. This is self-explanatory, and we note the complexities arising should partial designations be made or sought. That would not be an ideal situation for ComReg or industry to be placed in.

Q. 11 Do you agree or disagree with ComReg's preliminary view that the designation period should be for a maximum period 5 years, unless otherwise amended?

A. 11. ALTO agrees with ComReg's preliminary view that the designation period should be for a period of 5 years unless otherwise amended. ALTO has previously suggested that any designation period should only commence after ComReg has

fully deliberated about copper switch-off which we note remains in the ComReg work programme at this time.

ALTO notes that the eir Whitepaper about copper switch-off, as previously published, presents only one view of potential conditions. ALTO has its own views on copper switch-off that has been communicated to ComReg under separate cover.

Q. 12 Do you have any comments or suggestions on the draft Decision Instrument? Please set out your answer in detail.

A. 12. ALTO does not propose to offer any comments on the draft Decision instrument.

Q. 13 Do you agree or disagree with ComReg's draft regulatory impact assessment of the impact of the proposed options? Are there other impacts or details that should be included? Please set out reasons for your answer.

A. 13. ALTO is in broad agreement with ComReg's draft regulatory impact assessment of the impact of the proposed options. ALTO does not suggest any other impacts or details that should be included at this time.

ALTO
21st February 2023

eir Response to ComReg Consultation:

Universal Service Requirements

**Provision of voice only connections and voice communications services
at a fixed location (VFL USO)**

ComReg Document 23/02



21 February 2023



DOCUMENT CONTROL

Document name	eir response to ComReg 23/02
Document Owner	eir
Status	Non-Confidential

The comments submitted in response to this consultation document are those of Eircom Limited and Meteor Mobile Communications Limited (trading as 'eir' and 'open eir'), collectively referred to as 'eir Group' or 'eir'.

Please note that, for the purposes of the Freedom of Information Act 2014 and the Communications Regulation Act 2002 (as amended) and in the context of the eir Group's general rights and obligations, information supplied by the eir Group to you may contain confidential, commercially sensitive or price sensitive information consisting of financial, commercial, technical or other information, whose disclosure to a third party could result in financial loss to the eir Group, could prejudice the competitive position of the eir Group in the conduct of its business, or could otherwise prejudice the conduct or outcome of contractual or other negotiations to which the eir Group is a party.

Accordingly, you are requested to contact a member of eir Group's Regulatory Strategy Team where there is a request by any party to have access to records which may contain any of the information herein and not to furnish any information before the eir Group has had an opportunity to consider the matter.

Executive summary

1. In past Universal Service Obligation (USO) designation consultations, eir has highlighted very significant concerns about the major flaws in the process adopted by the Commission for Communications Regulation (“ComReg”) to designate a Universal Service Provider (USP) and regrettably the current review bears similar flaws.
2. ComReg has failed to acknowledge the altered regulatory context or to consider the relevant issues in any meaningful way and has not presented any quantifiable evidence in support of its position.
3. ComReg has not demonstrated that there is a need to introduce a USO designation for voice only connections and voice communications services at a fixed location (‘VFL serves’).
4. There is no justification for a VFL USO as the market is delivering social inclusion through mobile and other voice services. ComReg has chosen to set aside the significance of mobile telephony despite clear evidence of the substitutability of mobile for fixed voice service (including its own evidence in the context of recent retail fixed telephony service market reviews). . eir notes that ComReg’s Quarterly Key Data Reports reveal a rapid and continuing fall in fixed voice traffic minutes, which have declined by 50% in the last five years. ComReg found in its latest Mobile Experience Survey 2022, that handset ownership is almost universal across the country. The growth in mobile coverage and market penetration along with the decline in fixed voice only connections as evidence by ComReg in this consultation make an overwhelming case in favour of mobile ensuring the universal availability of VFL absent any USO.
5. The importance of mobile in delivering VFL was driven home by the European Commission (EC) Decision on the withdrawal of ComReg’ notified draft measures in the markets for Retail Fixed Telephony Services (RFTS) and Wholesale Fixed Access and Call Origination (FACO) in Ireland (the ‘Withdrawal Decision’)¹. The EC was highly critical of ComReg’s failure to recognise the fact that mobile telephony services (MTS) should be included in the RFTS market. When ComReg addressed the deficiencies of the vetoed market analysis it correctly identified that no operator had SMP in the retail fixed narrowband access network (including calls) due to inter alia the availability of mobile as a substitute. Yet ComReg has repeated the same mistakes in this USO review as it adopted in its initial vetoed review of the RFTS and FACO markets.
6. In this review ComReg also needs to take account of the significance of Over-The-Top (OTT) services which are beginning to displace both fixed and mobile voice services. ComReg has

¹ COMMISSION DECISION of 17.9.2021 pursuant to Article 32(6) of Directive (EU) 2018/1972 (Withdrawal of notified draft measure). Cases IE/2021/2332-2333: markets for retail fixed telephony services and wholesale fixed access and call origination in Ireland (the ‘Withdrawal Decision’).

demonstrated its awareness of this in both its proposed strategy for 2023-2025² and its Mobile Consumer Experience Survey³. This is borne out in the voice minutes trends presented in this consultation response.

7. It is highly regrettable that we must once again highlight that ComReg addresses and seeks views on the components of the USO (Questions 4 and 5) before considering whether there is a need for a VFL USO in the first instance. Furthermore ComReg frames these components squarely in the context of the provision of eir's fixed services both in terms of costs (the €7k threshold) and terminology ("Alternative Infrastructure" means the network of an Undertaking, other than the fixed network of the USP). This terminology immediately rules out mobile or indeed retail providers of VFL that are not vertically integrated with a wholesale network operator. While ComReg has attempted to refer consistently to a hypothetical USP albeit in lexicon of the current USO regime, this thin veil slips on occasion where ComReg references specifically to eir. This is most concerning as it also occurs in the counterfactual discussion at paragraph 202⁴.
8. ComReg has conducted the consultation to a timetable that is fundamentally flawed, inefficient and has significantly discriminated against eir and its interests. This consultation document was issued on 10 January 2023, with a deadline for submissions of 21 February 2023, just over four months before the current designation period expires on 30 June 2023. ComReg's decision to again combine a consultation on the form of any USO while at the same time seeking expressions of interest in combination with the unduly short timeframe, have nullified ComReg's call for expressions of interest from other telecoms operators, which in turn makes ComReg's proposed contingency measure of designating eir as the USP, a foregone conclusion.
9. ComReg has been aware of the expiry date of the current designation for in excess of 18 months and has had adequate time to plan and undertake a proper review and subsequent call for expressions of interest, in a fair and non-discriminatory manner. Given the continued administrative process issues associated with ComReg's USO reviews that have been repeatedly highlighted to ComReg one would question ComReg's own convictions of the relevance of USO and the need for designation more broadly in this modern technology age. The fact that history is repeating itself yet again in this unfair manner suggests that poor management of administrative processes is institutionalised within ComReg, or worse, a cynical attempt is being made to circumvent fair regulatory process contrary to eir's legitimate interests.

⁴ Universal Service - Voice only connections and voice communications services at a fixed location (VFL services) - Consultation and Draft Decision ComReg 23/02 – Para 202 – “ComReg may separately commence a review in respect of establishing mandated VFL USO QoS standards, during any proposed designation period, where ComReg is of the view that eir's actual QoS performance outputs have deteriorated or are likely to deteriorate to an inappropriate level.”

10. Following this inadequate assessment of the availability of VFL and the potential need for a VFL USO and having merely paid lip service to the consideration of alternative USPs, ComReg proposes to adopt and impose upon eir the components of the former Access at a Fixed Location (AFL) USO, virtually unchanged in content and entirely unchanged from a practical perspective. ComReg does propose to introduce criteria for determining whether an existing connection continues to be in scope for USO, following the arrival or identification of an alternative at that location. However this proposal has been constructed by ComReg such that the end-user would have to voluntarily switch to the alternative before the USP obligation would be lifted in respect of that end-user. This renders ComReg's proposal ineffectual and meaningless.
11. Similarly, ComReg has failed to consider that there is no legal requirement to designate any operator as the USP. This includes the fact that there is no legal requirement to designate an operator as the USP from 1 July 2023. ComReg has the power to intervene, at a later stage, to designate a provider of last resort in the unlikely event that market conditions change to the detriment of the current universal availability of VFL including in the context of the upcoming transposition of the European Electronic Communications Code
12. ComReg states its intention to require continued USO QoS reporting. ComReg's proposal to require QoS reporting based on a legacy regime and to historical targets, despite the declining relevance of these reports ignores the fact that VFL QoS is almost entirely determined by the underlying bearer of VFL. Broadband will be the predominant bearer within the next five years and already dominates in the case of new connections. Therefore QoS targets and in particular QoS targets for connections can only be determined in the wider context of Broadband QoS which is contingent on the Minister defining adequate broadband and specifying associated quality standards. ComReg itself notes that customer experience of voice services delivered over VoIP is generally not very different from those delivered over PSTN/fixed voice access. VoIP has not been subject to any QoS requirements to date, so this suggests that there may be no requirement for specific voice QoS for the foreseeable future. As regards existing connections, eir has demonstrated its commitment to maintaining QoS as it has done during its current USO designation which does not entail mandated QoS targets. The time has passed for this precautionary monitoring of QoS which might have been justified for the period immediately after their withdrawal of mandated QoS. ComReg itself recognises that PSTN connections (which are the focus of current USO QoS) are in decline (down 17% between Q4 2020 and Q2 2022) while VoIP is on the increase (up 8% in the same period). ComReg also notes that the number of new standalone fixed voice connection requests received by eir between 2020 and 2022 is very low making both the fault/repair and provisioning targets for legacy VFL services almost entirely irrelevant.

