Voice at a Fixed Location – Public Policy Tools

Response to consultation from Three

6th August 2024

Three.ie

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1 Introduction

Three welcomes the opportunity to comment on the Department's consultation on the feasibility of using Public Policy Tools to ensure the availability of Voice at a Fixed Location.

For the reasons set out in detail in this response Three believes that the analysis of the Public Policy Tools is incomplete and the conclusions drawn cannot be safely relied on to empower ComReg to make a designation under Paragraph 72(3) to impose appropriate universal service obligations.

Consultation Question:

2 Do you agree that each of the options considered are not suitable for reasons outlined in the Analysys Mason Report?

Three Response:

Three does not agree with the above statement, i.e. that each of the options considered are not suitable for reasons outlined in the Analysys Mason Report.

There are a number of embedded assumptions within the Report assessment which Three believes are incorrect and/or are not adequately justified.

Subsidised pricing of current VFL provision

The Analysys Mason Report does not take account of the fact the current level of retail pricing of VFL provided under USO is in fact subsidised as it is sold below cost. At the moment this subsidy is borne by eir.

There is no assessment in the report of what an appropriate affordable price would be for VFL. This is a significant omission as it feeds directly into an assessment of the economic viability of different VFL service delivery solutions.

It is notable that the decline in the use of landline telephones (VFL) has been so significant that, in 2023, the Central Statistics Office removed this from the National Basket of Goods and Services used to calculate CPI. This is a potential indicator that the materiality of VFL pricing as part of the overall consumer spend is at a level where the **affordable** price for the service is above the current subsidised retail price.

A VFL service comprises two components, an access path to a fixed location and the voice service that is provided over this access path.

The Analysys Mason report commissioned by the Department points out that "*In the medium term the costs of operation of the fixed narrowband network are likely to rise and that network is likely to be shut down; the option of using broadband networks to support VFL services will become essential at the point*[1]".

Three believes that this means that the **cost based** price of VFL solutions based on narrowband access paths is likely to rise above the price of VFL based on broadband based access paths going forward.

The inversion of costings between narrow and broadband access over the medium term does not appear to have been sufficiently taken into account when basing pricing assessments on a baseline of subsidised copper based VFL. There is no reason why

[1] Analysys Mason Report - Section 4.5.3

a USO VFL provided by way of a double play could not also be discounted by whatever mechanism.

The report sets out the provisions of Article 86(2) of the Directive which states that *"Member States shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal terms and conditions."*

An approach which limits the assessment of viable VFL solutions to an artificial **retail** price cap of being below the price of a double play offer may be not be valid. This is particularly relevant in the situation where narrowband VFL costings for a legacy end-of life technology are potentially higher than the underlying constraints of a fixed Broadband based VFL solution.

Uniform Pricing

Another embedded assumption within the Analysys Mason assessment is that the pricing of USO VFL must be uniform with non-USO VFL.[2]

What is explicit is that the VFL must be **affordable**. It is likely that affordability criteria will be uniform across the country and that the affordable level will be uniform. However, there is no basis to conclude that this means that the retail USO VFL pricing must be uniform and be set equal to the lowest commercially available price across the across the entire geography of the State. Where there are higher costs in providing VFL it may be justified to have higher retail pricing provided this remains **affordable**.

By way of example, in a scenario where VFL was commercially available ubiquitously, but not necessary from the same provider in all locations, there would be no automatic requirement for uniform retail pricing provided all the pricing was below the affordable level. Geographically de-averaged pricing would reflect costs and the level of competition in the specific location. Therefore, absent a determination of the affordable level, an approach to the assessment of USO which presupposes that uniform retail pricing is required does not align with the conditions that would exist under normal market conditions and represents the type of market distortion which envisaged by Article 86(2) of the Directive.

While Article 85(2) provides that Member States "*may*" require geographically averaged pricing this is not mandatory. Some public policy rationale for the requirement for uniform pricing and the level at which it should be set is required. This appears to be absent from the Report.

If the requirement for uniform pricing is removed, then it is possible to consider hybrid solutions where the majority of VFL is provided using one or more methods at one tier of retail pricing (perhaps on a commercial basis) and the residual demand is supplied using a different method at a higher, but still affordable retail price. Where necessary

[2] Analysys Mason Report - Section 3.2

serving this residual demand could be subsidised in a targeted fashion to reduce the retail price to the affordable level. It is only where all VFL solutions are more expensive than the affordable level that VFL must be subsidised down to a single uniform retail price that corresponds to a single uniform affordable level.

If there is an assessment of affordable level that is higher than the current USO VFL pricing, then it may be that fixed access paths based on broadband are the best and most efficient way to provide the majority of VFL. As the Analysys Mason report outlines there are some fixed broadband offerings which are within 10% of the current **subsidised** retail price of USO VFL provided over narrowband copper.

