



Commission for
Communications Regulation

Provision of Directory of Subscribers

Universal Service: Scope and Designation

**Response to Consultation, Further
Consultation and Draft Decision**

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Additional Information

All responses to this consultation should be clearly marked:

“Reference: Submission re ComReg 14/51” as indicated above, and sent by post, facsimile, e-mail or on-line at www.comreg.ie (current consultations), to arrive on or before 5pm on June 23rd 2014, to:

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Please note ComReg will publish all respondents' submissions with the Response to this Consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24.

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1. Executive Summary

- 1 The Commission for Communications Regulation (“ComReg”) previously issued a consultation document (“Consultation 14/20”)¹ which sought the views of interested stakeholders on proposed Universal Service Obligations (“USO”) in relation to Directories of Subscribers (“directory services”) and the designation of a Universal Service Provider (“USP”) in this regard.
- 2 Directory services refer to the ways in which consumers can access information, on telephone numbers, for example through printed directories, online directories and directory enquiry calls.
- 3 Having considered the views of respondents’ this Response to Consultation, Further Consultation and Draft Decision sets out ComReg’s preliminary views and on those issues which define the ways in which any USO in relation to directory services would be implemented. It considers the various regulatory options available to ComReg in relation to directory services, and in relation to the possible designation of a USP.
- 4 ComReg remains of the preliminary view that there continues to be a requirement to provide a subscriber directory. However, ComReg is of the preliminary view that the obligation could be amended to allow for consumer preferences for receiving the directory to be recorded, and implemented.
- 5 The proposed obligations set out in this consultation, have been put forward so as to ensure consumers needing to use directory services still have access to them, yet it allows for the obligation to dynamically change in line with the demand for a printed directory.
- 6 The proposed obligations set out in this document will ensure consumers can continue to receive the printed directory, should they so wish, yet ensure that the obligation is provided in a cost effective manner. ComReg is satisfied that these obligations will not result in any consumer detriment or unnecessary additional cost to the USP.
- 7 Therefore, following Consultation 14/20, in this consultation ComReg proposes that the printed directory will be provided to
 - End-users who have not opted out of receiving it for the first 2 years of the designation (“opt out model”)

¹ Consultation “Provision of Subscriber Directories, Universal Service: Scope and Designation”, Document No. 14/20, dated March 18th 2014.

- End-users who have opted in to receive a directory for subsequent years (“opt in model”), if this model is deemed more cost effective (otherwise an opt out model remains).
- 8 Any change by the USP to an opt in model must be supported by a substantial and adequate public awareness campaign well in advance of its implementation to ensure that end-users are well informed of their choice and can exercise that choice in good time.
 - 9 In making these proposals, ComReg has taken into consideration the responses received in relation to Consultation 14/20 and information collected on foot of a number of information requests together with other relevant material. ComReg has endeavoured, in this document, to summarise the key aspects of respondents’ submissions and ComReg’s views in relation to the same.
 - 10 Consultation 14/20 extended an invitation to all undertakings to express an interest in providing the Directory of Subscribers universal service for the proposed next designation period. No expressions of interest were received. Although no expressions of interest were received ComReg is allowing other undertakings a final opportunity to express an interest in being the USP for subscriber directories for the next designation period, as part of this consultation.
 - 11 In light of the dynamic nature of the proposed obligation, this Response to Consultation, Further Consultation and Draft Decision proposes that (absent any expressions of interest being received) Eircom should continue to be the universal service provider of subscriber directories for a period of 4 years.
 - 12 Although under the Regulations², no undertaking is excluded from being designated in relation to universal service obligations, as set out in Consultation 14/20, ComReg considers that an amendment is required to the legislation to ensure the definition of “operator” in the E-Privacy Regulations³ is precisely aligned with the entity that is required to maintain the National Directory Database (“NDD”) under Regulation 19(4) of the Regulations. Absent this amendment, ComReg may be unable at this time to designate another undertaking or not to designate an undertaking, as relevant, to provide this element (subscriber directories) of universal service.
 - 13 ComReg has agreed with the Department of Communications, Energy and Natural Resources that the matter can be resolved in a timely manner as relevant.

² European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011, S.I. No. 337 of 2011 (“the Regulations”).

³ European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (No. 336/2011) (“E-Privacy Regulations”)

- 14 ComReg is of the preliminary view that Eircom should be the USP due to its experience and capability and the systems it has in place at present.
- 15 ComReg is of the preliminary view that the options and proposals set out in this consultation will ensure consumers can still access the printed directory, which continues to provide a basic service to many people throughout the State.
- 16 ComReg looks forward to receiving responses from all stakeholders in relation to the proposals in this consultation. ComReg will review and fully take into account all responses it receives in reaching its final decision.

2. Background

- 17 The Regulations⁴ provide that a designated undertaking shall ensure that a comprehensive directory of subscribers is made available in an approved form, whether printed or electronic or both, and is updated at least once a year, or that a comprehensive telephone directory enquiry service (i.e. using the phone) is made available to all end-users including users of public pay telephones.
- 18 The Regulations also provide that the designated undertaking shall ensure the directory or the directory enquiry service comprises all subscribers in the State (including those with fixed, mobile and personal numbers) who have not refused to have their personal details included in those directories.
- 19 In principle, no undertaking is excluded from being designated in relation to universal service obligations⁵. The designation method(s) adopted must ensure that the obligations are provided in a cost effective manner and may be used as a means of determining the net cost of the universal service obligation.
- 20 On June 29th 2012 ComReg designated Eircom as the USP with specific obligations, including the provision of directory services⁶ for a period of two (2) years. Eircom, as the USP, is required to ensure that a comprehensive printed directory or directories of subscribers is made available to end-users and is updated at least once a year.
- 21 Accordingly, in light of the forthcoming expiration of the current USO designation, in Consultation 14/20, ComReg undertook a detailed review of the current directory services, to ascertain what the most appropriate requirements on a USP (if any) should be.
- 22 In considering an obligation in this regard, ComReg's objective is to ensure that end-users are provided with an affordable way to frequently access telephone numbers.