13. The Regulatory Impact Assessment (RIA) is significantly deficient, as it omits options, is devoid of quantitative analysis of the limited options that have been considered and is incoherent in respect of the Reasonable Access Request (RAR) options. As was the case in previous RIAs, this RIA is a qualitative exercise on the part of ComReg which simply repeats many sections of the preceding consultation paper. The absence of any attempt by ComReg to quantify the costs and benefits of its proposals renders the RIA meaningless and puts ComReg in breach of its obligation⁵ to comply with the related ministerial direction⁶.

⁵ Section 13(1) of the Communications Regulation Act 2002

⁶ Ministerial Policy Direction made by the Minister of Communications, Marine and Natural Resources on 21 February 2003. It requires that, before deciding to impose regulatory obligations on undertakings, ComReg must conduct a RIA in accordance with European and international best practice and otherwise in accordance with measures that may be adopted under the "Better Regulation" programme.

Response to consultation

14. eir welcomes the opportunity to respond to this consultation. The consultation process is unacceptably truncated in respect of the call for expressions of interest in fulfilling the proposed USO. Any party seeking to express an interest in being a USP is not being granted a reasonably opportunity to do so. More generally this review constitutes another unjustified fast-track to re-impose an unlawful and unnecessary USO on eir. eir has fundamental objections to the manner in which the ComReg is conducting the consultation for “Universal Service Requirements Provision of voice only connections and voice communications services at a fixed location (VFL USO)” and to the proposals that ComReg now makes in respect of designating and regulating a Universal Service Provider (“USP”).
15. ComReg is seeking to re-impose an outdated USO upon eir under an obsolete regulatory regime. We are on the cusp of a new regime that accounts for the significant changes to the market of the last two decades. Despite the fact that the EECC Regulations are set to be enacted in a matter of weeks, ComReg has seen fit to re-impose an anachronistic five year designation upon eir which artificially parses the broadband and voice USO elements in the new EECC framework.
16. There is no need for a separate voice USO. ComReg has noted in the USO consultation that its role under the new legislative framework in respect of certain aspects of universal service is contingent on the Minister⁷: (i) defining adequate broadband; (ii) specifying associated quality standards; and (iii) requiring ComReg to impose affordability measures. The Minister has not yet taken any of these steps and ComReg should not be pre-empting these steps with a premature USO review. The requirement to conclude the definition of ABB and associated QoS standards has been known since December 2018, therefore this exercise on the part of the Minister should have been completed by now and it would be reasonable to expect that it would not be further delayed by more than a few weeks.
17. ComReg advises that this consultation is limited to universal services for voice only communications at a fixed location. ComReg has not established a sound basis for imposing a voice only USO that would be distinct from a broadband and voice USO. The EECC provides for a USO to satisfy any reasonable request for access to adequate broadband and a voice service together, including the underlying connection at a fixed location with a secondary obligation to provide standalone voice.
18. The EECC brings a long overdue focus on access to broadband combined with voice services. Voice only access is a secondary consideration in the EECC as demonstrated by the fact that

⁷ Minister for the Environment, Climate and Communications.

regulation 70 (4)⁸ refers to the limitation of connection to support voice where requested by a consumer, enterprise or organisation. This clearly envisages a broadband bearer that can be limited to carrying solely voice. This would also logically allow for the provision of broadband over this connection if subsequently requested by the end-user, as would be their right. To impose a USO that involves connections that cannot support broadband merely drives inefficiency, contrary to ComReg's obligations under Regulation 72(4) of the EECC Regulations.

19. ComReg cannot ignore the fact that technological developments have resulted in the market increasingly being served by high speed data services including Next Generation (NG) Fixed and wireless data connections that will soon be the sole bearer for both voice and internet services.
20. Therefore when considering whether there is a need for a USO, ComReg must focus on the availability of such data connections which will be capable of supporting voice services. This is contingent on a USO review in respect of Adequate Broadband (ABB).
21. ComReg has stated that it considers that any justification for the complete withdrawal of the existing USOs would need to be undisputed. This statement suggests that ComReg is entirely oblivious to the fact that the existing USO is distinct from any USO envisaged under the new regulatory framework following the transposition of the Code. Similarly, it is important to highlight that the requirement of the consultation process is not that ComReg is considering withdrawing the USO. Here as a legal requirement ComReg is required to prove that regulatory intervention is necessary and a new designation is required.
22. The information requirement issued by ComReg to eir in November 2022 was described by ComReg as "the counterfactual" and this mind-set is evident also in chapter 4 of the consultation. However, the imposition of any form of USO upon eir beyond 30 June 2023 is the counterfactual. The factual situation beyond 30 Jun 2023 is that there cannot be a USO without objective justification and there is no justification under the EECC for a voice only USO in the absence of a broadband and voice USO in the first instance.
23. In response to ComReg's November 2022 13D information requirement, [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]. This will precede the retirement of the eir copper network over the subsequent years which will see the migration of remaining customers served on copper to modern technologies.

⁸ SI 444 of 2022, Regulation 70.

24. In response to previous USO consultations, eir has repeatedly highlighted ComReg's failure to give due consideration to the extent to which reasonable requests for a connection are already met by connections over mobile communications infrastructure, the majority of which are serviced through standard mobile subscriptions. ComReg itself recognises that "each of the MSPs operating in the State report 4G population coverage levels of at least 98%."⁹ and eir's 5G network now covers over 70% of the population.
25. Having ruled out mobile without any objective justification, ComReg proceeds to review other infrastructure from a networks perspective. All of the largest networks have a wholesale offering and multiple retail service providers are powering their retail offerings from more than one wholesale network. Therefore if a need for a USP can be objectively justified ComReg should give careful consideration to the merit of designating a retail USP with access to multiple fixed networks and or a mobile network hosting multiple retail mobile service providers.
26. Separately, there were just twenty two USO connections over Fixed Cellular Service (FCS) in the fifteen month period from January 2021 to March 2022¹⁰. There is no evidence that these fixed locations could not have been served by a standard mobile connection from a choice of mobile networks. They could certainly have been connected with the aid of mobile repeaters that extend mobile signal indoors where indoor signal may be limited due to the geographic location of a premises and/or building features (e.g. insulation, thick walls), similar to FCS.
27. FCS relies on outdated equipment and is due to be retired as an eir Retail offering when TIS is retired [§< [REDACTED] §<]. Furthermore the FCS model (whereby a fixed geographic phone number is supported by a mobile carrier) has become defunct as mobile termination rates have reduced to such a low level that retail price plans now bundle calls to mobiles along with calls to landlines at no extra cost. This removes any financial basis for end-users favouring a fixed phone number over a mobile phone number for the purpose of being contactable. The remaining function of FCS in delivering in-door service at locations with poor indoor mobile coverage is now delivered far more efficiently and effectively through repeaters.
28. ComReg should focus its intention on examining the need or otherwise for a regulatory construct to promote Affordable Broadband services in accordance with the European Code. This should give due consideration to all technologies including mobile.
29. If a requirement were identified in respect of the affordability of such access, affordability measures can only be imposed by the Minister for Communications, requiring ComReg in turn to require relevant undertakings to offer consumers with low incomes or special social needs tariff options different for those provided under normal conditions or geographically averaged pricing.

⁹ Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers Wholesale Fixed Access and Call Origination - (paragraph 3100), "each of the MSPs operating in the State report 4G population coverage levels of at least 98%" (paragraph 3.102).

¹⁰ eir's response to the USO information requirement issued by ComReg on 11 July 2022.



It is also important that ComReg has the option of designating more than one USP. This is not given any consideration in ComReg Regulatory Impact Assessment (RIA).

30. USO connections and reporting are catered for only on the legacy TIS billing system. TIS is due to be retired [redacted] (after the conclusion of the current designation on 30 June 2023). Therefore no provider will have established systems for USO fulfilment or reporting.

Q. 1 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider in the context of a VFL services USO? Please give reasons to support your view.

31. eir notes that ComReg's supply side discussion is focussed solely on the development of fixed access networks. Whilst these remain relevant to consideration of the AFL USO, ComReg has failed to acknowledge the important role of mobile services both on the supply and demand sides, repeating the mistakes of the previous USO review. This is all the more surprising in light of the focus of attention on mobile telephony services (MTS) by the European Commission in its Withdrawal Decision¹¹ requiring ComReg to withdraw the 2021 Draft Decision¹² on the Market Review of Retail Access to the Public Telephone Network at a Fixed Location.
32. The market is already delivering social inclusion through both fixed and mobile voice services however Mobile services are the most affordable. The full cost of mobile service (including access and National calls) is currently €15.00 or less per month with for access and inclusive calls, texts and data from a choice of three retail providers and three networks¹³. The cheapest standalone retail fixed telephony service costs €25.50 per month and rises to €39.00 with inclusive calls¹⁴. The aforementioned affordable mobile offerings exceed the USO AFL proposed by ComReg by also providing access to high speed data along with text services, not the mention the benefit of being a mobile services with coverage that ComReg describes as "effectively, national in scope"¹⁵.
33. Mobile networks already provide connections at locations that cannot reasonably be reached by fixed networks. ComReg has chosen to set aside the significance of mobile telephony despite clear evidence of the substitutability of mobile for fixed voice service and the fact that eir's mobile network has been the bearer fulfilling USO requests for connections at locations that are not served by any fixed network. While such request have been fulfilled through the Fixed Cellular Service (FCS) which has been the go-to solution for USO for many years. FCS has been rendered obsolete by developments in the market for mobile repeaters and ComReg own initiative in the licensing of mobile phone repeaters to enhance indoor coverage¹⁶.
34. We also note the general decline in the use of traditional fixed voice services. ComReg Quarterly Key Data Reports reveal a decrease of 50% in fixed voice traffic minutes over five

¹¹ "Commission blocks proposed Irish regulation of fixed voice telephony" <https://digitalstrategy.ec.europa.eu/en/news/commission-blocks-proposed-irish-regulation-fixed-voice-telephony>.

