



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Provision of Public Pay Telephones

Universal Service: Interim Designation

Response to Consultation and Decision

Reference: ComReg 18/67

Decision: D09/18

Date: 16/07/2018

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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1 Executive Summary

- 1 The Commission for Communications Regulation (ComReg) is the independent regulator for the electronic communications sector in Ireland. ComReg was established by section 6 of the Communications Regulation Act 2002 (as amended), (the Act).¹
- 2 In addition to ComReg's statutory objectives and functions under the Act, ComReg under the Universal Service Regulations (the Regulations)² has an obligation to ensure that "public pay *telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users*".
- 3 Universal service is an important tool to ensure end-user welfare. It provides a safety net that helps ensure certain basic fixed line services are available at an affordable and uniform price to all citizens and consumers throughout the State, where the market might not deliver these services.
- 4 Services provided under the universal service include reasonable access to voice telephony services from public payphones. Public payphones are payphones that are located in public areas (e.g. the street) and are available to, and accessible by the general public.
- 5 On 27 June 2018, ComReg published its Consultation – ComReg Document no. 18/57 "*Provision of Public Pay Telephones Universal Service: Interim Designation*" ("Consultation 18/57")³ which gave interested stakeholders an opportunity to share any views on ComReg's proposal to maintain a public payphone USO, and to designate eir ("interim designation"), for 3 months after June 2018 ("an interim period"). In publishing Consultation 18/57 ComReg was cognisant of its statutory objectives, as set out in Section 12 (1) (a) (iii) of the Act, including the promotion of interests of end-users of services and protecting end-user welfare.⁴ eir was the only respondent.
- 6 ComReg has undertaken a full public consultation and has carefully taken into account the submissions in reaching its conclusions in relation to provision of public payphones under USO for 3 months beyond June 2018 and, the designation of eir in this regard.

¹ The Communications Regulation Act 2002 (as amended).

² The European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011, S.I. No. 337 of 2011 ("Universal Service Regulations").

³ <https://www.comreg.ie/publication/provision-of-public-pay-telephones-universal-service-interim-designation/>

⁴ ComReg must use all reasonable, proportionate measures to promote the interests of citizens by ensuring that citizens have access to universal service as specified in Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as amended ("Framework Directive") at Article 8.

- 7 Having regard to its statutory objectives, ComReg believes that, on balance, this is the most appropriate approach. The dynamic approach (based on usage levels) under Decision D08/14 (“D08/14”)⁵ which designated eir as the Universal Service Provider (“USP”), ensured that end-users who used public payphones could still have access to them, whilst permitting eir to remove public payphones for which there was no longer a reasonable need. Indeed under that approach, eir could choose not to retain certain current payphones if it so wished, while being required to retain certain others.
- 8 For these reasons and, in order to protect end-users and therefore ensure that the requirements of the Regulations are met, ComReg has decided that eir is designated with the provision of public payphones effective from 16 July, 2018, (i.e. the publication date of the Decision) for 3 months. ComReg has decided that there will be no change in its approach to keeping a payphone USO during this period. Therefore, under this Decision ComReg has put in place, the same obligations in place hitherto, which is, amongst other conditions, usage thresholds for the permissible removal by eir of public payphones, pending a further consideration and consultation on these matters.
- 9 Accordingly, this Decision and Decision instrument (Decision D09/18) set out in Annex 2 is in force for 3 months.
- 10 In making its decision, ComReg has taken into account the submission received in response to Consultation 18/57, the information which we collected on foot of the Statutory Information request, together with other relevant material.
- 11 ComReg is satisfied that the measures set out in this Decision will help to ensure that, during the 3 month period, the reasonable needs of end-users will continue to be met and that this will not result in any additional costs to the USP, nor will they result in substantial end-user detriment.

⁵ Provision of Public Payphones – Universal Service Scope and designation, ComReg document 14/69, 7/07/14.

2 Background to the Decision

- 12 Under the Regulations, ComReg has an obligation to ensure that “public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users”.
- 13 The Regulations⁶ provide that a designated undertaking shall ensure that:
- Public pay telephones⁷ and other public voice telephony access points are provided to meet the reasonable needs of consumers in terms of the geographical coverage, the number of telephones or other access points, accessibility to disabled end-users and the quality of services; and
 - It is possible to make emergency calls from a public payphone using the single European emergency call number “112”; and
 - End-users of public payphones have access to a directory enquiry service.
- 14 In July 2014, ComReg in D08/14 designated eir as the USP for the provision of public pay telephones for the period 7 July 2014 until 30 June 2018.⁸ The USP must also ensure it is possible to make emergency calls, free of charge and that users have access to a directory enquiry (DQ) service.
- 15 In ComReg Decision D08/14 ComReg decided that the number of public payphones in operation at that time should be maintained by eir, unless their usage fell below a certain threshold level (as set by D08/14). If payphone usage fell below the specified level however, eir was permitted to remove them, if they chose to do so. The dynamic approach based on usage levels ensured that end-users who used public payphones could still have access to them, whilst permitting eir to remove public payphones for which there was no longer a reasonable need.
- 16 In D08/14 ComReg undertook to complete a review of the specified usage threshold by July 2016. ComReg conducted Consultation 16/43⁹ and, having considered respondents’ views, decided that the usage threshold regime remained appropriate and, therefore, ComReg maintained the status quo.¹⁰

⁶ Regulation 5 of the Regulations.

