



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# Consultation on the Provision of Public Pay Telephones

## Submissions to Consultation 18/57

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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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**eir Group**

**Response to ComReg Consultation:**

**Provision of Public Pay Telephones Universal Service: Interim designation**

**ComReg Document 18/57**



**5 July 2018**

**DOCUMENT CONTROL**

<b>Document name</b>	eir response to ComReg 18/57
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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'.

## Summary remarks

1. eir welcomes the opportunity to comment on ComReg's consultation on the Provision of Public Pay Telephones. eir has a number of issues it would like to address in addition to its response with regard to the appropriateness or otherwise of maintaining a public payphone Universal Service Obligation (USO) by way of an interim designation.
2. eir does not agree that it is in any way appropriate to maintain a public payphone USO by way of an interim designation for the period up until the 30 September 2018 and has serious concerns in relation to the failure by ComReg to follow due process in imposing regulatory obligations on eir. 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.<sup>1</sup>
3. ComReg states that "*it needs to maintain the current public payphone USO ("interim designation") and to designate eir, for 3 months after June 2018 ("an interim period")*" [emphasis added]. It is a matter of fact that there is no current designation in respect of the public payphone USO. D08/14 clearly states "*This Decision and Decision Instrument is effective from 7 July 2014 until 30 June 2018, unless otherwise amended by ComReg*". The 30 June 2018 has passed and ComReg did not amend the duration of the Decision. Therefore it is a simple fact that ComReg cannot extend something that does not exist.
4. eir notes that the same circumstances persist in respect of the printed directory USO when D07/14 also expired on 30 June 2018. As such there are no extant designations on any Undertaking in Ireland for the payphone USO or the printed directory USO and it is unlawful for ComReg to seek to extend something that does not exist. If ComReg believes there is a societal case to be made for a new designation for public payphones, or printed directories, then it 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.
5. eir's view is covered in more detail in our response to Question 1, however, in short we consider that ComReg's approach to the process surrounding this Consultation has been

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<sup>1</sup> European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011



haphazard at best as well as disingenuous. ComReg has known for four years that the designation would expire on 30 June 2018 and yet the first request for information that eir received was on the 26 February 2018. This consultation is the consequence of ComReg's poor management of its administrative processes and what would appear to be over three and a half years of inaction on the part of ComReg.

6. Unfortunately, this would appear to be a cross-divisional issue with delays in the market review process and the production of other consultations such as this one appearing to have become standard operating procedure. It would also appear that little action has been taken on ComReg's part to mitigate the risks of further delays occurring. Given the reoccurrence of such delays in the context of ComReg's entire work programme and the suggestion that this particular delay is as a result of information provided by eir, we now consider it necessary to shed some light on the bilateral discourse in relation to this consultation and to take issue with the manner in which ComReg has approached the process in general.

## RESPONSE TO CONSULTATION QUESTIONS

***Q. 1 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 up until the 30<sup>th</sup> September 2018. Please provide reasons to support your view.***

7. eir does not agree that it is most appropriate to maintain a public payphone USO by way of an interim designation for the period up until the 30 September 2018. Indeed we struggle to see how any interested party can reach an informed view on this matter as the consultation paper is opaque.
8. In July 2014, ComReg designated eir as the Universal Service Provider (USP) for public payphones for a period of four years to the 30 June 2018 (ComReg D08/14). At that time ComReg decided that the number of public payphones in operation should be maintained unless their usage fell below the specified level. On 28 June 2018, 2 days before the designation was due to expire, ComReg published a consultation proposing a 3 month interim designation of eir as the USP for public payphones for the period up to 30 September 2018 or until the date that it makes an ultimate decision, whichever is earlier.



9. ComReg states that in light of the forthcoming expiration of the current designation, it “*has undertaken a detailed review of public pay telephones to ascertain the continued need (or absence of the need) for reasonable access to public payphones under a USO.*” However, ComReg then states that in the course of finalising the consultation, it received new information on public payphones from eir on 21 June 2018. ComReg is therefore of the preliminary view that in order to allow time for full consideration of the potential impact of this new information on all aspects of public payphones it needs to maintain the current public payphone USO for a further 3 months.
10. eir notes 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. For context, ComReg issued an Information Request to eir on 26 February 2018, which included the following question;

*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*

Given that the absence of a designation would indicate a finding by ComReg that there was no longer a need to maintain the number of public payphones in operation, eir advised ComReg that in this scenario it “*would likely seek to remove all public payphones and private payphones*”.

11. On 21 June, eir received an email from ComReg quoting eir’s response to this particular question and querying whether eir had any comment it wished to make in this respect. eir added to its original response some additional clarification on the approach that would be taken to removing payphones as follows;

*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.***

12. On 28 June, just prior to the publication of the consultation on ComReg’s website, eir received an email from ComReg advising eir that this addition to its response or ‘new’ information significantly altered eir’s prior response on this matter thereby raising questions in respect of eir’s approach to public and private payphones and that this necessitated a

period of 3 months to consider this information and to seek further clarification from eir prior to finalising and issuing its consultation. This seems to be contrived.