¹² Information Notice - Publication and notification to the European Commission (EC), the Body of European Regulators for Electronic Communications (BEREC), and Member State National Regulatory Authorities (NRAs) of draft measures under Article 32 of Directive 2018/1972, ('ComReg Document 21/65'), available at <https://www.comreg.ie/publication-download/information-notice-rfts-faco-draft-decision>.

¹³ eir, Three and Vodafone respective 'sub-brands', GoMo, 48 and Clear Mobile.

¹⁴ <https://www.puretelecom.ie/landline-service>

¹⁵ Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers Wholesale Fixed Access and Call Origination - (paragraph 3100), "each of the MSPs operating in the State report 4G population coverage levels of at least 98%" (paragraph 3.102).

¹⁶ Mobile Phone Repeaters - Response to Consultation and Decision D08/18. ComReg doc 18/58

years to Q3 2022. The growth in mobile coverage and market penetration along with the decline in fixed voice only connections and usage as evidence by ComReg in this consultation make an overwhelming case in favour of mobile ensuring the universal availability of VFL absent any USO.

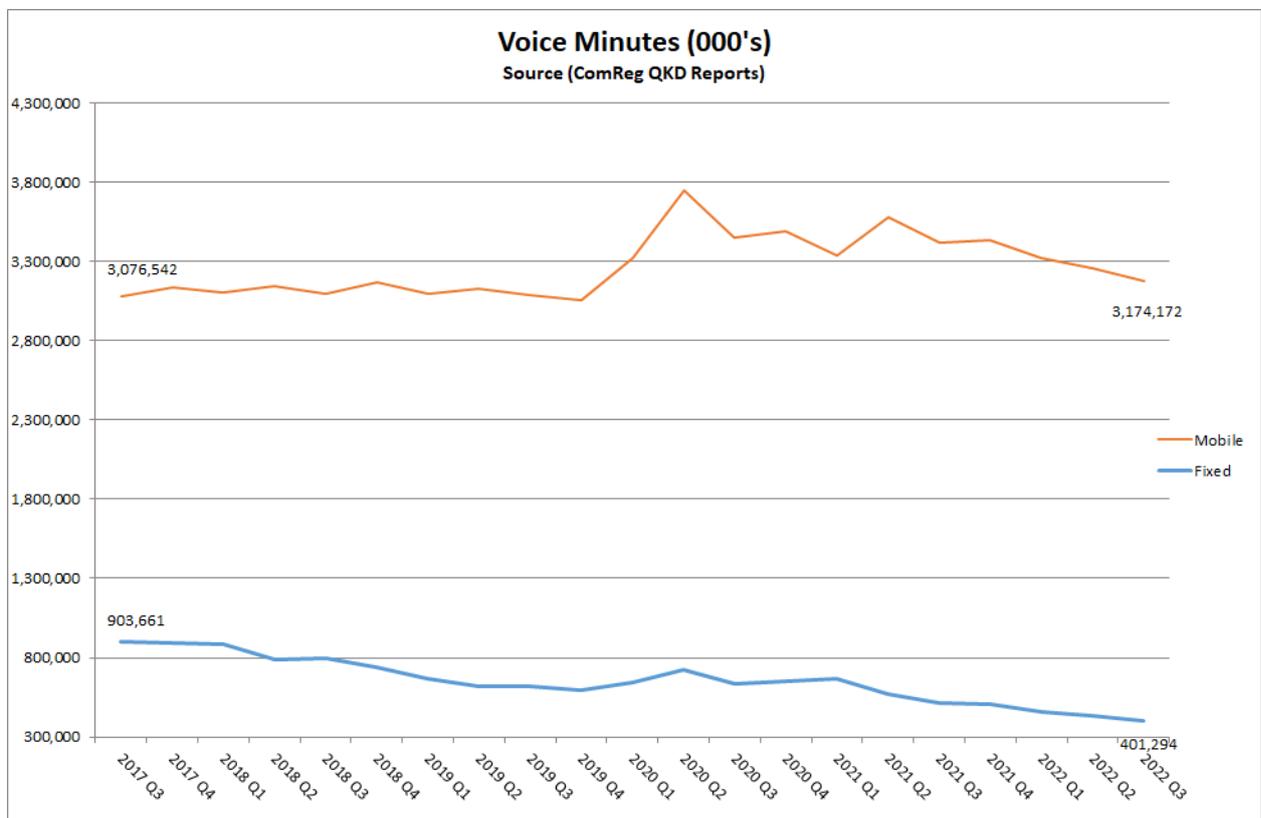
35. The importance of mobile in delivering VFL was driven home by the European Commission (EC) Decision on the withdrawal of ComReg' notified draft measures in the markets for Retail Fixed Telephony Services (RFTS) and Wholesale Fixed Access and Call Origination (FACO) in Ireland (the 'Withdrawal Decision')¹⁷. The EC was highly critical of ComReg's failure to recognise the fact that mobile telephony services (MTS) should be included in the RFTS market. That market review involved the consideration of supply and demand side factors that align closely with those under consideration here. When ComReg addressed the deficiencies of the vetoed market analysis it correctly identified that no operator had SMP in the retail fixed narrowband access network (including calls) due to inter alia the availability of mobile as a substitute. Yet ComReg has repeated the same mistakes in this USO review as it adopted in its initial vetoed review of the RFTS and FACO markets.
36. In our response to ComReg 16/31 we observed "*ComReg ... have provided no evidence that access at a fixed location is required in order to avoid social exclusion and in particular they have provided no evidence that any such requirement is not met by mobile services so that, in fact, all reasonable requests for a connection are already met. A number of other Member States have chosen to not impose a USO for AFL on this basis, including Germany, Estonia, Luxembourg, Poland and Romania*". ComReg would not be entering uncharted waters if it were to reach the entirely reasonable conclusion that a VFL USO is not required. Much of the evidence presented in ComReg's consultation document and supplemented in this response provides overwhelming support for such a conclusion. There is no legal requirement to designate any operator as the USP. This includes the fact that there is no legal requirement to designate an operator as the USP from 1 July 2023. ComReg has the power to intervene, at a later stage, to designate a provider of last resort in the unlikely event that market conditions change to the detriment of the current universal availability of VFL including in the context of the upcoming transposition of the European Electronic Communications Code
37. If a USO designation were deemed necessary, there are three mobile networks to choose from and arguably ComReg should consider one or more vertically integrated mobile providers that also host at least one MVNO as the optimal choice as this would minimise market distortion by enabling the access seeker to choose their preferred retail provider. This would similarly be true for retail broadband providers.

¹⁷ COMMISSION DECISION of 17.9.2021 pursuant to Article 32(6) of Directive (EU) 2018/1972 (Withdrawal of notified draft measure). Cases IE/2021/2332-2333: markets for retail fixed telephony services and wholesale fixed access and call origination in Ireland (the 'Withdrawal Decision').

Q. 2 Do you agree or disagree with ComReg’s review of the relevant demand trends? Please give reasons to support your view.

38. Over the past five years fixed voice minutes have declined by 50% and putting to one side the distortion to the trend attributable to COVID, a persistent decline has been evidence since Quarter 3 2018 and is continuing as depicted in figure 1. Notably COVID gave rise to a far sharper increase in mobile usage which suggests that there was generally a higher reliance on mobiles for voice calls during the pandemic when for many monthly people were confined to their homes to a large extent.

Figure 1. Fixed Voice Minutes Trend



39. ComReg relies heavily on its suggestion that “*there remains significant but declining cohort of end-users who continue to exercise their right to VFL services*”. Sadly this is a repeat of ComReg’s statement in the previous USO review. As eir pointed out in response to the last review, the exercise of a right to VFL does not go hand in hand with the retention of a fixed or indeed a fixed PSTN connection. ComReg should not confuse inertia with the absence of an alternative VFL solution given mobile call volumes and near ubiquitous mobile phone ownership.

40. ComReg also notes that monitored home alarm and medical alarm services provided by third parties may not work in the same manner over VoIP and that this may represent a barrier to switching for a small cohort of customers. As ComReg acknowledges this is a small cohort of customers. Therefore, the suggested indefinite support for such legacy services is an extremely unsound justification for the perpetuation of an outdated USO regime. Notably ComReg has not given any consideration to the fact that end-users might be migrated to modern alternatives. Instead ComReg is attempting to limit the options under consideration to re-impose the former USO. A USO designation cannot justifiably be based on completely separate third party services that are provided commercially merely on the basis that they can be used in conjunction with copper technology. ComReg is well aware that in other jurisdictions, where copper switch-off has commenced, alternative solutions have been found for such services.
41. ComReg's appears to be misrepresenting statistics from its latest Mobile Experience Survey 2022. Despite the unrelenting decline in fixed voice minutes and the shift to mobile usage in particular, ComReg suggests that end-users are to a large extent unable to use their mobile phones for calls at home. ComReg's survey identified 37% that reported a loss of signal when using call/text functions on mobile networks nationally (inside the home or elsewhere)¹⁸. If only 37% experienced issues on mobile networks nationally, how could a greater percentage of 45% experience these issues at a sub-national level (i.e. within Irish homes).
42. On closer inspection of ComReg's figures, ComReg incorrectly attributed the level of daily experiences of loss of voice/text signal throughout entire home (at 45%)¹⁹ to the entire population of the country, whereas the 45% only relates to those surveyed who experienced any issues..
43. In contrast the survey identifies that just 7% of respondents that retain their landline as well as a mobile subscription, do so due to there being better signal/quality on their landline (note – this question did not address whether mobile quality was unacceptable). ComReg similarly misrepresents the statistics in its reference to loss of signal in parts of the home and in its reference to the percentage experiencing mobile issues in rural areas. ComReg's review is practically devoid of quantitative analysis and we highlight this in particular in respect of ComReg's RIA. If the limited quantitative analysis that has been presented cannot be relied upon, the legitimacy of this entire consultation must be called into question.
44. ComReg proceeds to gloss over the fact that fixed lines are often bundled with BB and leaps to the conclusion that consumers "*continue to require and use fixed voice services*". As stated by the EC in the Withdrawal Decision, of the 49% of households and 77% of businesses which retain Retail Fixed Telephony Service (RFTS), a significant number do not use RFTS for voice

¹⁸ Paragraph 149 of ComReg 23/02

¹⁹ Paragraph 146 of ComReg 23/02



call purposes. The EC also indicated that 52% of Eircom RFTS lines did not produce any traffic. The general trend of RFTS being increasingly sold as part of a bundle, does not alter the changing dynamics of fixed voice usage or indeed demand for fixed voice services. Rather, any continuing demand for RFTS is driven by demand for other telecommunications services with the continued provision of fixed voice service (albeit with declining usage) linked to the progressive adoption of broadband access.