⁴ Regulation 4 of the Regulations.

⁵ Under Regulation 7(2) of the Regulations, ComReg may designate different undertakings or sets of undertakings to comply with the obligation in Regulation 5.

⁶ ComReg document 12/71 Decision No. 07/12

- 23 Given that it is not possible to obtain exact information in respect of the usage of the printed phone book, this review was supported by a consumer survey⁷ which collected information on public opinion and usage of directories. The results of this survey show that end-users use printed directories, Directory Enquiry (DQ⁸) services, online searches and online directories to access telephone numbers.
- 24 In order to assist in formulating its views, since the publication of Consultation 14/20, ComReg also sought information from directory enquiry providers in relation to usage of the various directory services.
- 25 ComReg proposed in Consultation 14/20 that the obligation could be maintained in its current form or it may be amended to allow for consumer preferences, different formats, changes to the delivery model or the introduction of charges for directories. It also proposed that where the legislative matter (as set out in Section 1 above) has not been addressed or where no expressions of interest have been received that Eircom should continue to be the universal service provider of directory services.
- 26 ComReg consulted on a number of proposed obligations in relation to the directory services USO in Consultation 14/20 and sought views on topics such as:-
- i. Is there a continued need for a directory services USO obligation?
 - ii. What should any future obligations be?
 - iii. What alternatives, if any, could best serve consumers' needs?
 - iv. How long should any designation be for, and which undertaking(s) should be designated?
- 27 ComReg received three responses to Consultation 14/20. The respondents to Consultation 14/20 ("the Respondents") were as follows:

⁷ See ComReg document 14/20a

⁸ A DQ call is a call you make to a directory enquiry service provider when you are looking for a business or individual's phone number. DQ calls can be made from mobiles or landlines. DQ numbers begin with 118 and are 5 digits long.

The Respondents
Eircom
Sky Ireland (Sky)
UPC Ireland (UPC)

- 28 ComReg fully considered the information provided in the responses to the consultation and information received from relevant stakeholders in relation to usage of the various directory services in reaching its preliminary views and draft decisions set out below.
- 29 ComReg has also revised the draft Regulatory Impact Assessment (“RIA”) based on responses received and the developments of its views. The Revised Draft RIA is set out in Annex: 2 of this document.

3. Requirement for Directory Services Universal Service Obligation

- 30 In Consultation 14/20, ComReg undertook a detailed review of the directory services market⁹ in Ireland. ComReg also conducted a consumer survey on public opinion and directory usage. It considered the ways in which consumers can access telephone numbers, for example, through printed directories (either supplied by the USP or otherwise), through DQ services or online (through online directories or online searches).
- 31 Consultation 14/20 also looked at approaches taken in other European countries to directory services USO, and found that various approaches have been taken in respect of mandating directory services as a universal service. It found that the vast majority of countries continue to include directory services in the USO. For example, countries such as France, Italy, Spain and UK continue to impose a directory services USO. In the countries where an obligation remains, the obligation has been implemented in various ways.¹⁰
- 32 Consultation 14/20 noted that while Eircom is the main provider of printed directories in the State, there are 4 operators offering national DQ services. There are a variety of prices of calls to DQ depending on the network operator and the DQ service provider. The prices of calls to these services are generally high compared to standard calls. A number of DQ service providers voluntarily provide an online telephone directory.
- 33 For those with internet access, the online directory has the advantage of containing all telephone numbers, unlike the printed directory which contains only those telephone numbers in the local area. In addition, online directories and DQ services provide access to unlisted numbers.¹¹
- 34 An accessible directory enquiry service is currently provided by a number of undertakings on a voluntary basis for end-users who are registered as having a vision impairment and/or have difficulty reading the phone book.

⁹ See Section 3.1

¹⁰ See Section 3.4

¹¹ Consumers have a number of options for listing their telephone numbers, these are:

Listed: Details (name, address, telephone number) are listed in the telephone directory and with Directory Enquiries

Unlisted : Listed with Directory Enquiries only, i.e. not in the phonebook

Ex-Directory: Details not listed the phone book or with Directory Enquiries

- 35 In August 2013, Eircom began offering consumers a facility to “opt out”¹² of receiving the printed telephone directory¹³. According to Eircom, the numbers signing up to opt out have been extremely low yet according to ComReg’s survey 22% would prefer not to receive a directory, with a further 27% having no preference as to whether they receive it or not.
- 36 Consultation 14/20 found that printed directories continue to provide a basic service to many people throughout the State, indicating, to some extent, a continued need for printed directories. ComReg considers that survey evidence shows that the printed directory continues to be used by consumers. It is possible that the complete withdrawal of the obligation may lead to consumer detriment due to the lack of access for all to affordable directory services.
- 37 The provision of a universal service may result in USP(s) providing designated services at a net cost. The Regulations allow the USP(s) to seek funding to meet a net cost of the universal service¹⁴, and where any net cost (of the particular universal service obligation) represents an unfair burden on the USP, the funding requirement must be met by industry¹⁵. There was no net cost claimed for directory services for 2009-2010.
- 38 Consultation 14/20 proposed a number of regulatory options in relation to the requirement for a directory services USO. ComReg’s proposals, the views of respondents and ComReg’s position in respect of each of these matters are summarised below.
- 39 The Regulations provides that a designated undertaking shall ensure that a comprehensive directory of subscribers is made available to all end-users whether printed, electronic or both and is updated at least once a year. Under Regulation 7, ComReg has the discretion as to whether or not to designate a USP. ComReg therefore has two options available to it:
1. Remove the obligation (Option 1)
 2. Maintain an obligation (Option 2)

¹² Consumers can go online to www.phonebookoptout.ie and opt out of receiving the printed directory in the future.

¹³ ComReg did not mandate an opt-out model due to possible impact on net cost, however this option is open to Eircom to implement currently

¹⁴ Regulation 11(1) of the Regulations.

¹⁵ Regulation 12(1) of the Regulations.