13. The additional text can in no way be construed or presented as significantly altering eir's position on the matter. eir's position remains unchanged that in the absence of a designation eir would likely seek to remove all public payphones and private payphones. The additional text simply expands on eir's position that 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.
14. eir rejects any suggestion that ComReg's delay is as a result of it providing new information to ComReg. eir does not agree that this constitutes new information nor does it significantly alter eir's position with regard to public and private payphones. eir reiterates that in the absence of a USO designation as put forward by ComReg, it would seek to remove public and private payphones, given that this service is generally uneconomic to provide. eir would remind ComReg that the rationale behind the universal service regime is to ensure the availability of basic communications services that provide a societal benefit where they would not be otherwise be provided for by the market under normal commercial conditions.
15. eir would also remind ComReg that in order to impose a new USO designation for payphones, ComReg would need to demonstrate that there is still a need for such services. ComReg cannot simply rollover the designation. Any USO designation can only be imposed in accordance with Regulation 7 of the Universal Services Regulation 2011. Regulation 7 (3) requires

*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."*

eir is therefore of the view that the approach being pursued by ComReg in this consultation is unlawful and that ComReg has failed to follow due process in imposing regulatory obligations on eir.

16. ComReg states in the consultation paper that it “*needs to ensure that, if deemed necessary, a public payphone USO is maintained after June 2018. 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.*” If this is truly ComReg’s concern then eir cannot see how the additional clarification provided by eir on 21 June has suddenly triggered the need for an urgent consultation.
17. eir was clear in February that “*In the absence of a designation eir would likely seek to remove all public payphones and private payphones*”. This position was reaffirmed in June. If ComReg perceived a risk to the continued availability of adequate payphones in June 2018 based on the text provided by eir, there is no reason why ComReg should not have perceived the same risk in February 2018. It is clear that the reason for this consultation is ComReg’s inability to discharge its duties in an orderly, timely, efficient and effective manner.
18. eir is surprised that ComReg would base it’s 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. eir will take into account economic and other reasons which may exist for retaining a payphone, which may include local authority concerns. 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.
19. According to ComReg’s Annual Action Plan published at the start of its 2017/18 work programme, the original intention was to publish a consultation regarding the USO designation for Payphones in Q1 2018 with a Decision to follow in Q2 2018. Unsurprisingly, a consultation paper failed to materialise in Q1 and in its updated Action Plan published in April 2018, ComReg indicated that it would publish both the consultation and associated Decision in Q2 2018.
20. eir notes that ComReg did not raise the query with eir regarding its response until the 21 June 2018, just over a week before the designation was due to expire. It would therefore appear that in any event ComReg was unlikely to publish its consultation not to mention its Decision before the end of Q2 2018. Conveniently, ComReg has now managed to at least publish a consultation before the deadline. This consultation appears to merely be a tick-box exercise for ComReg and is not a genuine consultation on the issues at hand.

21. eir considers that 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. It is alarming that ComReg is seeking to exercise its powers in what would appear to be an unlawful manner due to failure solely on its part. eir reserves its position accordingly.



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5 July 2018

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### ComReg 18/57 Consultation on the Provision of Public Pay Telephones

Dear Gerry

I refer to the consultation document published by ComReg on Thursday, 28 June 2018 in relation to the above matter.

eir is responding to the consultation in the manner set out in the consultation document however I am separately writing to you to express the serious concerns eir has in relation to the failure by ComReg to follow due process in imposing regulatory obligations on eir.

As you know, eir's designation as the universal provider of public pay telephones came to an end on 30 June 2018. However, on 28 June 2018 (2 days before the regulatory obligations were due to lapse), ComReg published a fast track consultation seeking to re-designate eir until 30 September 2018 without any proper basis for doing so. ComReg claims in the consultation document that there is "new information" to consider however eir strongly objects to this assertion. There is no new information that needs to be considered and, in our view, ComReg is being disingenuous in this regard.

ComReg requested information from eir in February 2018 to assist with its review and that information was provided to ComReg in March 2018. No new information in relation to public pay telephones has been provided since that time.

It appears to eir that ComReg is claiming that it needs more time to consider the following text highlighted in bold below:

*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.***

Firstly, this statement from eir is not new information, but is rather further clarification. This statement also merely confirms what is obvious from previous submissions made to ComReg in relation to managing the USO and, in particular, the practicalities of removing public pay telephones. Secondly, notwithstanding that eir was merely stating the obvious, we also fail to see how this particular statement is a relevant criterion in establishing whether eir should be designated with the universal provision of public pay telephones. In fact, we would strongly argue that it is not a relevant criterion.





We also fail to see how ComReg can justify requiring three additional months to consider this one sentence in circumstances where it has provided respondents only one week to consider this consultation document. It seems clear to eir that ComReg is merely looking for an excuse to cover up the poor administration of its own work programme.

eir also takes issue with the fact that ComReg is, once again, consulting on a foregone conclusion (as was also the case with the recent NDD consultation). ComReg does not appear to be following fair procedures and has demonstrated pre-judgment and bias. This consultation is merely a tick-box exercise for ComReg and is not a genuine consultation on the issues at hand.

As set out in our response to consultation, ComReg cannot simply rollover the designation. Any USO designation can only be imposed in accordance with Regulation 7 of the Universal Service Regulations.<sup>1</sup> More specifically, Regulation 7(3) requires

*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.*

It is eir's view that the approach being pursued by ComReg in this consultation is unlawful and eir reserves its position accordingly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Healy'.

**Gary Healy**  
**Director of Regulatory & Public Policy**

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<sup>1</sup> European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011