⁷Where “public pay telephone” means a telephone available to the general public for the use of which the means of payment may include coins, credit cards, debit cards or prepayment cards, including cards for use with dialling codes. Citations European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011, S.I. No. 337 of 2011 (“Universal Service Regulations”).

⁸ In accordance with Regulation 7 and Regulation 5 of the Regulations.

⁹ Universal Service – Provision of Public Payphones – Review of Usage Threshold for Removals Decision 16/43, 27/05/16 in July 2016.

¹⁰ Universal Service – Provision of Public Payphones – Usage Threshold for Removals Decision 16/62, 26/07/16 in July 2016.

- 17 The approach to the provision of public payphones under USO as set out under D08/14 remained in force until 30 June 2018.
- 18 The following is a brief summary of events leading to the publication of this Decision:
- In effecting any reduction in the number of public pay telephones, eir, as the USP, was obliged to ensure that the USO was met and; in this respect, D08/14, Section 4 of the Decision Instrument “*removal of public pay telephones*”, as established in July 2014, applied until 30 June 2018 (when the designation expired).
 - Early in 2018 ComReg commenced a detailed review of public pay telephones the purpose of which was to prepare a public consultation on the continued need (or absence of the need) for reasonable access to public payphones under a USO beyond June 2018 and, what, if any, may be the most appropriate future designation requirements.
 - ComReg required information to assist with its review and preparing the planned consultation. In this respect, and amongst other things, on 26 February 2018, ComReg issued an information request to eir,¹¹ as the USP for previous periods and as the majority supplier of payphones, asking “*In the absence of a designation please provide details of eir’s likely commercial future approach to the ongoing provision of (1) public payphones and (2) private payphones.*”
 - On 12 March 2018 eir responded stating “*In the absence of a designation eir would likely seek to remove all public payphones and private payphones.*” eir did not provide any detailed information with this statement. ComReg relied on this information and considered the risk that eir could possibly engage in an imminent and widespread removal of payphones in the absence of USO.
 - As ComReg prepared to finalise its planned consultation, ComReg corresponded with eir on 21 June 2018 and received new information (in bold below), with eir stating “*In the absence of a designation eir would likely seek to remove all public payphones and private payphones. **This would be managed over time and on a case by case basis, taking account of a number of factors and commercial criteria that may extend beyond the revenue and costs specific to each payphone.***” [emphasis added]. eir has not provided ComReg with detailed information regarding its submitted approach to payphones post D08/14.

¹¹ A Statutory Information request, pursuant to Section 13D of the Act, dated 26 February 2018.

- On 28 June 2018, ComReg advised eir that this new information (which ComReg had no prior visibility of until 21 June 2018) significantly altered eir's previous response on eir's approach absent a USO, and it raised questions in respect of eir's commercial approach to the provision of public and private payphones.
- On 28 June 2018, ComReg published Consultation 18/57 which gave interested stakeholders an opportunity to submit any views on ComReg's proposal to designate eir for 3 months after June 2018 and, in this regard, impose on eir a USO with a view to maintaining the approach to the provision of public pay telephones under USO as set out under D08/14 pending the outcome of a consultation on the future of the payphone USO.
- ComReg has requested eir to clarify and provide more information in respect of eir's approach to the provision of public and private payphones in order to assist ComReg to better understand the counterfactual scenario.¹²
- Having taken into account the submission received in response to its proposals and the draft Decision Instrument, set out in Consultation 18/57, the information which we collected on foot of the Statutory Information request, together with other relevant material, ComReg is now publishing its final decision on an interim designation.

¹² A Statutory Information request, pursuant to Section 13D of the Act, dated 13 July 2018.

3 Summary of ComReg's Decision

19 The following section contains a brief summary of the rationale for ComReg's Decision and the contents of ComReg's Decision. The Decision Instrument is set out in Annex 2. This is based on ComReg's assessment of events leading to the publication of this Decision having regard to current information and having regard to ComReg's statutory objectives.

Designation of USP

20 As a result of its analysis, ComReg has decided, in the interest of end-users of payphones, to designate eir to provide public payphones for a further 3 months under the same conditions that were in place hitherto for the last 4 years.