3.1 Remove the obligation (Option 1)

- 40 In Consultation 14/20 ComReg considered the impact of removing the directory services USO. ComReg was of the view that consumers should have access to at least one directory service at an affordable price. This, for example could be in the form of a printed directory, or an electronic format. However, whatever the form, it should be accessible to all consumers.
- 41 ComReg was concerned that if a directory services obligation is removed, consumers would have few options available to them to access telephone numbers at an affordable price.
- 42 ComReg stated its preliminary view that if the obligation to provide a printed directory was removed, distribution of the printed directory would cease or, at a minimum, cease in rural areas. In this situation consumers could still access telephone numbers online or via DQ. However, calls to DQ can be expensive, compared with other calls, and for those consumers who do not have internet access, the withdrawal of printed directories could lead to higher telephone bills.
- 43 ComReg stated its preliminary view that, bearing in mind the cost of providing a directory of subscribers compared with the benefit to consumers of the continued provision, there appears to be a case to maintain this obligation.
- 44 ComReg was of the preliminary view that there continued to be a need for a directory services universal service obligation. However, in maintaining any obligation in this regard, ComReg sought to assess all alternatives to printed directories.
- 45 ComReg asked the following question in respect of the provision of directory services:

Q. 1 Do you agree or disagree that there is a continued requirement to provide a directory services obligation? Please provide reasons to support your views.

Views of Respondents

- 46 Eircom was of the view that *“While there may be limited justification for the maintenance of a directory services obligation on one or more parties, eircom does not agree there is a continued requirement to provide a **printed** directory USO.”*

- 47 UPC was of the view that the survey results *“are far from clear in justifying a continued requirement to provide a printed directory”*, it is also of the view that if the requirement to provide a printed directory is maintained the USP should be *“afforded flexibility in how it meets this obligation and in particular that it does so via the most efficient means possible.”*
- 48 Sky noted that it *“is important that ComReg balances the needs of consumers and industry in determining how the USO is delivered.”*

ComReg’s Preliminary View

- 49 ComReg has considered the responses received to Consultation 14/20 and remains of the preliminary view that there is a continued requirement for a directory services obligation.
- 50 ComReg remains of the preliminary view that absent a directory services obligation, consumers may not be able to access at least one directory service at an affordable price.
- 51 If the obligation was removed, distribution of the printed directory would cease, or at a minimum cease in certain areas (likely to be rural). Online directories, although currently provided by a number of operators, may continue to be provided. However although 82%¹⁶ of Irish consumers currently have internet access, not all end-users have access. Although a number of operators provide DQ services, calls to DQ can be expensive, and therefore the withdrawal of an affordable directory service could lead to higher telephone bills.
- 52 Furthermore, ComReg notes that only 4% of those surveyed¹⁷ stated they never look for local phone numbers and only 6% stated that they never look for national phone numbers.
- 53 Applying the survey results to the adult population of Ireland¹⁸ ComReg estimates that the printed directory is referred to (for local numbers only) approximately 7million times per annum. If the obligation to provide a printed directory was removed, ComReg estimates that just under 2.5million of these referrals would be substituted with a call to DQ.
- 54 The cost of DQ calls can vary substantially, depending on the call duration, the DQ number called and the network called from. However, ComReg estimates that the withdrawal of the printed directory could cost consumers anywhere between €1.5m and €8.9m p.a.

¹⁶ http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/4-18122013-BP/EN/4-18122013-BP-EN.PDF

¹⁷ See ComReg Document 14/20a

¹⁸ Source

<http://www.cso.ie/en/releasesandpublications/er/pme/populationandmigrationestimatesapril2013/#.U3HdjHC-ozc>

- 55 ComReg therefore remains of the view that given the consumer need and in the context of the provisions in the Universal Service Regulations there continues to be a case to maintain this obligation.

Question 1. Do you agree with ComReg's preliminary view that there is a need for a directory services USO? Please give reasons to support your view.

3.2 Maintain an obligation (Option 2)

- 56 Consultation 14/20 proposed that removing the obligation to provide directory services is not appropriate at this time. ComReg was of the view therefore, that the existing obligations could be maintained (Option 2(a)), or amended (Option 2(b)) once it ensures a comprehensive directory of subscribers is made available. The options are set out in further detail below.

Maintain the Current obligation (Option 2(a))

- 57 Under the current obligation, the USP must ensure that a comprehensive printed directory or directories of subscribers is made available to all end-users and is updated at least once a year.
- 58 ComReg was of the preliminary view that complete withdrawal of the printed directory obligation would negatively impact a large proportion of consumers and in particular those most vulnerable in society.
- 59 ComReg was also of the preliminary view that printed directories continue to provide a basic service to people throughout the State, however due to the wide range of facilities available to access phone numbers there may be reasons to change the existing obligation.
- 60 ComReg asked the following question in respect of the provision of directory services:

Q. 2 What is your view regarding the continued requirement to provide a printed directory to all consumers? Please give reasons to support your views.

Views of Respondents

- 61 Eircom *“does not consider there is sufficient justification to require the provision of a printed directory to all consumers”* and supports ComReg's preliminary view that there may be reasons to modify the existing obligation. Eircom is also of the view that *“there are sufficient alternatives available that render the printed directory obsolete and unnecessary.”*

- 62 UPC believes *“it is far from clear that there is a real need or desire on behalf of consumers to continue the requirement”* and that it is possible *“a significant proportion of those surveyed might actually view receipt of a printed directory as a nuisance or an unnecessary service”*.
- 63 Eircom is also of the view *“It is questionable whether the printed directory in its current form can be considered a comprehensive directory”*, due to the number of entries in the phonebook versus the number of telephone numbers in use. Eircom does not agree with ComReg’s view that printed directories continue to provide a basic service to many people throughout the State.
- 64 Furthermore, Eircom stated that *“To maintain the current printed directory USO on substantially the same terms will have negative consequences in terms of economic efficiency and environmental damage.”*
- 65 However, Eircom also noted in its submission that distribution of the 2014 directories is guaranteed, and hence a new designation would not be required until the end of 2014, Eircom also noted that *“It may be appropriate to consider aligning the designation period(s) with calendar years if the printed directory is to remain a material component of the directory services USO.”*