45. ComReg fails to take account of the important fact that broadband has become the anchor product in fixed bundles and voice is typically bundled by default or offered at little extra cost and this results in a significant portion of voice connections having little or no usage. Therefore it is misleading for ComReg to make sweeping statements about fixed voice service being “required”.
46. ComReg’s analysis of the demand for VFL is also over simplified as it focuses solely on the demand for standalone VFL and bundles. ComReg does not consider the fact that it does not have visibility of the number of households served by an unbundled VFL and unbundled mobile. ComReg makes the mistake of assuming that households availing of standalone VFL are entirely reliant on this for telephony. Given that mobile penetration is in excess of 100% of the population it is only reasonable to assume that the 191,202 standalone VFL subscriptions were held alongside at least one standalone mobile subscription. This point is reinforced by the Mobile Consumer Experience Survey which identifies that 98% of respondents having a mobile phone (which would of course represent a higher percentage of households).

Q. 3 In your opinion are there other relevant factors in relation to demand trends which ComReg should consider? Please give reasons to support your view.

47. ComReg must give due consideration to the importance of mobile services. ComReg has chosen to set aside the significance of mobile telephony despite clear evidence of the substitutability of mobile for fixed voice service and the fact that eir's mobile network (as the USPs network but not necessarily the only mobile networks available) has been the bearer for connections at locations that are not served by any fixed network. eir also notes the general decline in the use of traditional fixed voice services and near universality of mobile phone ownership. ComReg Quarterly Key Data Reports reveal a rapid and continuing fall in fixed voice traffic minutes, which have declined by 50% in the last five years. ComReg found in its latest Mobile Experience Survey 2022, that handset ownership is almost universal across the country. The growth in mobile coverage and market penetration along with the decline in fixed voice only connections as evidence by ComReg in this consultation make an overwhelming case in favour of mobile ensuring the universal availability of VFL absent any USO. In the case of less remote locations and urban areas ComReg cannot discount the importance of bundles (including broadband bundles that incorporate a VFL element).
48. This is evidenced by ComReg's 2019 Mobile Customer Experience (MCE). Of the respondents who have more than one telecommunications service, 50% purchase a bundle but only 5% overall consider the fixed landline element of the bundle to be important. Looking specifically at those respondents who purchase landlines and in terms of their usage, 89% of active landline users purchase their landline in bundle while 97% of those respondents who have a landline, but don't actively use it, purchase their landline in bundle.
49. As highlighted in ComReg's latest Mobile Consumer Experience Survey landline ownership has dropped significantly from 52% in 2019 to 39% in 2022 and this is considered to be mostly likely due to displacement by mobile phones with 82% of former landline users and 80% of non-landline users noting that they simply don't need a landline, opting to use mobiles instead. A key reason identified here for retaining a landline is to support the broadband service/connection to Wi-Fi. 2022 Survey 82% of respondents said that they don't need a landline/use a mobile phone instead. This further highlights ComReg's misguided focus on fixed networks as the legacy means of ensuring universal access to VFL.
50. In addition, of those respondents to ComReg's 2022 Mobile Customer Experience (MCE) Survey that have both a landline and a mobile phone, 31% indicated that they need landline for their broadband connection/WiFi service, 13% indicated that their internet package includes free landline, 7% indicated that they never thought about or got around to disconnecting their landline and a further 4% indicated that it was too much hassle to disconnect the landline. This



suggests that for the majority (55%) of those who have dual access, the retention of a landline is primarily driven by current inertia rather than a preference for fixed telephony.

51. ComReg also need to take account of the significance of Over-The-Top (OTT) services which are beginning to displace both fixed and mobile voice services. ComReg has demonstrated its awareness of this in its proposed strategy for 2023-2025²⁰ where ComReg observes “*While ECS play a fundamental role, OTTs offer a range of services to consumers to enable them to communicate, work, learn and be entertained*”. While ComReg’s Mobile Consumer Experience Survey²¹ observes “*The rise of these messaging, voice and video calling OTT services has impacted network traffic and revenues of traditional telecoms operators and this is expected to continue*”. This is borne out in the voice minutes trends presented above in Figure 1. Some OTT providers²² offer fixed geographic phone numbers with prices starting from as little as €7.01 per month and with inclusive national, mobile and international calls for just €15 per month. Therefore the market delivers complementary access and OTT call offerings that can be combined into an affordable solution for VFL.

Q. 4 Do you agree or disagree with ComReg's preliminary view that there is a requirement to impose new specifications for reasonable access requests for existing end-users? Please give reasons for your answer.

52. For the reasons set out above, this is a moot question as the proposed USO has not been objectively justified. Even if this were not the case, ComReg's proposal would add no value. ComReg proposes to introduce criteria for determining whether an existing connection continues to be in scope for USO, following the arrival or identification of an alternative at that location. This has been notably absent from the current designation.
53. Under ComReg's proposal an end-user would have to voluntarily switch to the alternative before the USP obligation would be lifted in respect of that end-user. This renders ComReg's proposal ineffectual and meaningless. ComReg suggests in its RIA (paragraph 404), that this would minimise any cost associated with a VFL services USO. eir is at a loss as to how this would have any bearing on the cost of USO service provision.
54. For the avoidance of doubt, eir has not suggested that it would withdraw service entirely in such circumstance in any case, even in the absence of a USO designation.

Q. 5 Do you agree or disagree with ComReg’s preliminary view that there is a requirement to re-impose threshold level applicable to new reasonable access requests, as set out in D09/21? Please give reasons for your answer.

55. For the reasons set out above, this is a moot question as the proposed USO has not been objectively justified. Even if a USO were justified, the proposed threshold is no longer relevant to any potential USP’s costs whether that be eir or another undertaking or combination of undertakings.

Q. 6 Do you agree or disagree with ComReg's approach to control of expenditure measures?

Please provide reasons for your answers.

56. While eir agrees with ComReg's conclusion that control of expenditure measures are already being delivered by the market, we disagree with ComReg's analysis as it focuses solely on the current USP.

57. This question is being asked in respect of the construction of any USO and before ComReg addresses the question as to whether a USO is necessary in the first instance. Therefore it is entirely inappropriate and insufficient to consider these measures solely in the context of the current USPs offerings.

Q. 7 Do you agree or disagree with ComReg's preliminary view that there is a continued need for a VFL services USO, post 30 June 2023? Please provide reasons for your answers.

58. ComReg has failed to acknowledge the altered regulatory context or to consider the relevant issues in any meaningful way and has not presented any quantifiable evidence in support of its position. It has not demonstrated that there is a need to introduce a market intervention for voice only connections and voice communications services at a fixed location ('VFL serves') separate to and in advance of considering the need for adequate broadband connections at a fixed location ('ABB'). Given that the latter is the most likely bearer for VFL, this review is rendered both incomplete and premature. There is no justification for a VFL USO as the market is delivering social inclusion through mobile and other voice services for the reasons set out throughout this response to consultation.

Q. 8 Do you wish to express an interest in being a USP for any future provision of voice only connections and voice communications services VFL under the USO? Please set out your reasons and any other information you deem relevant.

59. eir does not wish to express an interest in being a USP. However, yet again, that discretion appears to have been taken away from eir. Furthermore, any other potential USP has not been granted the opportunity to express an interest due to the flawed process that ComReg has adopted. ComReg has not yet issued a final Decision on whether there should be a USO or on what form it might take, making it impossible for eir or any other undertaking to assess the potential opportunities and risks of a designation. Furthermore, ComReg is allowing just 6 weeks from 10 January 2023 until 21 February 2023 for applicants to consider this and prepare a submission. Prospective applicants were not given any prior notice of this very narrow window for applications and no separate information notice was issued by ComReg highlighting this supposedly important call for expressions of interest.
60. eir has demonstrated that the net cost was in the region of €10m per annum in previous years (up to 2015/16). ComReg's interpretation of unfair burden means that a private operator must fund the AFL USO from its own resources. ComReg's proposal to extend the former AFL USO under the guise of a VFL would likely result in a net cost to eir and its shareholders in excess of €20m.
61. ComReg has conducted the current consultation process in a manner that is inconsistent with the requirements of the EECC and that has prejudiced eir. eir objects to the fact that ComReg has sought expressions of interest in parallel with its consultation on the scope and nature of the USO requirements. The proposed expression of interest scheme is merely pretence. eir submits that both cumulatively and individually these features of the consultation process disproportionately infringe upon eir's interests by significantly increasing the likelihood that eir would be unduly designated the USO. This constitutes an inefficient designation mechanism which fails to adhere to the principles of objectivity, transparency and non-discrimination, mandated by the EECC Regulations²³.
62. Regulation 72(4) of the EECC Regulations requires ComReg to "*the Regulator shall use an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated. The designation methods adopted shall ensure that the services referred to in paragraph (1) are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Regulation 75.*" Furthermore, Recital 231 of the EECC Directive

²³ S.I. No. 444 of 2022 European Union (Electronic Communications Code) Regulations 2022.

suggests that Member States take into account the ability and the willingness of undertakings to accept all or part of the USO. Recital 233 suggests that “*A priori, requirements to ensure nationwide territorial coverage imposed in the designation procedure are likely to exclude or dissuade certain undertakings from applying for being designated as universal service providers. Designating providers with universal service obligations for an excessive or indefinite period might also lead to an a priori exclusion of certain providers*”.