While the enjoiner is that end-users should not be forced to access a service that they do not want, this should not be achieved by forcing the maintenance in the market of more costly delivery mechanisms. If broadband access services are available at comparable or cheaper **costs** than narrowband access services, there is no objective reason to require that the market continues to supply and support an uneconomic solution.

Restriction of access to non-voice services

Three notes the Regulation 70(4) of SI 444 of 2022

"(4) Where a consumer, enterprise or organisation so requests, the connection referred to in paragraph (1)(b) shall be limited to support voice communications services."

However, any assessment of the commercial availability of voice only VFL provided over fixed broadband access must take account of the availability of a non-commercial subsidised narrowband VFL offering in the market.

Where the existing price of Double Play offerings approximate to the affordable level for VFL, the assessment should take account of the ease at which service providers could offer the restricted service at a discount to their Double Play offerings. This assessment should reflect a scenario where the distortive effects of subsidised VFL services offered on non-commercial terms are absent from the market.

Effectively what is required is a form of SSNIP test where the market entry in the provision of voice restricted VFL is assessed at a price point where the current subsidised VFL retail pricing for VFL is raised to the affordable level.

Requirement for ubiquity

The various assessments speak to ubiquity. However, ubiquity on a per component basis is not required. What is required is a combination of components which serve VFL demand.

At Section 5.1 the Report dismisses the possibility of combining components by stating that "*the option of combining multiple network technology interventions with a VFL* *service... will be even more expensive than any of the other options to provide VFL and can be ruled out as relatively cost-ineffective a priori".*

This statement is unsupported by any analysis. Given that Component 2 omits consideration of satellite based fixed broadband access and that Component 1 is based on an assessment of mobile data coverage rather than mobile voice coverage this conclusion is not based on reliable inputs.

Assessment of Component 1

In its assessment of mobile coverage, Analysys Mason bases its analysis on mobile data access at 3Mbit/s. This conflates VFL with a **data** access path. This embedded assumption results in a baseline coverage of 97% population. At least one Mobile Service provider is advertising 99.7% population coverage for voice and text (2G) and a number are advertising 99% coverage for 4G.

This error undermines the analysis and any downstream conclusions.

In addition, there is no analysis of whether the remaining 0.3% population is capable of being served by other access technologies (for example a mobile blackspot in a low-lying area might be adjacent to existing fixed access infrastructure) or the extent to which the population outside mobile coverage has already been served on foot of a previous Universal Service Obligation designation, or has already been served by NBI.

Further the analysis only considers the expansion of the mobile network as a mechanism to close the residual service gap. No consideration is given to a hybrid solution which would use satellite services to bridge the gap. At least one LEO based satellite provider is offering nationwide broadband services at a retail price of €50 per month including VAT.

Assessment of Component 2

The assessment of Component 2 omits any consideration of Satellite based fixed broadband access solutions. This is a material omission as Satellite based services by their nature will be ubiquitous. While they may be uneconomic to deploy to serve all VFL demand, they could be used in combination with existing access solutions to provide a hybrid solution that overall is cheaper than using individual access technologies to provide ubiquitous coverage.

Consultation Question:

3 Are there any other PPT options that could have been considered?

Three Response:

The various Public Policy Tool options considered only consider direct contracts between the Department and service providers.

Another option exists whereby end users obtain VFL on commercial terms using a double play offer, where this is available at or below the affordable price. This would achieve the majority of the required VFL connectivity coverage. For the residual areas the Department could operate a voucher scheme given directly to end-users in these areas to reduce the net cost to end users of VFL to the level that the Department determines to be affordable. This would allow end user s to self-curate solutions by contracting with satellite and VoIP providers

ComReg has recently launched a fixed Broadband Checker database. Addresses at locations shown as being served in the database would be considered to be able to avail of commercial VFL and those not on the database would be eligible for the voucher scheme. This would allow end-users to contract directly with satellite and VoIP providers to lower the net cost of VFL to the end user to the affordable level. Given the continued roll-out of both fibre and FWA based fixed broadband solutions it is likely that over the course of the next 5 years the volumes of locations eligible for the voucher would decline and should a location become shown as serviceable on the database the value of the voucher could be reviewed to reflect the cheapest available access path or withdrawn entirely if this was below the determined affordable level. A lag between the location being entered on the database and the change/withdrawal of the voucher would allow end-users to migrate to a service provider of their choosing if they so desired. This would avoid market distortions as the voucher would only be to the value necessary to allow VFL access in the absence of commercial and affordable options.

The possibilities of Vouchers or other direct price supports to end users is explicitly countenanced by Recital 219 of the Directive.

"…To that end, Member States could provide those consumers with direct support for communication purposes, which could be part of social allowances or vouchers for, or direct payments to, those consumers. This can be an appropriate alternative having regard to the need to minimise market distortions. … "

Three believes that the lack of detailed consideration of PPTs which are specifically mentioned in the Directive is a significant omission from the Report.