ComReg’s Preliminary View

- 66 ComReg has considered the responses and is of the preliminary view that the provision of a printed directory to all consumers may no longer be required. As set out in Consultation 14/20 alternatives such as opt in / opt out models, together with central distribution/ delivery models are being considered. However, ComReg does not believe at this time that complete withdrawal of the printed directory would be appropriate.
- 67 The results of ComReg’s consumer survey showed that 43% of consumers continue to use the printed phonebook to find local telephone numbers, with 58% of consumers referring to it in the previous 12 months. Although 22% of consumers said they did not wish to receive the printed directory, with a further 27% not having a preference, 52% of consumers stated they would prefer to receive one, with 7% of these willing to pay for the printed directory.
- 68 These survey results shows that printed directories continue to provide a basic service to many people throughout the State. Furthermore although ComReg agrees there are alternatives to the printed directory, for some end-users it is the only available affordable alternative. For these reasons, ComReg is of the view that it is unreasonable for Eircom to state that *“there are sufficient alternatives available that render the printed directory obsolete and unnecessary”*.

- 69 ComReg notes UPC's view that "*a significant proportion ... might view receipt of a printed directory as a nuisance or an unnecessary service*", however ComReg notes that although the survey found 22% of consumers did not wish to receive the printed directory only a small number of households have opted out of receiving the printed directory, ComReg therefore notes that those who do not wish to receive the printed directory can opt out of receiving it.
- 70 However, as set out in section 3.1 of Consultation 14/20 ComReg is aware that there is a wide range of ways in which consumers can access directory services and many consumers have stated they do not wish to receive the printed directory.
- 71 ComReg therefore remains of the preliminary view that due to the varying needs of consumers and the wide range of facilities available to access phone numbers there may be reasons to modify the existing directory services USO.

Amend the obligation (Option 2b)

- 72 Consultation 14/20 set out that it may be appropriate to change the current obligations, and therefore considered possible ways in which the existing public subscriber directories USO could be amended yet ensure there are no significant negative impacts on consumers.
- 73 ComReg was of the view that there are three main formats which any directory of subscribers can take (i) printed, (ii) electronic, (iii) directory enquiry call. Depending on the format chosen, an amended obligation would also need to stipulate:
- a) the delivery model i.e. should the directory be delivered to each household or to a collection point;
 - b) the consumers preference i.e. ability of consumers to opt in or opt out of receiving the directory;
 - c) whether the service should be provided free or if consumers should be charged for the service.

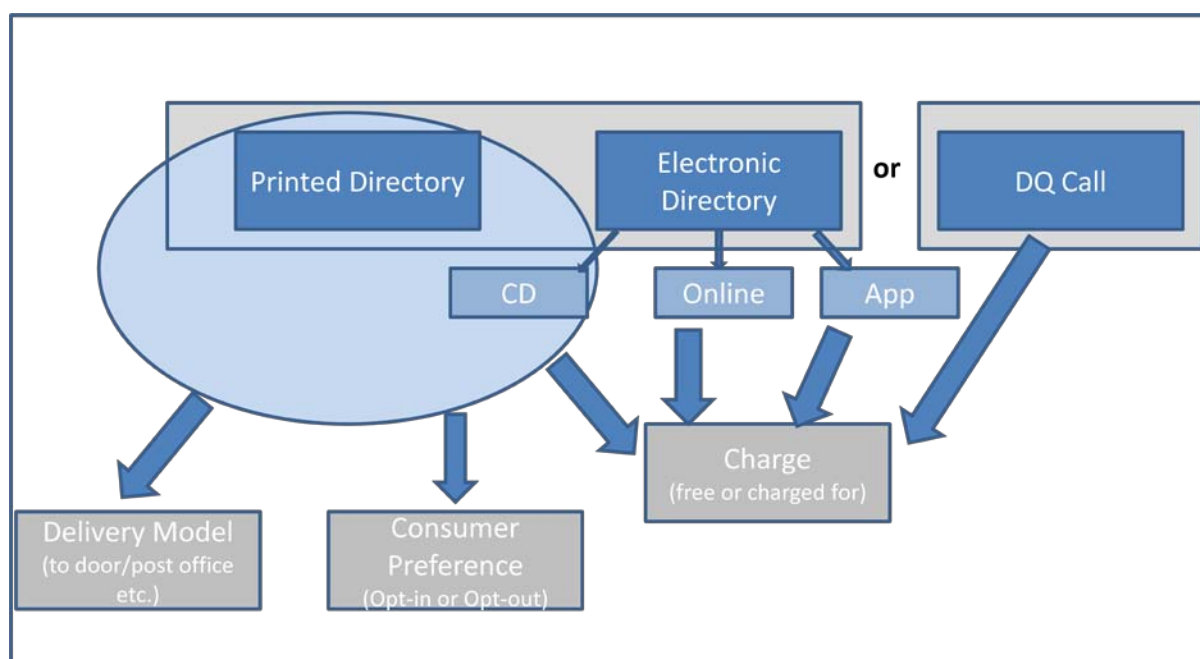


Figure 1

74 Consultation 14/20 addressed each option in turn.

Directory Format

75 In Consultation 14/20 ComReg considered possible formats for a directory, such as printed, electronic or directory enquiry call.

76 ComReg considered the option whereby a USP would be designated to provide printed directories. The changes from the current obligation would relate to potential changes to the delivery model, consumer preferences and charges for receipt of the directory.

77 Consultation 14/20 set out that rather than the USP providing consumers with a printed directory, the USP could provide the directory in one or more electronic formats¹⁹. This could, for example, take the form of an app for those with Smartphones, a CD distributed to consumers or the provision of an online directory.

78 This would ensure that many consumers would have access to an affordable comprehensive directory of subscribers. However, not all consumers have access to new technology which would allow them to access directories in these formats.