63. The process followed by ComReg is in this respect entirely defective. Far from ensuring that no undertaking is in principle excluded, the process followed by ComReg ensures that no undertaking other than eir may de facto be designated. In fact, ComReg makes it a precondition that they express an interest. eir believes that it is entirely discriminatory of it as eir has never expressed a willingness of discharging the USO in circumstances where the net cost of the USO has remained unshared to date. Also ComReg’s call for interested parties to come forward does not absolve ComReg of its obligation to assess the suitability of all potential USPs.
64. More particularly, by issuing this consultation on 10 January 2023 with a submission deadline of 21 February 2023, ComReg has nullified the provisions which permit other providers to register expressions of interest in being designated the USO for AFL on the basis that the periods in question simply would not allow another provider to put in place the structures and framework required to discharge the USO for AFL, even if ComReg had issued a Decision on these (which it has not). ComReg’s failure in this respect has in turn increased the likelihood that the USO for AFL and the associated financial burden will once again be assigned to eir.
65. If ComReg were to be sincere in seeking expressions of interest it would need to have afforded any candidates sufficient time; (a) in advance of ComReg’s draft decision and designation to allow potential candidates to determine whether they want to make an expression of interest and (b) after ComReg’s Decision on the scope of the USO to ensure that the successful candidates are able to put in place necessary structures and frameworks to ensure that they will be able to discharge the obligation in question.
66. Unfortunately history is repeating itself as evidenced by the three previous designation consultations (ComReg 16/31, ComReg 14/48 and ComReg 21/51) all of which were issued extremely close to the expiry of the existing USO. It is inconceivable that yet again ComReg has chosen to follow an almost equivalently flawed administrative process. The severely truncated consultation timetable calls into question whether ComReg has and will fully and properly consider and evaluate the inputs and submissions arising from the consultation process. The unduly short timeframes have nullified ComReg’s call for expressions of interest from other telecoms operators, which in turn increases the likelihood of eir being designated the AFL USP.

67. ComReg has been aware of the expiry date of the current designation for in excess of 18 months and has had adequate time to plan and undertake a proper review in a fair and non-discriminatory manner. The fact that history is repeating itself in this unfair manner suggests that poor management of administrative processes is institutionalised within ComReg, or worse, a cynical attempt is being made to circumvent fair regulatory process acting disproportionately against eir's interest.
68. ComReg has failed to provide any clarity to interested parties on how a potential net cost would be calculated. ComReg states at paragraph 371 that if designated interested parties "*would be entitled to make applications for USO funding, in accordance with ComReg Decision D04/11*". However the principles in D04/11 are clearly set in the context of services provided over a copper network which would appear to preclude interested parties to make an application using alternative technologies that may be more efficient. This further demonstrates that ComReg is not running a fair designation process.
69. These instances of prejudice constitute breaches of the principles set out in Regulation 72 (4) of the EECC Regulations.
70. It should also be noted that ComReg's proposed process to consider expressions of interest is little more than a thin veneer of a procurement process. ComReg lists out 9 categories that must be completed in respect of an expression of interest. Paragraph 335 states "*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 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.***" Whilst it is normal to have a scoring system within a procurement exercise interested parties are usually given sufficient information to understand what the minimum standard to be achieved an acceptable score . ComReg has not done this creating further ambiguity for any interested party and thereby discouraging participation.
71. If ComReg had properly managed and carried out the consultation process they would have enabled other operators to register expressions of interest in being designated as USP.

Q. 9 ComReg is of the preliminary view that, absent of: (i) receiving any expressions of interest, or (ii) the availability of an Alternative Infrastructure provider with an Equivalent Service, that is willing to serve end-users commercially; that the current USP, eir, may be best placed to be the USP for voice only connections and voice communications services post 30 June 2023. Please provide reasons for your answer.

72. Following this inadequate assessment of the availability of VFL and the potential need for a VFL USO and having merely paid lip service to the consideration of alternative USPs, ComReg proposes to adopt and impose upon eir the components of the former Access at a Fixed Location (AFL) USO, virtually unchanged.

73. [Redacted]. In short, eir has never been less well placed to fulfil ComReg's proposed USO. ComReg has identified that eir is one of two undertakings currently offering standalone retail fixed telephony service.

74. Therefore, should ComReg manage to objectively justify its proposals, which it has not and cannot, having dismissed out of hand the role of mobile already delivering universal VFL, there remains a retail provider that is positioned to fulfil standalone retail fixed telephony service delivery.

75. eir is certainly not best placed to be the USP for voice only connections and voice communications services. We have provided strong evidence that indicates that mobile networks are best positioned to fulfil the need for VFL nationwide and as stated above, if the need for a USP is identified it might be best serviced by one or more vertically integrated network provider that host at least one MVNO, in the interest of minimising market distortion and providing choice to end-users exercising their USO VFL rights.

Q. 10 Do you agree or disagree with ComReg’s preliminary view that geographical scope of any proposed designation should be the whole of the State? Please set out reasons for your answer.

76. eir does not agree. To the extent that an AFL USO can be justified (if at all) it should be targeted at any areas that may be identified in which a request for VFL cannot be delivered, having exhausted all reasonable options including the use of mobile repeaters.

Q. 11 Do you agree or disagree with ComReg's preliminary view that the designation period should be for a maximum period 5 years, unless otherwise amended?

77. eir does not agree with that the designation period should be for a maximum period 5 years. If ComReg were able to objectively justify a VFL designation in the first instance, it should only be for a maximum period of 1 year (to 30 June 2024).
78. This should allow more than adequate time for the Minister to conclude the definition of adequate broadband IAS including associated quality of service standards and for ComReg to consult on the need or otherwise for a USO under the new framework.

Q. 12 Do you have any comments or suggestions on the draft Decision Instrument? Please set out your answer in detail.

79. Without prejudice to eir's objections to ComReg's proposals as set out above, eir questions the relevance and meaning of section 5.7 ii. of the draft Decision Instrument. Section 5.7 has been presented below for ease of reference.

5.7. A request by a Requester for a new Voice only Connection and/or Voice Communications at a Fixed Location is reasonable, where:

i. an Equivalent Service is not available; or

ii. the Requester has exercised their rights by requesting a Voice only Connection and Voice Communications Service ; and/or

iii. the Alternative Infrastructure is the USP's (subject to 5.6 above); in which case the USP shall satisfy it.

80. Point ii above appears to have a circular meaning which would render section 5.5 redundant as 5.5 contains the criteria for requests that would be deemed not to be reasonable. If a request for VFL is deemed reasonable merely on the basis of an end-user exercising their right to request VFL, every request would be a reasonable one.

Q. 13 Do you agree or disagree with ComReg's draft regulatory impact assessment of the impact of the proposed options? Are there other impacts or details that should be included? Please set out reasons for your answer.

81. The Regulatory Impact Assessment (RIA) is significantly deficient, as it omits options, is devoid of quantitative analysis of the limited options that have been considered and is incoherent in respect of the Reasonable Access Request (RAR) options. As was the case in previous RIAs, this RIA is a qualitative exercise on the part of ComReg which simply repeats many sections of the preceding consultation paper. The absence of any attempt by ComReg to quantify the costs and benefits of its proposals renders the RIA meaningless and puts ComReg in breach of its obligation²⁴ to comply with the related ministerial direction²⁵.
82. The revised guidelines concerning RIAs from the Department of the Taoiseach emphasises the importance of conducting a quantitative analysis (para. 4.13). It states *"Once the options have been outlined, the costs, benefits and impacts of these options should be identified and analysed. It is important that all impacts are analysed to some extent as well as just merely identified. Where possible monetise cost and benefits (i.e. place a monetary value on them). Where monetisation is not possible, costs and benefits should be quantified (expressed numerically e.g. number/proportion of lives saved, reduction in traffic volumes etc). The level of analysis undertaken should be proportionate to the significance of the proposal."*
83. The need to carry out a full quantitative analysis is supported by the principles of efficiency and objectivity identified in Regulation 72(4) of the EECC Regulations which should guide ComReg selection of a USP:
84. *"In designating an undertaking under paragraph (3), "the Regulator shall use an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated."*
85. The RIA in its current format fails to meet the requirements of efficiency and objectivity identified. In light of the above:
86. ComReg has ignored a fundamental principle of best practice for RIAs, that being the evaluation of regulatory options based on quantitative analysis and criteria.
87. In fact the RIA conducted by ComReg is entirely lacking in any quantitative analysis and criteria for assessing whether the option chosen represents an efficient solution that balances the costs and benefits.

²⁴ Section 13(1) of the Communications Regulation Act 2002

²⁵ Ministerial Policy Direction made by the Minister of Communications, Marine and Natural Resources on 21 February 2003. It requires that, before deciding to impose regulatory obligations on undertakings, ComReg must conduct a RIA in accordance with European and international best practice and otherwise in accordance with measures that may be adopted under the "Better Regulation" programme.



The opinionated and self-serving approach can be seen throughout Chapter 8 which sets out ComReg's Regulatory Impact Assessment (RIA). The absence of any attempt by ComReg to quantify the costs and benefits of its proposals renders the RIA meaningless.