21 This decision is made in light of the following facts:-

- eir is the only USP of payphones since the introduction of the USO.
- eir is the largest public payphone provider in Ireland.
- eir has not provided ComReg with sufficient details on its claimed policy and approach to payphones absent a designation, provided to ComReg on 21 June 2018, to allow ComReg to fully consider if eir's approach would meet the reasonable needs of end-users. ComReg is of the view that the implications of the approach articulated by eir in March 2018 are significantly different.
- ComReg is concerned that, as it has received no specific details of the approach that eir recently states it will take absent a designation, the exact approach is unknown to ComReg, the public and other stakeholders at this time. ComReg has requested specific information from eir in relation to the statement provided to ComReg on 21 June 2018.
- ComReg must allow time for eir to submit the requested details and for ComReg to consider this, to finalise its' consultation on the future of the payphone USO, to consult and to reach and publish its' decision. It is noted that ComReg in accordance with the Regulations may only decide not to designate an undertaking with a USO after consulting with the Minister and having regard to views expressed to it under a public consultation. ComReg is of the view that for this purpose 3 months is an appropriate minimum period.

- ComReg is of the view that the obligations in place hitherto are the most appropriate obligations in light of the short timeframe for this designation. In addition, eir, the public and other stakeholders are already familiar with the obligations, there is no implementation timeframe necessary and eir has flexibility to choose not to retain certain payphones with low usage if it so wishes.

Universal service obligations

- 22 ComReg has decided to impose obligations on eir, as the USP, to address consumer protection concerns so that *inter alia* the reasonable needs of end-users will continue to be met in accordance with the Regulations.
- 23 Accordingly, ComReg has decided to impose obligations (the same conditions that were in place hitherto), as provided for by the Regulations to:
- Ensure that public pay telephones are provided to meet the reasonable needs of end-users by retaining and maintaining the USO for public pay telephone in accordance with the criteria for permissible removal specified in Section 4 of the Decision Instrument set out in Annex 2;
 - Ensure that it is possible to make emergency calls from a public pay telephone free of charge;
 - Ensure that users of its public pay telephones have access to a directory enquiry service;
 - Ensure that all public pay telephones provide appropriate payment means;
 - Apply geographically averaged prices throughout the State.

4 Responses to issues raised in submissions by interested Parties

Introduction

24 Consultation 18/57 set out ComReg’s proposal to designate eir for 3 months after June 2018 and, in this regard, impose on eir a USO to maintain the approach to the provision of public pay telephones under USO in place hitherto as set out under D08/14 (i.e., the existing public payphone USO). Consultation 18/57 sought stakeholder’s views on our draft decision and asked the following question:

- Do you agree with ComReg’s preliminary view that it is most appropriate to maintain a public payphone USO by way of an interim designation for the period until 30 September 2018?

25 eir made the only submission in response to Consultation 18/57.

26 Having considered all of the issues and taken into account the views expressed by the respondent, ComReg has finalised the Decision Instrument, as set out at Annex 2.

27 This section sets out a summary of the issues raised by eir in response to Consultation 18/57, and ComReg’s response to the submission. Only issues relevant to Consultation 18/57 are addressed by this response to consultation.

Appropriateness of an interim designation

28 eir disagreed with ComReg’s proposal, as it was of the view “*the most appropriate manner in which to implement a new public payphone USO designation would have been by way of ComReg adequately demonstrating that the need for the current level of payphones remains and by publishing its consultation and Decision in advance of the expiry of the designation.*”

29 eir set out its opinion that “*ComReg has failed to follow due process in imposing regulatory obligations on eir.*”

30 Further eir was of the opinion that “*ComReg does not appear to be following fair procedures and has demonstrated pre-judgment and bias. ComReg cannot simply rollover the designation. Any USO designation can only be imposed in accordance with Regulation 7 of the Universal Service Regulations.*”

- 31 eir noted that 30 June 2018 has passed and as a result there is no longer a USO on any undertaking(s) for provision of public payphone USO and, was of the view that ComReg cannot extend something that does not exist. In addition, eir considered that for a new designation ComReg “*must set out its case in an open and transparent consultation in accordance with the requirements of the Universal Service Regulations, whereby no undertaking is in principle excluded from being designated.*”
- 32 eir noted its surprise “*at ComReg’s suggestion that it needs another 3 months to consider the appropriateness of a USO designation for payphones as a result of “new” information provided by eir.*” In eir’s view, its additional text does not constitute new information nor does it significantly alter eir’s position. eir reiterated that its position (as set out in response to ComReg’s Statutory Information request) “*remains unchanged that in the absence of a designation eir would likely seek to remove all public payphones and private payphones.*” However, eir now submits “*such removals would be undertaken over time and decision making may include other factors in addition to the costs and revenues of a particular payphone.*”
- 33 eir furthermore submits that it cannot see the reason for Consultation 18/57, as it was of the view that the perceived risk to the continued availability of adequate payphones in June 2018 based on the text provided by eir, should have been the same as perceived risk in February 2018.
- 34 Further, eir noted its surprise “*that ComReg would base its decision to extend the USO designation on an issue which would be exclusively for eir to decide as a responsible corporate citizen in a post-designation scenario.*” In addition, eir was of the opinion that “*The manner in which eir would address its payphone inventory outside of a designation as the universal provider of public payphones is not a matter for ComReg. eir will act as a responsible commercial operator in approaching the provision of payphones now the USO designation has passed.*”

ComReg’s Response

- 35 In Consultation 18/57, ComReg was of the preliminary view to protect end-users that it was most appropriate to consider maintaining a public payphone USO by way of an interim designation for the period until 30 September 2018. In this respect, ComReg proposed in its draft decision to designate eir for 3 months after June 2018 and, in this regard, impose on eir a USO to maintain the approach to the provision of public pay telephones under USO (i.e., the same obligations in place hitherto, which is, amongst other conditions, usage thresholds for the permissible removal by eir of public payphones) as set out under D08/14 (which remained in force until 30 June 2018). The requirements and the conditions as set out in Section 4 of D08/14 were in place prior to and at the time of ComReg publishing Consultation 18/57. Contrary to eir’s view, therefore, ComReg is not proposing to simply roll over or extend the existing USO.