79 Alternatively, the USP could be required to provide a DQ service. However, ComReg was of the preliminary view that the provision of directory services could be better achieved by means other than a DQ service.

¹⁹ Regulation 4(1) of the Regulations gives discretion to ComReg to stipulate that the form of the comprehensive directory of subscribers can be printed or electronic or both.

- 80 ComReg was of the preliminary view that although consumers would be protected if the USP was required to provide a DQ service that it may lead to detriment to other DQ service providers in the market, in particular where maintaining affordable access to the service was required.
- 81 ComReg was of the preliminary view, that printed directories continue to be used by some consumers, perhaps because the consumers does not have internet access to get the information free of charge or because consumers choose to use it rather than calling DQ. ComReg was also of the preliminary view that maintaining a printed directory protects those most vulnerable in society, and ensures they continue to be able to access the information they require.

Distribution/delivery model

- 82 Currently the USP delivers a copy of the local printed directory to every end-user in the State. Consultation 14/20 noted that if an obligation to provide a printed directory or a CD is proposed, it may be appropriate to consider amending the existing delivery model, for example to allow for a central collection point in for example, post offices or supermarkets.
- 83 ComReg was of the preliminary view that while an amended delivery model would mean the USP could potentially benefit from reduced costs, due to reduced delivery costs and potential printing costs, additional costs may be incurred due to engagement with and payments to businesses for use of their premises. Additionally, consumers would be responsible for collecting the directory from a central collection point, and this could negatively affect those most vulnerable in society.
- 84 ComReg was of the preliminary view in Consultation 14/20 that an amended delivery model was unlikely to be justified at this time.

Consumer Preferences

- 85 Another way by which the obligation could be amended is to collect information on consumer preferences, i.e. whether the consumers wishes to receive a directory in a given format or not. Again this is only relevant where the directory provided is printed or a CD.

- 86 An obligation to provide a directory of subscribers to individual end-users could specify that the model is either “opt in”- where the consumer informs the USP they would like to receive a directory or “opt out” where the consumer informs the USP they do not want to receive a directory.²⁰
- 87 ComReg was of the preliminary view in Consultation 14/20 that an “opt in” model, if implemented correctly, could benefit consumers, as not all consumers wish to receive a directory. However, ComReg had concerns that this model may lead to additional costs to the USP in relation to the maintenance of the database of consumer preferences.
- 88 ComReg was concerned that if the obligation was changed to allow consumers to “opt in” that this could lead to consumer detriment, in particular to those who may not be aware of their options and how to exercise their rights. Consultation 14/20 noted that although ComReg has not mandated an opt out model, Eircom has started to gather consumer preferences using an “opt out” model²¹ which it is entitled to do.

Charge for directory of subscribers

- 89 There are currently a number of ways in which consumers can access telephone numbers, with the cost of this information varying depending on the method chosen. ComReg was of the preliminary view that some form of affordable directory should be provided to consumers.
- 90 ComReg asked the following questions in respect of changing the obligation:

Q. 3 Do you agree or disagree with the options as set out above? Please give reasons to support your view.

Q. 4 What in your opinion is the most appropriate format(s) for the directory? Please give reasons to support your views.

Q. 5 Do you agree or disagree that a central collection point is not appropriate? Please give reasons to support your views.

²⁰ The collection of consumer preferences is only relevant where the chosen directory format is one which is either delivered to the door or where the USP wishes to determine quantities where a central collection point model is implemented

²¹ In Consultation 14/20 it was noted that “ComReg understands that the number of consumers availing of this option has been low so far”

Q. 6 Do you agree or disagree that consumers should be afforded the opportunity to record their preference not to receive a directory? Please give reasons to support your views.

Q. 7 Do you agree or disagree that an affordable directory in at least one format should be provided to consumers? Please give reasons to support your views.

Views of Respondents

- 91 Eircom is of the view that *“ComReg has failed to consider the option of extending the 196 service to address the needs of all vulnerable members of society who need access to a directory service because they cannot effectively access online or DQ directory services”*. Furthermore, Eircom states that *“nowhere in the Consultation does ComReg actually define who those vulnerable members of society are”*.
- 92 Eircom is of the opinion that the *“primary format should...be the provision of online directories and potentially the development of an app for smart phones to enhance accessibility for mobile users if required.”*
- 93 Eircom stated that *“Maintaining a register of consumer preferences carries an administrative cost. A more efficient approach would be to move to a system of collection from central points.”* Eircom is of the view that concerns raised by ComReg in Consultation 14/20 in relation to a central distribution centre are unfounded, and noted that the *“size of the printed directories has declined over time”*. Furthermore Eircom believes *“the cost savings generated by this approach will by far outweigh reductions in advertising revenue”*.
- 94 UPC also contended that the distribution of the directories through a central distribution point should be further investigated by ComReg, it *“believes that the potential cost savings....through “central distribution points” should be further investigated by ComReg.”*
- 95 Eircom contended that for an opt out scheme to be maintained effectively *“there should be a requirement on ECSP to participate in raising awareness and capturing preferences from their retail customers”*.
- 96 However UPC is of the view that *“it is imperative that ComReg confirm that the alternative proposals.....would not result in a net cost for the provision of any component of directory services”*. UPC, agreed that consumers should be afforded the opportunity to record their preference not to receive a directory, and that *“where there is a clear consumer want and need....an affordable directory in at least one format should be provided”*.