Universal Service Requirements – provision of voice-only connections and voice communications services at a fixed location

Response to ComReg's Consultation and Draft Decision 23/02

17th February 2023

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1 Introduction

National Broadband Ireland (NBI) is pleased to provide its response to ComReg’s consultation and draft decision on Universal Service Requirements, relating to the provision of voice-only connections and voice communications services at a fixed location (USO VFL).¹

In November 2019, NBI signed the National Broadband Plan (NBP) Project Agreement with the Minister for the Environment, Climate and Communications, committing NBI to roll out a full-fibre network to those areas of the country that had been identified as unserved by commercial broadband providers, i.e. the NBP Intervention Area (IA). NBI’s Fibre to the Home (FTTH) network deployment is now well advanced – at end-January 2023, the NBI FTTH network had passed 118,045 premises, with 30,681 end-users connected to the network and availing of high-speed broadband services from a variety of Retail Service Providers (RSPs).

NBI anticipates that it will complete the NBP network deployment within seven years. The deployment is now early in its fourth year and NBI is on target to complete the rollout in line with its contractual obligations.

The deployment of the NBP network forms part of a significant public and private investment aimed at ensuring there is nationwide Gigabit coverage in place before the end of this decade. As such, this investment is helping to usher in a new era of universal service in the Irish electronic communications sector, this time in relation to high-speed broadband availability.

In responding to this consultation, NBI offers the following high-level comments:

- The provision of voice telephony services on an affordable basis to all end-users was once a central public policy aim in the area of electronic communications. In the face of significant technological and service change over the past twenty years, resultant supply and demand shifts mean that voice telephony no longer holds such importance for end-users. With fibre rapidly supplanting fixed-line copper connections, it is high-speed broadband that has become the key electronic communications service required by end-users;
- NBI recognises that ComReg has to perform a delicate balancing act in how it approaches the future need for a VFL services Universal Service Obligation (USO). With the current USO set to expire on 30th June this year and the new regulatory framework, the European Electronic Communications Code (EECC), not yet fully transposed into Irish law, it is not possible to wait for the finalisation of an updated USO definition before deciding what to do about the obligation dealing with VFL services.
- At the same time, we can ignore neither the technological shifts that are still underway nor how the EU’s Digital Decade targets, ensuring nationwide availability of Gigabit-capable

¹ ComReg Consultation and Draft Decision, Document No. 23/02, 10th January 2023 (the “Consultation Document”).

connectivity and 5G coverage, will render voice-only connectivity an ever more marginal service;

- In light of these considerations, NBI believes that ComReg's proposals in the consultation strike a reasonable balance. ComReg has put forward a sensible framework that enables end-users who wish to avail of a VFL service to request this from the Universal Service Provider (USP). In doing so, ComReg rightly places some constraints on this and, recognising the impending nationwide availability of Gigabit-capable connectivity, opens the way towards VFL connections being provided over high-speed broadband, including as part of a service bundle.
- NBI is pleased to see that ComReg's proposals in this consultation are more forward-looking in nature, in particular by placing a strong emphasis in how future demand for VFL services may be met by services provided over high-speed broadband connections, rather than replicating legacy services provided over copper.
- NBI also welcomes the fact that ComReg's proposals place no requirement on NBI to provide a voice-only wholesale service. NBI believes this approach is compatible with State Aid approval for the NBP Project, in light of the requirement that the NBP network must be used to support the provision of Next Generation Access (NGA) services and not ones that mimic legacy voice services.

2 Responses to ComReg's consultation questions

In this Section, NBI provides its response to each of the questions posed by ComReg in its Consultation Document.

Q. 1 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider in the context of a VFL services USO? Please give reasons to support your view.

More than two decades on from the creation of a voice telephony USO within the EU, the electronic communications landscape has totally changed. This is the case in relation to the services which are provided over electronic communications networks and also in relation to the networks themselves. Circuit-switched voice telephony provided over the incumbent's fixed network, which, from a public policy perspective, was deemed so important that its provision was mandated on a nationwide basis at an affordable price, is now a service in steep decline and will soon become a thing of the past.

While ComReg alludes to these changes in the consultation document, by pointing to the deployment of Next Generation broadband networks, NBI considers that ComReg's analysis does not take full account of all supply-side trends which are relevant for its consideration of a VFL services USO. In particular, NBI considers more weight should be given to the impact of 4G and 5G mobile networks and the proliferation of Over-the-Top (OTT) services, the latter of which work equally well on fixed and mobile networks and which now account for a significant and growing portion of voice traffic.

In this regard, from a supply-side perspective, the alternatives to voice telephony are many and varied. As well as voice calls and text messaging over mobile networks, data services encompassing audio and video calls, as well as messaging and chat functionalities, in addition to managed and unmanaged Voice over Internet Protocol (VoIP) services, all constitute alternatives to traditional circuit-switched voice telephony. For all these many data services, there is a common underlying requirement, i.e. adequate internet access, which could be provided over either fixed or mobile broadband connections.

In its Fixed Access Market Review Decision last June (ComReg Document D05/22)², ComReg noted the profound shift that has occurred for voice traffic from fixed to mobile networks. At Q4 2021, retail fixed services accounted for only 14% of total voice traffic³ and ComReg took the view then that, notwithstanding temporary fluctuations in relevant volumes observed during the period covered by the Covid-19 pandemic, the clear trend remained of declining fixed voice traffic volumes and rising mobile voice traffic volumes.⁴ As a result, the market presence of 4G and 5G mobile networks should be

² Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers, Wholesale Fixed Access and Call Origination, Response to Consultation and Decision, ComReg, Decision D05/22, 29th June 2022.

³ Ibid., Para. 3.60.

⁴ Ibid., Para. 3.62.

included in any consideration of relevant supply-side trends in the context of the requirement for a VFL services USO.

Likewise, the increasing popularity and usage of OTT services, which include an element of voice over broadband, mean that such services are also relevant and worthy of consideration from a supply-side and/or demand side point of view (see also response to Q.2 below). The way in which voice traffic is increasingly carried over fixed and mobile networks using OTT services has also contributed to the observed decline in voice services provided over legacy fixed networks. In considering the future need for a VFL services USO, it would be advisable to factor in the significant supply-side and/ or demand side impact of these OTT services.

Q. 2 Do you agree or disagree with ComReg's review of the relevant demand trends? Please give reasons to support your view.

ComReg's analysis of the main demand trends make sense and are supported by the data it has presented. It is obvious that the demand for standalone retail fixed voice services has been in decline for several years and that, with the continued rise in demand for bundled services and the shift in voice traffic from fixed to mobile networks, this decline is set to continue in future years. As fibre networks are progressively rolled out, both commercially and by NBI within the NBP IA, with voice services becoming ever more subsumed into bundled services including high-speed broadband, and with ongoing demographic changes, the installed base of customers availing of standalone retail voice services appears set to decline still further.

In this regard, NBI welcomes ComReg's recognition in the consultation that, for the purposes of assessing if an end-user has access to an equivalent service, a bundled offering that includes a managed VoIP service constitutes an equivalent service. This means that, as fibre deployment advances, both within the NBP IA and commercially elsewhere, the requirement for a VFL services USO provided on a standalone basis, either over the legacy network or by other means (such as a fixed cellular solution), should be lessened. With the expected completion of nationwide fibre deployment by 2028 (see response to Q.3 below), the need for a USO from that point on should be confined to the availability of adequate broadband services.

Q. 3 In your opinion are there other relevant factors in relation to demand trends which ComReg should consider? Please give reasons to support your view.

In NBI's view, three further factors are relevant from a demand perspective. These are as follows:

- Extensive full-fibre deployment is displacing legacy fixed networks;
- Withdrawal of copper-based legacy voice services is now approaching;
- Demand for OTT services is contributing to ongoing decline in fixed voice services (see also response to Question 1 above).

The **deployment of full-fibre networks** by Eircom, SIRO and NBI, as well as the prospective fibre deployment being planned by Virgin Media, will transform the electronic communications landscape in this country over the next few years. This transformation is not a distant aim – fibre deployment is

continuing apace and the Government's aim, set out in its Digital Connectivity Strategy⁵, that all households and businesses will be covered by a Gigabit network by 2028, is on target to be realised⁶, two years ahead of the date envisioned in the European Commission's Digital Compass Communication.⁷

Data from ComReg's quarterly report demonstrates that there is significant end-user demand for high-speed broadband services provided over fibre connections. At end-Q4 2020, FTTP broadband subscriptions stood at 248,528 and accounted for 13.5% of all broadband connections, compared to 20.2% for cable and 34.7% for VDSL.⁸ In ComReg's most recently quarterly report (Q3 2022)⁹, FTTP connections had risen to 465,253 and now accounted for 23.8% of the total. In that time, fibre connections exceeded cable (18.9% of total connections at Q3 2022). VDSL remains the leading connection medium (accounting for 28.5%) but FTTP is on target to displace VDSL in the near future, most likely before the end of this year.

The shift in demand for broadband services, as evidenced by ComReg's published data, is an extremely relevant factor to consider in considering the future need for a VFL services USO. While, as we discuss in our response to Q.7, it would be prudent to maintain such an obligation in the short-term, the significant take-up of high-speed broadband services over fibre (which may encompass a managed VoIP service) renders such an obligation moot over the medium-term, not least given the USO requirements for adequate broadband that are set to be put in place once the national transposition of the European Electronic Communications Code (EECC) has been completed.