36 Contrary to eir's view, ComReg did set out its preliminary view of the regulatory impact of the case for an interim designation in an open and transparent manner in Consultation 18/57 which was:

- Imposing a public payphone USO on eir for 3 months consisting of requirements set out in D08/14 pending the planned consultation on policy issues arising regarding any future designation or otherwise for provision of public payphones is necessary and appropriate to protect end-users. ComReg's key statutory objective is to promote and protect the interests of end-users of the universal service in the State. The availability of public payphones is important for more vulnerable end-users.
- The dynamic approach (based on usage levels) under D08/14 ensured that end-users who used public payphones could still have access to them, whilst permitting eir to remove public payphones, if they so wished, for which there was no longer a reasonable need.
- ComReg was cognisant of eir's response to its Statutory Information request in February 2018. Based on information provided by eir in March 2018, there was a risk that eir, acting as a profit maximising company, and absent any USO, may have financial incentives to cease provision of payphones in the short term. However, ComReg now understands that, based on the recent information provided by eir, absent a designation, eir may approach the removal/retention of payphones in accordance with a particular policy or criteria it may have developed, rather than possibly by a widespread and imminent removal, which ComReg understood to be the case from the initial information provided by eir. In light of the ambiguity, ComReg considered it appropriate to request eir to clarify and provide more information in respect of eir's approach to public and private payphones in order to assist ComReg to better understand the counterfactual scenario.
- More importantly, ComReg was cognisant of its objectives to ensure that, unless deemed unnecessary, a public payphone USO is imposed after June 2018 and, that the requirements of the Universal Service Regulations are met.
- The objective of Consultation 18/57 was to address these policy matters arising in light of the events set out in section 2.

- 37 Further, on 26 February 2018, ComReg sought information from eir as to its intentions outside a USO, the counterfactual scenario. However, even though it was aware that its response would be used by ComReg in forming its preliminary views, eir did not provide any details as regards its statement “*In the absence of a designation eir would likely seek to remove all public payphones and private payphones.*” On 21 June 2018 eir sought to provide an additional statement; “*This would be managed over time and on a case by case basis, taking account of a number of factors and commercial criteria that may extend beyond the revenue and costs specific to each payphone.*” Again, the specific details corresponding to this statement were not provided by eir. Accordingly, ComReg needed time to consider this new information and to seek further clarifications from eir prior to finalising and issuing a consultation about the future approach.
- 38 ComReg considered it necessary to obtain detailed and accurate information from eir of how it would approach removing this universal service and, ComReg has issued a further information request to eir in that regard. Information received will form part of ComReg’s consultation process and decision making on a possible future scope and designation beyond the interim designation, taking into account the interests of end-users.
- 39 For all these reasons, and in light of the events set out in section 2, in Consultation 18/57, ComReg put forward a proposal to keep in place a safety net to protect end-users pending further consideration of relevant information which in ComReg’s preliminary view is necessary and appropriate. It is noted that in accordance with the Regulations¹³ ComReg may only decide not to designate an undertaking with a USO for the provision for public payphones for an area or, a certain part of an area, after consulting with the Minister and having regard to views expressed to it under a public consultation.

¹³ Regulation 5(3) provides where the Regulator determines, after consultation with the Minister and having regard to views expressed to it under public consultation carried out in accordance with Regulation 26, that there exists a sufficient number of public pay telephones or other public voice telephony access points in any geographic area to satisfy the reasonable needs for such service in that area, taking into account the population density in such geographic area and the state of development of the communications market in that area, the Regulator may decide not to designate an undertaking under Regulation 7 for the purpose of paragraph (1) in relation to that area of a specified part of that area, as the case may be.

- 40 ComReg disagrees with eir that it has not followed due process in imposing regulatory obligations on eir. In the absence of the necessary information as to eir's planned policy and approach to the provision of payphones going forward, ComReg published Consultation 18/57 and sought views of all interested parties on ComReg's preliminary view. Therefore, it was open to all stakeholders to share any views on the consultation proposal and provide other proposals as relevant (and, any expression of being a USP for the provision of public payphones). In this light, ComReg did not preclude any undertaking from this consultation process regarding an interim designation and imposing a USO in accordance with the Regulations.