- 97 Eircom agreed that affordable directory services should be provided to consumers. It stated its view that *“this should be an efficient combination of printed, electronic and the 196 service formats.”* Furthermore Eircom was of the view that *“charging should be introduced for the provision of directories to consumers who are not considered vulnerable members of society.”*
- 98 UPC believes *“ComReg should confirm Eircom’s intentions regarding the “electronic directory” and also confirm there is not net cost to Eircom of providing this “electronic directory” now and for the period of the proposed designation”.* UPC further sets out its view that if there is no net cost and the service will be continued then *“this mode of delivery may provide a viable alternative to the current requirement”.*

ComReg’s Preliminary View

- 99 In response to Eircom’s comments in respect of identifying vulnerable users and in order to further assist respondents to this further consultation, and bearing in mind ComReg’s objective²², ComReg has considered the term vulnerable users. In so far as promotion of the interests of users within the Community is concerned, in addressing the needs of specific social groups, ComReg considers that a definition of “vulnerable users” in the context of the electronic communications Framework is likely to include, for instance, specific social groups such as, elderly users and users with special social needs (as referred to in Regulation 16 of the Framework Regulations) and consumers on low incomes (as referred to in Regulation 8(2) of the Universal Service Regulations).
- 100 ComReg notes Eircom’s comment in respect of its 196 (special free directory) service. However, it is ComReg’s preliminary view that the scope of this service should not be extended for purposes other than those with disabilities. This is because it would be difficult to ascertain which exact individuals should have access to the service.

Directory Format

- 101 Although DQ is easily accessible by all users, the charge for making calls to these numbers is currently higher than standard calls and therefore, designating a USP to provide this service, would likely require a review of these charges in order to maintain affordable access to the service.
- 102 In doing this, consumers would be protected; however it may lead to detriment to other DQ service providers in the market, who may have to reduce prices in order to compete with the USP. Furthermore, it is possible that any mandated reduction in call charges by the USP could lead to a net cost.

²² Under section 12(2)(c)(vi) of the Communications Regulation Act 2002, as amended

- 103 ComReg noted in Consultation 14/20 that electronic or printed directories rather than the provision of a DQ service may better achieve ComReg's objectives. ComReg remains of this view.
- 104 ComReg has considered the responses provided by operators and notes Eircom's view that the primary format should be online.
- 105 Although the majority of households (82%)²³ have internet access, there remains a substantial proportion of individuals, almost 1 in 5 (18%), who have never accessed the internet. Those most vulnerable in society may not be able to access electronic directories.
- 106 In the case of an electronic format, the USP may benefit from reduced costs, for example from not having to print a large number of directories, however depending on the form chosen; the USP may not be able to obtain advertising revenue to offset the costs in the future or may incur costs in excess of those for providing a printed directory.
- 107 Therefore ComReg is of the view that to impose a directory services obligation for an electronic format would not be appropriate at this time. ComReg notes that many DQ operators also provide online directories, and is of the opinion that as these are provided without a requirement to do so, it would not be appropriate for ComReg to impose an obligation to provide an online directory at this time.
- 108 ComReg notes that the printed directory continues to be used by 43% of the population to get local telephone numbers, with 58% of these having referred to it at least once in the previous 12 months. ComReg also notes that 52% of consumers would prefer to receive a printed directory. The printed directory is also accessible to vulnerable users.
- 109 For these reasons, ComReg believes a printed directory should continue to be provided. ComReg is of the view that the USP should also provide an online directory to consumers. ComReg is of the opinion that the provision of an online directory is commercially viable and hence would be maintained absent an obligation. ComReg therefore is of the view that there is no need to require the provision of an online directory at this time.

Delivery Model

²³ See http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/4-18122013-BP/EN/4-18122013-BP-EN.PDF

- 110 ComReg notes Eircom's and UPC's views that a central distribution point may be appropriate. However, ComReg remains of the view that an amended delivery model is unlikely to be justified, economic or workable at this time. Although it is Eircom's view that an amended delivery model could achieve cost savings, it has not provided any evidence to support its claim.
- 111 ComReg is of the opinion that an amended distribution model would require the establishment of a comprehensive set of rules to ensure collection points were spread evenly throughout the country and in premises which were accessible to consumers at regular times, and which would ensure that consumers were made aware when and where the directory was available.
- 112 ComReg's view is that a central distribution model would negatively impact on those most vulnerable in society who may be unable to collect the directory. ComReg also has concerns as to how consumers would be informed of when and how they could collect the directory.
- 113 Although ComReg is of the view that the USP could potentially benefit from reduced costs, for example due to reduced delivery costs and potential printing costs, on the other hand the USP would be responsible for engaging with individual businesses to get agreement for use of the premises as a collection point. This engagement with and payments to businesses for use of their premises and informing end-users that the directory is available for collection may result in increased costs.
- 114 For these reasons ComReg remains of the preliminary view that an amended delivery model is unlikely to be justified at this time.

Consumer Preferences

- 115 As set out above, not all consumers wish to receive a directory and many consumers have access to other free directory services. The collection of consumer preferences by the USP could ensure only those who wish to receive a printed directory would receive one.
- 116 ComReg notes Eircom's view that operators should be required to participate in raising awareness and capturing preferences.
- 117 ComReg is of the preliminary view that collecting consumer preferences would result in a reduced requirement in terms of the number of directories which would need to be printed and therefore the delivery of same.

- 118 ComReg notes that although more than 1 in 5 of those surveyed stated they do not wish to receive a printed directory, with a further 1 in 4 not having a preference, only a very small amount of people have actually opted out of receiving it. This is probably due to consumer inertia as suggested by Eircom. However, ComReg is of the opinion that the USP could more actively publicise this option, and therefore encourage end-users who no longer require the printed directory to state this preference.
- 119 If an opt in model was introduced there is a risk that consumers who do want to receive the printed directory would not be aware of the need to opt in or that the process of opt in is seen as onerous.
- 120 Therefore, ComReg is of the preliminary view that an opt out model could be maintained by the USP for the first 2 years of any designation. However, after this period ComReg is of the preliminary view that it is a possibility that the USP may choose to introduce an opt in model for the remaining years of the designation, if such a model was determined to be cost effective. If such a model was not determined to be cost effective by the USP an opt out model would remain in place.
- 121 The initial period would allow consumers to contact the USP to inform it they do not want to receive a directory. This approach would mean that where there is consumer inertia, and the numbers opting out are below that expected, after 2 years of this regime, the USP would be allowed to move to gather consumer preferences on an opt in basis, if this model was more cost effective.
- 122 Under both regimes consumers would benefit by being able to have their preference to receive a printed directory recorded, while the USP could benefit from reduced costs, due in part to a reduction in the volume of printed directories which would need to be printed. Any move to an opt in model would have to be supported by a public awareness campaign run well in advance, in order to ensure those who wish to retain the printed directory could do so. ComReg reserves its right to approve any campaign approach.
- 123 Under these proposals ComReg is of the view that the first set of printed directories should be delivered after the 1st July 2014, the second set would be delivered no more than a year later. These first two set of directories would be distributed under the 'opt out' model. Subsequent distributions may be under an 'opt in' model should this be deemed by the USP to be a more cost effective approach.