Hand-in-hand with the advance of fibre networks, the approaching **withdrawal of legacy fixed-line voice services** is also a relevant factor to consider. Eircom signalled its intentions in this regard in the paper it published on the issue¹⁰, in which it envisaged a rolling programme where services provided over the legacy copper network would be withdrawn on a progressive basis. ComReg has also given detailed consideration to this issue and has put forward a proposed framework for the transition from legacy to modern infrastructure.¹¹

In responding to ComReg's proposals on the transition¹², NBI stressed that ComReg's focus needed to be forward-looking and that the aim should not be to replicate the availability over fibre networks of

⁵ The Digital Connectivity Strategy for Ireland, Department of the Environment, Climate and Communications, 8th December 2022, available at: <https://www.gov.ie/en/publication/f1f85-digital-connectivity-strategy/>.

⁶ Issues are likely to remain, both for premises located in the NBP IA and those served commercially, in relation to end-users that are difficult to connect, due to issues such as obtaining access to multi-dwelling units, difficulties in deploying the final drop connection to specific premises etc.

⁷ COM/2021/118, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52021DC0118>.

⁸ ComReg's QKDR Q4 2020: <https://www.comreg.ie/publication/quarterly-key-data-report-on-electronic-communications-services-for-q4-2020>.

⁹ ComReg's QKDR Q3 2022: <https://www.comreg.ie/publication/quarterly-key-data-report-q3-2022/>.

¹⁰ 'Copper Switch-off – Leaving a legacy for the Future' (undated), available at: https://www.openeir.ie/wp-content/uploads/2021/03/White-paper_Leaving-a-Legacy.pdf

¹¹ See ComReg's Call for Inputs (ComReg Document No. 21/78 dated 3rd August 2021) and Consultation Document (ComReg Document No. 22/13 dated 25th March 2022).

¹² See NBI's responses to ComReg's Call for Inputs (submitted on 14th September 2021) and the Consultation Document (submitted on 11th May 2022).

limited legacy services. Instead, NBI submitted that the transformational nature of the shift from copper to fibre needed to be explicitly recognised and promoted as such to end-users, with an emphasis on the proliferation of new services and related benefits from the new technology, rather than its ability to provide end-users with an equivalent service to that available for decades over the legacy network. NBI also noted at that time that the transition from copper to fibre would require a reappraisal of the current USO and how this might be re-cast as a requirement to provide high-speed broadband services on a universal basis.

In this respect, NBI welcomes ComReg's approach to the scope for the VFL services USO contained in the consultation. As already discussed in response to Q.2 above, ComReg's view that a bundled offering which includes a managed VoIP service constitutes an equivalent service for USO purposes should mean that access requests are facilitated via fibre connections either commercially or on the NBP network. NBI considers this to be an appropriate, effective and proportionate approach.

In addition, as already noted above in response to Q.2, **the increasing use of OTT services by end-users** is also contributing to the ongoing decline in demand for traditional fixed voice services. In NBI's view, it would make sense to give explicit recognition in its analysis to this important demand factor, which is indicative of the ongoing transformation of electronic communications services, with traditional voice telephony service provided over the legacy network now largely confined to the margins.

Q. 4 Do you agree or disagree with ComReg's preliminary view that there is a requirement to impose new specifications for reasonable access requests for existing end-users? Please give reasons for your answer.

NBI recognises that ComReg has little choice, due to the expiry of the current USO in June this year, but to move ahead at this juncture with its consideration of the need for a VFL services USO. It follows that, if ComReg decides that a VFL services USO is required post-30th June 2023, it must impose specifications for reasonable access requests in the case of existing end-users. (New reasonable access requests are dealt with in Q.5 below).

NBI welcomes ComReg's acceptance that, where commercial fibre deployment has taken place and where NBI has rolled out its fibre network within the NBP IA, the existence of such alternative infrastructure and the availability of bundled services that include a VoIP component are deemed to be sufficient in meeting reasonable requests for access for existing end-users currently availing of fixed voice services over the copper network. As ComReg notes, this position is consistent with the framework it has set out in relation to the transition from legacy to modern infrastructure.¹³ Without such a recognition by ComReg, the withdrawal of legacy services and the de-commissioning of the copper network by Eircom (i.e. 'Copper Switch-off') would not be able to proceed.

As NBI articulated in its response to ComReg's consultation on this issue¹⁴, NBI would be concerned if the migration framework were to result in an outcome where operators accessing wholesale services on

¹³ ComReg Document No. 22/13 dated 25th March 2022.

¹⁴ NBI's Response to ComReg's Consultation on the transition from legacy to modern infrastructure, submitted 11th May 2022.

the NBI network, including Eircom, were to seek the development of Alternative Comparative Products (ACPs) that mimic in functionality the types of legacy voice and narrowband data services that are currently available over Eircom's copper network. State Aid approval for the NBP Project is on the basis that it is only used to provide a Next Generation Access (NGA) service¹⁵ and NBI's minimum speed service is currently a 500Mbps one. It is difficult to see how a request from any operator for an ACP service could be reconciled with these State Aid requirements.

It is not NBI's expectation that there will be any need for it to supply ACPs on its network, nor does it believe (in part based on its own experience to date) that there would be any demand for such products. In light of ComReg's proposals in the consultation, NBI now understands that ComReg's plans for a VFL services USO would not involve such a requirement. In this regard, NBI welcomes the position that the need for a voice service to be provided over alternative infrastructure such as NBI's NBP network would, from a USO perspective, be satisfied if a VoIP service forms part of a bundled offering.

Q. 5 Do you agree or disagree with ComReg's preliminary view that there is a requirement to re-impose threshold level applicable to new reasonable access requests, as set out in D09/21? Please give reasons for your answer.

ComReg's analysis in the consultation document confirms that the total number of new standalone fixed voice connection requests received by Eircom in recent years is very low, which confirms the declining demand for such connections.¹⁶ In this regard, the framework outlined by ComReg for considering new access requests – which is set out in Figure 16 – is sensible and, as ComReg notes, the procedure appears to be working well.

As ComReg further notes, the threshold level it proposes to re-impose in relation to the cost of putting in place new connections is only an issue for non-standard connections that require significant investment in infrastructure (i.e. poles and duct) that has long asset lives and which may, in time, be used to deploy fibre connections. As such, NBI agrees with ComReg's preliminary view that this obligation should be reimposed. That said, NBI has no views to offer on the appropriate level at which this threshold should be set.

Q. 6 Do you agree or disagree with ComReg's approach to control of expenditure measures? Please provide reasons for your answers.

To the extent that ComReg maintains there is a continued need for a VFL services USO, its approach to control of expenditure measures appear sensible and proportionate.

¹⁵ See European Commission letter dated 15th November 2019 relating to State Aid SA.54472 (2019/N).

¹⁶ Consultation Document, Section 4.2.1.7.

Q. 7 Do you agree or disagree with ComReg's preliminary view that there is a continued need for a VFL services USO, post 30 June 2023? Please provide reasons for your answers.

There is an evident need to consider the requirement for a USO for electronic communications services on a forward-looking basis, in light of the ongoing transition to high-speed broadband services, which may include, as part of a bundle, a managed VoIP service. In this regard, it is without question that the technological and service landscape has altered fundamentally from when the USO, as currently defined, was first put in place. This shift has been reflected both in relation to supply and demand characteristics, with the legacy copper network nearing retirement and being gradually replaced by the ongoing deployment of fibre, while demand for and usage of voice services has largely migrated off the fixed network and onto mobile and OTT services.

This shift was recognised within the EECC, in which provision is made for the re-casting of the USO to encompass "adequate broadband" services.¹⁷ The Regulations transposing the EECC¹⁸ – which will take effect once the accompanying primary legislation is enacted – empower the Minister for the Environment, Climate and Communications to define what constitutes adequate broadband and to specify relevant quality standards.¹⁹

NBI recognises, however, that the EECC provides for the maintenance of a USO for voice-only connections.²⁰ In light of this, it is prudent for ComReg to plan for a VFL services USO post-30th June 2023, even if, in practice, it is likely that the demand for voice-only services will continue to decline and that end-users' requirements will be more than adequately accommodated by the availability of managed and OTT voice services provided over high-speed broadband, as well as via mobile connections.

In this regard, NBI welcomes the fact that ComReg recognises that a voice service provided over alternative infrastructure such as NBI's NBP network would meet the requirements for the provision of a voice service from a USO perspective if a VoIP service forms part of a bundled offering. This will mean that, as fibre deployment advances, both commercially and as a result of the NBP, the need for a standalone voice service to be provided by the USP is likely to be short-term in nature and limited to premises not yet passed by a fibre service.²¹

As we discuss in response to Q.11 below NBI also welcomes ComReg's plan to review the proposed VFL services USO designation no later than six months after the Minister has concluded the definition of adequate broadband internet access services and associated quality of service standards. Once the deployment of fibre connectivity, both commercially and pursuant to the NBP, has been completed, the

¹⁷ EECC, Article 84.

¹⁸ SI 444 of 2022.

¹⁹ The EECC (Article 84) specifies that BEREC will draw up a report on Member States' best practices to support the defining of adequate broadband services on a consistent basis across the EU.

²⁰ SI 444 of 2022, Regulation 70 (1)(b) and

²¹ While premises potentially left unserved altogether following the withdrawal of the existing copper connection is not an issue within the NBP IA (due to end-user protections in the Project Agreement requiring NBI to provide a connections solution for each premises located in the NBP IA that it passes), it could well be for those customers currently served commercially with a VDSL service via the legacy copper line who, for whatever reason, are experiencing difficulties in securing fibre connectivity to their premises.

requirement for a VFL services USO should fall away. Following this, to the extent that any USO is needed, it should be confined to the provision of adequate broadband services.

Q. 8 Do you wish to express an interest in being a USP for any future provision of voice only connections and voice communications services VFL under the USO? Please set out your reasons and any other information you deem relevant.

NBI's contractual mandate under the NBP Project Agreement is to act as a wholesale-only provider of electronic communications services (principally VUA and Bitstream) over its fibre network. As such, NBI does not provide any retail services to end-users, whose need for such service is catered for by RSPs who avail of NBI's wholesale offerings. At end-January 2023, 61 RSPs had contracted with NBI to provide retail services to end-users within the NBP IA.