Consultation 18/57

- 41 eir was of that opinion that "*the consultation is opaque*" and, that "*This consultation appears to merely be a tick-box exercise for ComReg and is not a genuine consultation on the issues at hand.*"

ComReg's Response

- 42 Having regard to the information which we collected on foot of the Statutory Information request, together with other relevant material and, having regard to the policy matter arising, ComReg published Consultation 18/57. For the reasons set out above, this consultation was not a 'tick box' exercise, as claimed by eir. Consultation 18/57 was, in light of the events set out in section 2, an open consultation on matters arising and part of ComReg policy review.
- 43 In addition, ComReg considers eir to be incorrect where it purports to suggest that there has been inaction on the part of ComReg in relation to policy issues arising regarding payphones. The summary of events leading to the publication of this Decision, as set out in section 2, clearly demonstrate that ComReg has monitored developments and seeks the most up to date information in respect of payphones. ComReg's review of the usage threshold requirements in D08/14 in Consultation 16/43, July 2016, also demonstrated that, at that time, having considered respondents' views, ComReg decided that the usage threshold regime as set out in D08/14 remained appropriate to June 2018.
- 44 Early in 2018, ComReg commenced a detailed review of public payphones the purpose of which was to prepare a public consultation on a possible future designation and scope of USO.
- 45 To assist with its review and, in preparation for the planned consultation, ComReg amongst other things, issued eir with an information request on 26 February 2018 asking for the most up to date information.

- 46 As ComReg received no specific details of the approach that eir recently states it will take absent a designation, ComReg has now requested specific information from eir in relation to the statement provided to ComReg on 21 June 2018.

5 Next Steps

- 47 ComReg plans to publish during quarter three of 2018, a consultation regarding the requirement or not for a USO for provision of public payphones having considered eir's response to the further information request. ComReg will publicly consult on, *inter alia*, the likely effect upon stakeholders and competition, of ComReg exercising its discretion as to whether or not to designate a USP(s) for provision of public payphones and, of imposing any associated USO measures¹⁴ beyond the interim designation (when this designation decision expires).
- 48 Following that consultation, it is envisaged that a final decision would be issued in respect of a universal service designation for provision of public payphones.

¹⁴ Under Regulation 7(1) of the Universal Service Regulations, ComReg may designate one or more undertaking to comply with an obligation or requirement referred to in Regulation 5 (1) of those Regulations, which relates to public payphone services.

Annex: 1 Regulatory Impact Assessment

Introduction

- 49 The analysis presented in this section represents ComReg’s RIA. It sets out ComReg’s conclusions of the likely effect upon stakeholders and competition, of ComReg exercising its discretion as to whether or not to designate a USP(s) for provision of public payphones and, of imposing any associated USO measures.¹⁵
- 50 This RIA forms part of ComReg’s overall analysis of the continued need (or absence of the need) for reasonable access to public payphones under a USO beyond 30 June 2018 (when the current designation expired)
- 51 The purpose the RIA is to assess the likely impact upon stakeholders and competition of options regarding a public payphone USO – by way of an interim designation for the period of 3 months or otherwise. The RIA assists with assessing whether ComReg’s proposed regulatory approach is likely to have the desired impact in terms of promotion of the interests of end-users and protecting end-user welfare by ensuring that citizens can benefit from reasonable access to public payphones.¹⁶
- 52 ComReg’s aim in conducting its RIA is to ensure that any specific obligations imposed are appropriate, proportionate and justified in light of the analysis conducted, having regard to its objective regarding reasonable access (currently based on usage)¹⁷ to public payphones, whilst also mindful of the principle of proportionality.
- 53 The purpose of the RIA is to establish whether regulation is actually necessary, to identify any possible negative effects which might result from imposing a regulatory obligation and to consider any alternatives. Consistent with the RIA Guidelines¹⁸ and, section 13(1) of the Act, ComReg’s RIA considers the effect of proposed regulation. Therefore, ComReg in conducting this final RIA takes full account of its obligations under the Regulations.

¹⁵ Under Regulation 7 (1) of the Universal Service Regulations, ComReg may designate one or more undertakings to comply with an obligation or requirement referred to in Regulation 5 (1) of those Regulations, which relates to public payphone services.

¹⁶ Pursuant to the Communications Regulation Acts 2002 to 2011, as amended, ComReg’s key statutory objectives in relation to the provision of electronic communications services (“**ECS**”) are to (i) Promote competition, (ii) Contribute to the development of the internal market, and (iii) Promote the interests of users in Ireland, as well as within the European Union.

¹⁷ In accordance with Decision D08/14.

¹⁸ ComReg, “Guidelines on ComReg’s Approach to Regulatory Impact Assessment”, [ComReg Document 07/56a](#), 10 August 2007 (the “**RIA Guidelines**”).

54 ComReg has carefully considered in section 4 of this Decision document the specific issues raised on its proposals.

55 Having regard to the submission received in response to Consultation 18/57, the information which we collected on foot of the Statutory Information request, together with other relevant material and, ComReg's statutory objectives, the following sets out ComReg's RIA on requirements regarding an optimal approach to public payphones provision in order to ensure that the USO responds to end-users' reasonable needs.