124 ComReg also notes Eircom's view that *"Maintaining a register of consumer preferences carries an administrative cost."* However, Eircom has already begun to collect consumer preferences on an opt out basis therefore suggesting costs could be offset by potential savings in printing and delivery. Furthermore, Eircom has previously indicated to ComReg when implementing the opt in model that the costs of implementing it were deemed to outweigh the costs, once sufficient numbers opted out of receiving the printed directory.

125 ComReg is therefore of the view that where sufficient numbers of end-users no longer wish to receive the printed directory, the reduction in the volume of directories which would be required to be printed would offset any these costs associated with maintaining the list. However, it is possible that due to economies of scale there would be a point, if sufficient numbers opted out that this model would no longer viable.

126 Therefore, ComReg is of the preliminary view that an opt in model if properly operated, could be implemented after a period of 2 years. ComReg is also of the view that there must be a variety of accessible, easy and free ways to opt in. With proper consumer communication, a selection of free easy and accessible opt in methods and delivery to subscriber's premises/residence, any detriment in particular to those most vulnerable in society could be overcome.

127 ComReg is of the view that all consumers should be informed of their ability to have a printed directory how they can avail of it. New customers could also be informed for example when entering into a contract.

128 Therefore, ComReg is of the preliminary view that an opt in/opt out model, if implemented correctly could benefit consumers and result in reduced costs to the USP. This model would be dynamic and allow for the gradual removal of blanket distribution of the printed directory.

Charge for directory of subscribers

129 ComReg notes that both UPC and Eircom were in agreement that an affordable directory should be provided to consumers. ComReg notes that a number of providers voluntarily provide an online directory free of charge. ComReg has no reason to believe that these services will be ceased within this designation period. ComReg does not believe it would be appropriate at this time to impose an obligation in this respect.

130 ComReg remains of the preliminary view that an affordable directory in at least one format should be provided to consumers.

Question 2. Do you agree or disagree that consumer preferences should be gathered on an opt out approach for a period of 2 years followed by an opt in approach if this is deemed cost effective? Please give reasons to support your view.

4. Designation of Universal Service Provider (s)

4.1 Designation Period and Mechanism

131 The Regulations require ComReg to designate one, or more, operators to guarantee the provision of the universal services to ensure the entire State is covered²⁴. Different operators (undertakings), or sets of operators, can be designated to provide different elements of universal service, and/or to cover different parts of the State²⁵.

132 In principle, no undertaking should be excluded from being designated to provide the directory of subscribers' universal service, in all or part of the State. In the majority of Member States, the incumbent operator provides the universal services, as has been the case in Ireland. In theory, other operators in Ireland may be able and willing to provide this part of the universal service, in all or part of the State and may be able to do so at a lower cost.

133 Consultation 14/20 invited stakeholders to express an interest in providing the directory services aspect of the universal service. No expressions of interest were received.

134 As set out below, ComReg is currently seeking to align the definition of "operator" in the E-Privacy Regulations with the definition of the entity required to maintain the NDD under Regulation 19(4) of the Regulations. ComReg has agreed with the Department of Communications, Energy and Natural Resources that the matter can be resolved in a timely manner if necessary.

135 Consultation 14/20 set out that the designation period chosen would depend on the nature of the obligation imposed; ComReg believed that where an obligation is dynamic and appropriately flexible a longer designation period would be appropriate.

136 Consultation 14/20 proposed that in the event expressions of interest were received, but the E-Privacy Regulations are not amended prior to July 2014, and ComReg was therefore unable to designate another undertaking to provide this element of universal service, a shorter designation period may be appropriate. This would allow ComReg to review this element of the universal service once the legislative matter has been addressed.

²⁴ Regulation 7(1)

²⁵ Regulation 7(2)

137 These issues aside, ComReg was of the preliminary view that the next designation period should be for a period of 3 or 4 years, unless expressions of interest in providing the service are received or representations are made which substantially alter ComReg's view.

138 Accordingly, ComReg proposed a designation period of 3 or 4 years, from July 1st 2014 to June 30th 2017 or June 30th 2018.

139 ComReg asked the following question:

Q. 8 Do you agree or disagree with ComReg's view that the next designation period should be 3 or 4 years, if the legislative matter is addressed? Please provide reasons to support your view.

Views of Respondents

140 On the basis that the legislative matter is addressed, UPC agreed that the next designation period for the provision of a directory service should be for three or four years.

141 Eircom was of the opinion that *"If the directory services USO is approached from the basis of an efficient combination of formats, with a targeted focus on addressing the need of vulnerable members of society, then a three or four year designation period may be appropriate."* Eircom also noted that the printed directory production cycle operates on a calendar year basis and therefore it *"may be appropriate to consider aligning the designation period(s) with calendar years"*. Eircom does *"not consider the legislative matter to be a relevant consideration"*.

ComReg's Preliminary View

142 ComReg has considered the responses and is of the view that that the designation period should be for a period of 4 years. ComReg remains of the view that where an obligation is dynamic and caters for the changing needs of users in terms of the opt out/opt in model, a longer designation period would be appropriate.

143 ComReg is of the view that at this time there is no requirement to align the designation period with calendar years. As set out above, ComReg is of the view that any printed directories distributed after 1 July 2014 would be considered to be delivered in the new designation period. Additionally, ComReg is not aware of any reasons why a production cycle must operate on a calendar year basis.