In light of its clear contractual mandate under the NBP Project Agreement, NBI sees no role for itself as a potential USP for voice-only connections and voice communications services under the USO.²² In any event, as already outlined in this response, NBI envisages that end-user requirements for voice services within the NBP IA will increasingly be met as part of a bundle of retail services provided by a variety of operators over fibre connections put in place by NBI.

Q. 9 ComReg is of the preliminary view that, absent of: (i) receiving any expressions of interest, or (ii) the availability of an Alternative Infrastructure provider with an Equivalent Service, that is willing to serve end-users commercially; that the current USP, eir, may be best placed to be the USP for voice only connections and voice communications services post 30 June 2023. Please provide reasons for your answer.

To the extent that a VFL services USO is required post-30th June 2023, then, absent either expressions of interest or the availability of an alternative service, the current USP, Eircom, would appear to be best placed to take on this obligation. As already noted, such a requirement is likely to be short-term in nature and would no longer be needed once there is nationwide availability of fibre connectivity.

Q. 10 Do you agree or disagree with ComReg's preliminary view that geographical scope of any proposed designation should be the whole of the State? Please set out reasons for your answer.

NBI understands and accepts ComReg's rationale for proposing that the geographical scope of any proposed VFL service USO designation should be the whole of the State. As ComReg states, end-users who might want to make voice-only reasonable access requests are dispersed throughout the State and so a nationwide designation is required to ensure that any end-user requiring the protections of the USO is in a position to do so.

²² NBI is obliged to act as a Retailer of Last Resort under the Project Agreement, in order to ensure that, where a particular end-user is unable to obtain a retail service from any other provider, NBI will step in and provide a retail service to that end-user. This circumstance has not arisen to date, nor does NBI expect that it ever will.

For the purposes of the NBP IA, the proposed USO will only be relevant for those premises not yet passed by the NBP fibre network. NBI has an obligation under the Project Agreement to meet all connection requests within the IA (with end-users contracting with RSPs for retail broadband services) and so, once a premises is passed, under ComReg's USO framework, the end-user in question may avail of access to an equivalent service provided over alternative infrastructure. There is, then, no longer any USO requirement to serve that customer by any other means. The net effect of this is that, once NBI has completed the deployment of the NBP network, which it is scheduled to do in late 2026 / early 2027, a VFL services USO would have no relevance in relation to providing connections to premises located within the NBP IA.

Q. 11 Do you agree or disagree with ComReg's preliminary view that the designation period should be for a maximum period 5 years, unless otherwise amended?

NBI accepts ComReg's need, in the short-term, to put in place a VFL services USO and the proposed designation period of no longer than five years appears appropriate. As noted above however, in response to Q.10, NBI will have completed the deployment of the NBP network in the NBP IA within the proposed designation period and so, for premises in the IA, the designation will by then have become moot.

NBI notes that it is ComReg's intention to commence a review of the proposed USO designation no later than six months after the Minister has concluded the definition of adequate broadband internet access services and associated quality of service standards. NBI strongly supports this proposal and looks forward to engaging constructively in this review once it gets underway.

Q. 12 Do you have any comments or suggestions on the draft Decision Instrument? Please set out your answer in detail.

NBI has no observations to offer in relation to the draft Decision Instrument.

Q. 13 Do you agree or disagree with ComReg's draft regulatory impact assessment of the impact of the proposed options? Are there other impacts or details that should be included? Please set out reasons for your answer.

NBI agrees with ComReg's draft regulatory impact assessment of the proposed options.

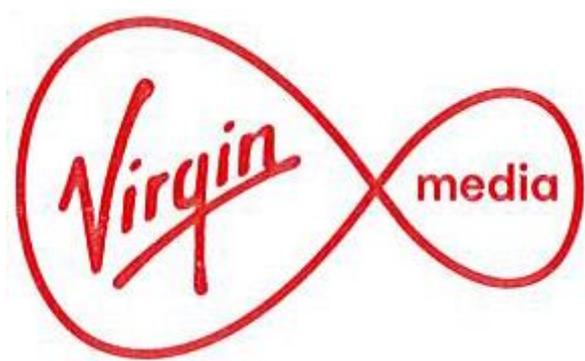
One further consideration is the requirement contained in the EECC for national regulators to promote access to and take-up of services provided over very high-capacity networks²³ and for national regulators to ensure "territorial cohesion" in relation to the deployment of such networks.²⁴

NBI accepts, however, that, while it did not explicitly call out these objectives, ComReg's proposals are consistent with them, in that it views the imposition of a VLF services USO as only a short-term

²³ EECC Article 3, paragraph 2a.

²⁴ EECC, Recital 23.

requirement and that, in assessing the reasonableness of any request for a VLF service, an equivalent service that may be offered to the requesting end-user could form part of a bundle of services offered over alternative infrastructure. By doing so, ComReg's proposals should help to ensure that the take-up of services over fibre networks is promoted, which in turn aligns with the Government's Digital Strategy aim of promoting connectivity to Gigabit services.



Virgin Media response to:

ComReg's Public Consultation on Universal Service – Voice only connections and voice communications services at a fixed location (VFL services)

ComReg Document 23/02

21 February 2023

Introduction

Virgin Media welcomes the opportunity to respond to ComReg’s consultation paper Universal Service -Voice only connections and voice communications services at a fixed location (VFL services) – Consultation and Draft Decision. Please find our responses to the specific questions asked set out below.

Virgin Media Response to Consultation Questions

1. In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider in the context of a VFL services USO? Please give reasons to support your view.

Response to Question 1: At paragraph 80 of the Consultation ComReg state that “Next generation broadband networks may eliminate the need for service providers to maintain separate voice and data networks. They potentially facilitate economies of scope and cost savings, where both voice and data are provided over a single broadband network”. While entities such as, Virgin Media and SIRO have signalled their intention to invest in next generation broadband networks over the next few years, planned and announced investment is not always delivered, potentially for reasons beyond the control of those whose stated intention it is to make such investments. At a time of great economic uncertainty, caused by a build up of factors from Brexit, Covid-19, the war in Ukraine and now the cost of money with inflation and increased interest rates, there is uncertainty as to how much companies will be able to deliver on their intended investments. [REDACTED] ComReg’s conclusion at paragraph 83 is correct that these networks cannot yet be relied on to ensure the full availability of VFL services nationally.

2. Do you agree or disagree with ComReg’s review of the relevant demand trends? Please give reasons to support your view.

3. In your opinion are there other relevant factors in relation to demand trends which ComReg should consider? Please give reasons to support your view.

Response to Question 2: Yes, Virgin Media agrees with ComReg’s review of the relevant demand trends. It is however always critical to look at what the market failure is and to see if it could be addressed by other means.

Response to Question 3: In respect of a USO Virgin Media recognises the role of USO in supporting social inclusion and welcomes the focus on closing the gap between availability and take up of services to address a clear market failure. The goal of USO under the EECC is to avoid the risk of social exclusion, which prevents citizens from full social and economic participation in society, through a lack of access

to electronic communications services. This should be an important consideration for ComReg when reviewing demand trends.

4. Do you agree or disagree with ComReg’s preliminary view that there is a requirement to impose new specifications for reasonable access requests for existing end-users?
5. Do you agree or disagree with ComReg’s preliminary view that there is a requirement to re-impose threshold level applicable to new reasonable access requests, as set out in D9/21?

Response to Question 4: Yes, please see our response to Question 3 above where a USO should only apply where there is a clear market failure.

Response to Question 5: Virgin Media is not responding to this question.

6. Do you agree or disagree with ComReg’s approach to control expenditure measures.

Response to Question 6: ComReg’s drafting at paragraphs 313 and 314 is unclear. Are paragraphs 313 and 314 directed at all undertakings or are they directed at the designated universal service provider? Greater clarity is required here. If the purpose is to put forward ComReg’s position in respect of all undertakings this should be made clearer.

7. Do you agree or disagree with ComReg’s preliminary view that there is a continued need for a VFL services USO, post 30 June 2023? Please provide reasons for your answers.

Response to Question 7: Yes, we agree with ComReg’s statement at paragraph 322 “ *It is important to note that apart from the VFL services USO, there is currently no other mechanism, programme or scheme in place to ensure that the basic telephony at a fixed location... is provided to everyone that requires it and who cannot obtain it under normal market conditions*”.

As stated in our response to Question 3 Virgin Media recognises the role of USO in supporting social inclusion and welcomes the focus on closing the gap between availability and take up of services where the market does not deliver and there is no other way to address such failure. The goal of USO under the EECC is to avoid the risk of social exclusion, which prevents citizens from full social and economic participation in society, through a lack of access to electronic communications services.

8. Do you wish to express an interest in being a USP for any future provision of voice only connections and voice communications services VFL under the USO?
9. ComReg is of the preliminary view that absent Eir may be best placed to be USP for voice only connections and voice communications post 30 June 2023. Please provide reasons for your answers.

Response to Question 8: No.

Response to Question 9: Virgin Media agrees with ComReg’s assessment.

10. Do you agree or disagree with ComReg’s preliminary view that geographical scope of any proposed designation should be the whole of the State?
11. Do you agree or disagree with ComReg’s preliminary view that the designation should be for a maximum period of 5 years, unless otherwise amended?

Responses to Questions 10 and 11: Virgin Media agrees with ComReg's view that geographical scope of any proposed designation should be in respect of the whole of the State. Virgin Media also agrees that the designation should be for the proposed period unless otherwise amended.

12. Do you have any comments or suggestions on the Draft Decision Instrument? Please set out your answer in detail.

Response to Question 12. Virgin Media has no comment to make on the Draft Decision.