Consultation Question:

4 Are there any other headings that should have been used in the assessment of the Options?

Three Response:

Three believes that the following issues should have been incorporated into the Report.

Affordable Price level

The Report should consider the **affordable** price for VFL. Absent an assessment of the affordable price any conclusions drawn from the price and cost comparisons contained in the report are not sufficiently robust to be relied on. If for example the affordable price was determined to be significantly higher than the current subsidised retail price of VFL it might reduce demand in terms of volume and location so as to change the scope of the technologies assessed. Similarly if the affordable price was above the range of the cheapest double play offers it would affect the assessment of whether fixed narrow band access solutions where appropriate given their built-in obsolescence.

The lack of an affordable price being defined means that assessments are based on comparisons to currently discounted USO VFL. As this service is sold below cost these comparisons and the assessments and conclusions that flow from them are the result of potentially distortive effects of the presence of below cost products in the market.

Demand for VFL

Absent from the Report is any consideration of the level or location of demand for VFL.

ComReg's published figures for Q1 2024 show in excess of 627,000 VoIP based voce connections and some 516,000 PSTN and ISDN connections (a total of 1.14m). The equivalent figures for Q1 2019 are 481,000 and 965,000 respectively (a total of 1.44m) This represents a significant decline in fixed voice over 5 years.

While some of the reduction in PSTN/ISDN connections might be attributable to conversion to VoIP based connections, even if 100% of the growth in VoIP was conversions from copper based PSTN/ISDN there has been a minimum net reduction of over 300,000 in the number of narrowband based VFL connections.

ComReg data also shows just over 500,000 copper based DSL broadband connections. Three believes that the majority of these will part of a double play bundle.

Taking the DSL and PSTN/ISDN figures means that the total national embedded base of standalone VFL could be as low as 20,000 connections. It is not clear what the demand for new VFL connections actually is.

Given the continuing reduction in narrowband fixed line services it is striking that the Report does not assess neither the likely locations nor level of demand for VFL connections.

Any assessment of the demand for VFL (and hence any assessment of the efficacy, viability or appropriateness of any PPT) must take account of the fact that the current levels of demand for VFL are based on retail prices which are discounted below cost. Basic economics indicates that the discounting of retail prices is likely to stimulate demand. The failure to set the affordable level of VFL independently of the current subsidised retail price of VFL provided under USO means that the current level of demand may be artificially inflated.

In scenarios where the footprint of commercially available solutions for VFL based on fixed broadband access is increasing, the requirement that the options considered deliver ubiquitous service availability potentially represent a mischaracterisation of the issue to be addressed. There may be existing and increasing options for most of the demand. What is required is one or more solutions that can serve residual demand in the unserved areas.

If this demand is low enough, then looking at solutions which require networks to be in place prior to the demand arising is misplaced. What is required are solutions which can be built to order in a relatively short timeframe. While individual bespoke connections might be more costly, the overall cost of serving a low level of demand in this manner might be lower than putting in place a wide area underutilised network.

Consultation Question:

5 Do you have any views (positive or negative) on the Analysys Mason Report conclusion that there is at this time no “other PPT” that can meet the requirements?

Three Response:

Three does not agree that the Analysys Mason Report can be safely relied upon to conclude that at this time no "other PPT" could meet the requirements. As has been set out in the detailed response to the questions relating to options and analysis the assessment is variously:

- incorrect (e.g. it assessments mobile 3Mbit/s data coverage instead of mobile voice coverage when assessing FCS);

- omits consideration of material inputs (e.g. the availability of satellite based fixed broadband, the fact that its baseline comparator for VFL pricing (eir's line rental) is already subsidised, it omits any dimensioning of the likely level or location of demand for VFL, etc);

- fails to consider other PPT options (e.g. a voucher based scheme for areas where commercial VFL is not viable, changes to building regulations/planning to address future demand for VFL;

- fails to take proper account of Copper Switch Off (CSO) and the fact that after CSO VFL must be provided over fixed broadband as the access layer with either a separate VoB or VoIP Component as the service layer;

- risks requiring further installation of copper lines, which is a legacy technology facing obsolescence. Installation and maintenance of copper lines at this time would be particularly expensive and the most uneconomic of all available solutions. It would be clearly contrary to policy objectives to force uneconomic investment where more cost effective alternatives are available.

- fails to take proper account of the policy objective of promoting VHCN roll-out and take up and the desirability of promoting forward compatible technology solutions in the provision of VFL.

Three is of the view that these infirmities are sufficiently material to require a substantive reworking of the Report. This should be carried out before any consideration is given to ComReg making a designation under Paragraph 72(3) of the Code to impose appropriate universal service obligations.