Step 1: Describe the policy issue and identify the objectives

56 Universal service is an important tool to ensure end-user welfare. It provides a safety net that helps ensure certain basic services are available at an affordable and uniform price to all citizens and consumers throughout the State, where the market might not deliver these services.

57 Services provided under the universal service include reasonable access to voice telephony services from public payphones.

58 ComReg's concern is that, if left to the operation of market forces alone, an adequate provision of public payphones to meet the reasonable needs of end-users may not be guaranteed. In these circumstances, and where these services are valued and needed at this time, the requirements of the Regulations would not be met.

59 Under the Regulations, ComReg must ensure that all reasonable, proportionate measures to promote the interests of citizens by ensuring that they have access to universal service at an affordable price.

60 ComReg's policy objectives for this review are:

- I. To ensure that end-users have reasonable access to public payphones and that consumers are protected; and
- II. To ensure that the requirements of the Regulations (transposing the Universal Service Directive) are met.

Step 2: Identify and describe the potential regulatory options

61 ComReg is considering the following options which may be adopted for the purpose of achieving the above stated objectives:

Option 1. No Designation of undertaking(s) as USP for provision of a public payphone USO

62 The delivery of basic universal services would be left to the operation of market forces alone. No undertaking(s) would be designated to provide public payphones.

Option 2. Designation of undertaking(s) as USP for provision of a public payphone USO

63 Under this option a public payphone USO would be imposed to ensure the adequate availability of public payphones through a designation of an undertaking(s) to provide public payphones for 3 months from 16 July 2018 and, under the same conditions that were in place hitherto for the last 4 years.

Step 3 – Determine the impacts on stakeholders and competition

64 In order to determine the impact of each of the proposed measures, the measures are assessed by comparing their impact against what would happen if the measure was not implemented.

65 This is set out below.

Measure Proposed	Impact on Industry	Impact on Consumer
Option 1 No Designation of undertaking (s) as USP	<p>No USP designated to provide public payphones.</p> <p>No net cost claim or impact in respect of sharing of any unfair burden as relevant.</p> <p>eir could cease providing public payphones.</p> <p>However payphones could be continued on a commercial basis.</p>	<p>According to eir, it is likely that public payphones would cease and private payphones may also cease to be provided depending on commercial incentives.</p> <p>The specific details of eir’s approach is unknown and ComReg is concerned that this could result in end-user detriment, the reasonable needs of end-users may not be met.</p>

		<p>As the specific details of eir's approach is not known, vulnerable end-users and most disadvantaged in society may no longer have access, on the same terms, to service that they currently rely on and use, and may only have access to expensive alternatives. However, eir claims that this is <i>"an issue which would be exclusively for eir to decide as a responsible corporate citizen in a post-designation scenario."</i> In addition, eir was of the opinion that <i>"The manner in which eir would address its payphone inventory outside of a designation as the universal provider of public payphones is not a matter for ComReg. eir will act as a responsible commercial operator in approaching the provision of payphones now the USO designation has passed."</i></p> <p>Eir has not provided ComReg with specific details as to what this may mean for payphones and their end-users if ComReg made a decision not to designate.</p>
<p>Option 2</p> <p>Designation of undertaking (s) as USP</p>	<p>USP designated to provide public payphones.</p> <p>Potential net cost claim or impact in respect of sharing of any unfair burden as relevant.</p> <p>Under the dynamic approach the USP may choose not to retain certain current payphones if it so wished, while being required to retain certain others.</p>	<p>End-users who use and rely on public payphones would still have reasonable access to public payphones and access to voice telephony services from public payphones when necessary, for calling ECAS, DQ and other valued services, in accordance with the same approach that has been in place for the previous 4 years.</p> <p>The reasonable needs of end-users will likely continue to be met, which helps ensure end-user welfare.</p>

	This will not result in any additional costs to the USP as eir claims it would act in a 'responsible manner' in any case, although the specific detail of eir's approach absent a designation is unknown.	
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Step 4 – Assess the impacts and choose the best option

- 66 ComReg considers that the adequate provision of public payphones to meet the reasonable needs of end-users provides a valuable service to vulnerable users in society. The end-users accessing public payphones, and the reason for use, will vary depending on the circumstances. It is not relevant to compare public payphone usage with the general phone usage of other consumers of electronic communications services. The relevance is the benefit to society (in meeting the reasonable needs of end-users) with regard to the actual use of a particular public payphone. Having regard to the identified consumer protection concerns in light of undertakings possible commercial incentives and, the impact on end-users absent a USO, ComReg is of the view that Option 1 (no designation of USP) at this time is not appropriate.
- 67 The continued application of a USO at this time is objectively justified and proportionate as this safety net helps ensure the reasonable needs of end-users are protected regarding access to public payphones. The advantage of Option 2 (Designation of USP), is that, it helps ensure that end-users who use public payphones could still have access to them, whilst still permitting the USP to remove public payphones for which there was no longer a reasonable need.
- 68 Under Option 2 the USO would consist of the same obligations in place hitherto, which is, amongst other conditions, encompasses usage thresholds for the permissible removal by eir of public payphones, pending a further consideration and consultation on these matters. This will not result in any additional costs or administrative burden to the USP.
- 69 The choice between Options 1 and 2 therefore depends on which of these ComReg considers as the most appropriate and proportionate option to achieve the above stated policy objectives. We are of the view that, on balance, the potential benefits of Option 2 compared to Option 1 outweigh the possible costs to the USP. Option 2 achieves ComReg's objectives that end-users are protected and ensures that the requirements of the Regulations are met.

- 70 For the reasons set out at paragraphs 21 and 36 above, ComReg is of the view, on balance, that Option 2 is the most optimal approach to this matter at this time and should be implemented.

Annex: 2 Final Decision Instrument

1. STATUTORY FUNCTIONS AND POWERS GIVING RISE TO DECISION

1.1 This Decision and Decision Instrument, made by the Commission for Communications Regulation (“ComReg”), relates to the provision of universal services in the Irish telephony market and is made:

- i. Having regard to sections 10 and 12 of the Communications Regulation Act 2002 (as amended);
- ii. Pursuant to the functions and powers conferred upon ComReg under and by virtue of Regulation 7 (1) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“the Regulations”);
- iii. Having regard to Regulation 5 (2) of the Regulations;
- iv. Having taken account of the representations of interested parties submitted in response to ComReg Document No 18/57.
- v. Having regard to the analysis and reasoning set out in ComReg Document No 18/57 and ComReg Document No. 18/67.

2. DESIGNATION OF UNIVERSAL SERVICE PROVIDER

Public Pay Telephones

2. In accordance with Regulation 7 of the Regulations, Eircom Limited and its subsidiaries, and any undertaking which it owns or controls, and any undertaking which owns or controls it and its successors and assigns (“eir”) is hereby designated as the Universal Service Provider (“USP”) for the purpose of complying with the following obligations, as provided for by Regulation 5 of the Regulations.

2.1. The USP shall do the following:

- i. Ensure that public pay telephones are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other access points, accessibility to disabled end-users and the quality of services by retaining and maintaining the current USO public pay telephone except in accordance with the criteria for permissible removal specified in Section 4 of this Decision Instrument.

- ii. Ensure that it is possible to make emergency calls from a public pay telephone using the single European emergency call number “112”, the National emergency call number “999” and any national emergency call number that may be specified by ComReg, in each case free of charge and without the necessity to use coins or cards or any other means of payment.
- iii. Ensure that users of its public pay telephones have access to a directory enquiry service.
- iv. Ensure that all public pay telephones provide appropriate payment means;

Geographically Averaged Pricing

2.2. As provided for by Regulation 8 (3) of the Regulations, eir, as the USP, shall apply geographically averaged prices throughout the State for the services referred to in this Decision.

3. MAINTENANCE OF OBLIGATIONS

3.1. Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements contained in decision notices and directions made by ComReg applying to eir and in force immediately prior to the Effective Date shall continue in force and eir shall comply with same.

4. REMOVAL OF PUBLIC PAY TELEPHONES

Criteria for permissible removals

4.1 The USP is permitted to remove a public pay telephone on a single site where:

- i. there is demonstrable evidence that the removal of the public pay telephone is necessary as the public pay telephone concerned is a focus for anti-social behaviour; or
- ii. the usage in the previous six months of the public pay telephone (while in reasonable working order) has been low, indicating an absence of “reasonable need” in that location, where “low” is considered to mean:
 - Average Usage (including local, national, international, emergency calls, DQ calls, Freephone calls and reverse charge minutes) for the previous six months is less than 1 minute per day and

- Average minutes for the previous six months to Freephone numbers and Emergency Services combined is not more than 30 seconds of these minutes;

or

- iii. there is more than 1 public pay telephone on the site and the average usage across all of the public pay telephones on the single site does not meet the low usage standards as set out in 4.1(ii); in such instances the USP shall ensure 1 public pay telephone remains on the single site; or
- iv. it is requested by a local authority.

4.3 For the purposes of the above a “single site” means one or more payphones located within 100 meters of each other or within a line of sight which includes either side of a road or on any adjacent roads, and “average usage” is determined based on the previous 6 months usage.

Notification requirements

4.4 The USP must notify ComReg eight (8) weeks in advance of any public pay telephone removal

i. This notification to ComReg should contain at a minimum:

- Details of the proposed public pay telephone to be removed
- Proposed date of cessation of service and for removal of public pay telephone
- Details of which of the above criteria have been met and how
- Demonstrative evidence that the public pay telephone was in full working order, i.e. within reasonable repair standards, for 6 months prior to its removal except in cases where it has been repeatedly vandalised.
- Usage reports for the relevant six month period, in a format specified by ComReg.

4.5 The USP must post a notice on the public pay telephone for a minimum period of six (6) weeks in advance of the proposed removal, to clearly inform users of the intention to remove the public pay telephone and include the proposed date for removal of public pay telephone.

4.6 Notification should also be posted on the USP’s website.

5. EFFECTIVE DATE AND DURATION

- 5.1 This Decision and Decision Instrument is effective from 16 July 2018 to 15 October 2018.

6. SEVERANCE

- 5.2 If any Section or, portion thereof, contained in this Decision Instrument is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, then that Section, or portion thereof, shall, to the extent required, be severed from this Decision Instrument, and rendered ineffective, but as far as possible without modifying the remaining Sections, or portions thereof and shall not in any way affect the validity or enforcement of this Decision Instrument or other decision instruments.

7. CONFLICT

- 5.3 For the avoidance of doubt, to the extent that there is any conflict between a ComReg Decision Instrument or ComReg document dated prior to the Effective Date and eir's obligations now set out herein, this Decision Instrument shall prevail, unless otherwise indicated by ComReg.

Jeremy Godfrey

Commissioner

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE 16th DAY OF JULY 2018

Annex: 3 Legal Basis

In addition to our functions and objectives under the Communications Regulation Act 2002 (as amended), Regulation 5 of the European Communities (Electronic Communications Network and Services) (Universal Service and Users' Rights) Regulations 2011 ("the Regulations") states:

5. (1) A designated undertaking shall ensure that public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other access points, accessibility to disabled end-users and the quality of services.

(2) The Regulator may, with the consent of the Minister, specify terms and conditions applicable to the provision of public pay telephones or other public voice telephony access points for the purpose of ensuring that the requirements specified in paragraph (1) are met.

(3) Where the Regulator determines, after consultation with the Minister and having regard to views expressed to it under a public consultation carried out in accordance with Regulation 26, that there exists a sufficient number of public pay telephones or other public voice telephony access points in any geographic area to satisfy the reasonable needs for such service in that area, taking into account the population density in such geographic area and the state of development of the communications market in that area, the Regulator may decide not to designate an undertaking under Regulation 7 for the purpose of paragraph (1) in relation to that area or a specified part of that area, as the case may be.

(4) (a) The Regulator shall conduct a review of any decision it makes under paragraph (3) as and when it considers appropriate.

(b) Where the Regulator makes a decision that the number of public pay telephones or other public voice telephony access points is no longer sufficient to serve the reasonable needs for such services in that area, the Regulator may designate an undertaking under Regulation 7 as having an obligation under paragraph (1) in respect of public pay telephones or other public voice telephony access points in that area.

(5) An undertaking providing public pay telephones shall ensure that it is possible to make emergency calls from a public pay telephone using the single European emergency call number "112" and any national emergency call number that may be specified by the Regulator, in each case, free of charge and without the necessity to use coins or cards or any other means of payment.

(6) Any undertaking providing public pay telephones shall ensure that the users of those telephones have access to a directory enquiry service referred to in Regulation 4.

(7) An undertaking that fails to comply with—

- (a) a requirement of paragraph (1), (5) or (6), or*
- (b) a term or condition specified under paragraph (2), commits an offence.*

(8) In proceedings for an offence under paragraph (7) it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant requirement, term or condition, or*
- (b) it was not possible to comply with the relevant requirement, term or condition.*

Designation of undertakings

7. (1) The Regulator may designate one or more undertakings, for such period as may be specified by the Regulator, to comply with an obligation or requirement referred to in Regulation 3, 4(1)(a) or (b), an obligation or term or condition referred to in Regulation 5 or 6 and, where applicable, a requirement under Regulation 8(2), so that the whole of the State may be covered.

(2) The Regulator may designate different undertakings or sets of undertakings to comply with one or more of the obligations, requirements or terms or conditions referred to in paragraph (1) or to cover different parts of the State.

(3) In designating an undertaking under paragraph (1), the Regulator shall adopt 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 obligations 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 11.

Where an undertaking designated in accordance with paragraph (1) intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall notify the Regulator at the time of the decision to dispose or 6 months prior to the transaction whichever is the earlier date. Such notification shall include details as to the effect of the intended transaction on the provision of access at a fixed location under Regulation 3(1) and of telephone services under Regulation 3(2). The Regulator may impose, amend or withdraw specific obligations on the separate legal entity.

Affordability of tariffs

8. (1) *The Regulator shall monitor the evolution and level of retail tariffs of the services identified in Regulations 3, 4, 5 and 6, in particular in relation to national consumer prices and income, as either provided by designated undertakings or available on the market if no undertakings are designated in relation to those services.*

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

(3) *The Regulator may, with the consent of the Minister, require an undertaking designated by the Regulator under Regulation 7 to apply common tariffs including geographical averaging throughout the State, in the light of national conditions.*

(4) *The conditions of any scheme to provide special tariff options, common tariffs, including geographical averaging, shall be fully transparent and shall be published and applied in accordance with the principle of non-discrimination. The Regulator may require, where it considers a scheme does not comply with this paragraph, that the scheme be modified or withdrawn.*

(5) *A designated undertaking that fails to comply with a requirement imposed under paragraph (2), (3) or (4) commits an offence.*

(6) *In proceedings for an offence under paragraph (5) it is a defence to establish that—*

(a) reasonable steps were taken to comply with the relevant requirement, or

(b) it was not possible to comply with the relevant requirement.