144 In light of the proposed amendments to the obligation, as set out in Section 3 above, which allow the obligation to adjust to users' needs, ComReg proposes a designation period of 4 years.

Question 3. Do you agree or disagree with ComReg's preliminary view that the next designation period should be 4 years? Please give reasons to support your view.

4.2 Designation for the entire State

145 Consultation 14/20 considered whether or not it is appropriate to continue to designate universal service obligations to cover the entire State. ComReg was of the preliminary view that a universal service for the entire State, (whether or not it is delivered by different USP(s)), remains a requirement for the proposed next designation period.

146 Consultation 14/20 found that there are differences in the provision of directory services between urban and rural areas and that these are important considerations for a universal service designation for the entire State or for specific areas.

147 However, ComReg believed there are areas that would not be served by the market if the USO did not exist. ComReg was concerned that directory services might not be provided to all or some areas in the State without a universal service obligation.

148 Consultation 14/20 asked the following question:

Q. 9 Do you agree or disagree with ComReg's proposal that, for the proposed next designation period, the required universal services should be designated for the entire State? Please provide reasons to support your view.

Views of Respondents

149 Eircom states its view that *"It is not possible to reach a view on the geographic scope of the designation without being offered a clear view on the vulnerable members of society that need to be addressed...ComReg appears to define vulnerable members of society ... as those living in rural areas who do not have internet access, have low disposable income, mobility issues or physical weakness and lead busy lives. On this definition it would seem that a narrowly targeted directory services USO is required."*

150 UPC agrees that the required universal services should be designated for the entire State.

ComReg's Preliminary View

151 ComReg has considered the respondents views and their reasons for them. However, ComReg remains of the view, there are areas which would not be served by the market if the USO did not exist.

152 ComReg remains of the view for the reasons set out in Consultation 14/20 that it is most appropriate to designate for the entire State for the next designation period.

4.3 Universal Service Provider

153 In Consultation 14/20 ComReg set out that if the E-Privacy Regulations are not amended prior to July 2014, ComReg may be unable to designate another undertaking to provide this element of universal service. However ComReg was hopeful this issue could be resolved and therefore the consultation extended an invitation to all undertakings to express an interest in providing the Directory Services universal service for the proposed next designation period.

154 Consultation 14/20 presented ComReg's view that while there are no significant barriers which prevent an operator from entering the market for the provision of printed directories, there are no other providers currently providing printed directories of residential subscribers in the same volumes in the State.

155 ComReg proposed that if the legislative matter as set out above was not addressed, the current universal service provider, Eircom, should continue to be the universal service provider, during the next designation period, due to its ubiquity, experience and capability.

156 ComReg asked the following question in respect of the designation of a USP:

Q. 10 Do you agree or disagree with ComReg's proposal that where the legislative matter has not been addressed or where no expressions of interest are received, Eircom should continue to be the universal service provider for the directory of subscribers during the next designation period? Please provide reasons to support your view.

Views of Respondents

157UPC stated its view that *“ComReg should make clear that it does not foresee compensation of the USP for any component of directory services, and await expressions of interest.”*

158Eircom is of the view that *“it would be unlawful to designate eircom as USP at the exclusion of consideration of others”*. Furthermore Eircom contended that it does *“not consider that the legislative issue is a lawful impediment to other entities being designated as directory services USP. In any event, if ComReg considers that the legislation must be addressed in advance then the actual deadline is end 2014. FCR Media is contractually committed to complete the 2014 calendar year cycle.”*

159Eircom put forward the argument that *“ComReg’s proposed designation process that eircom will be the de facto USP unless another entity expresses an interest in fulfilling USO associated with directory services. We do not consider this to be a fair and non-discriminatory mechanism.”*

160Furthermore Eircom believes *“It is illogical for ComReg to expect other potential providers to be in a position at this stage of the process to express an interest absent a clear definition of what is required and the compensation scheme.”*

161Eircom also stated it *“is not aware of any unique advantage it has in terms of ubiquity in the context of directory services USO and requests ComReg to clarify what unique advantage ComReg considers eircom to have in this regard.”*

ComReg’s Preliminary View

162Directory services can be provided to consumers in a number of ways. A number of providers offer directory enquiries services and some also offer an online phonebook.

163Although, in ComReg’s view, while there are no significant barriers which prevent an operator from entering the market for the provision of printed directories, there are no other undertakings currently providing mass distribution of printed directories of residential subscribers in the State.

164No expressions of interest were received on foot of Consultation 14/20. Eircom has already begun to gather consumer preferences, and therefore has the systems in place to provide directories on an opt out basis. ComReg is of the preliminary view that these systems could be adjusted to allow for an opt in model should Eircom decide to implement this model after the expiration of the opt out period as proposed above.

165 As set out above, under the Regulations²⁶, no undertaking is excluded from being designated in relation to universal service obligations. As set out in Consultation 14/20, ComReg considers that an amendment is required to the legislation to ensure the definition of “operator” in the E-Privacy Regulations²⁷ is precisely aligned with the entity that is required to maintain the National Directory Database (“NDD”) under Regulation 19(4) of the Regulations. Absent this amendment, ComReg may be unable at this time to designate another undertaking or not to designate an undertaking, as relevant, to provide this element of universal service.

166 However, ComReg has agreed with the Department of Communications, Energy and Natural Resources that the matter can be resolved in a timely manner as relevant. Therefore, ComReg is allowing other undertakings a final opportunity to express an interest in being the USP for subscriber directories for the next designation period, as part of this consultation.

167 Nevertheless, it is ComReg’s preliminary view that the current universal service provider, Eircom, should continue to be the universal service provider for a printed directory, during the next designation period, unless expressions of interest are received, due to its experience and capability due to the systems it has in place at present to record consumer preferences.

168 Should any expressions of interest be received ComReg will consider such proposals and possible further steps, which may include further consideration of the designation of USP’s and the designation period and other aspects proposed in this consultation, in the response to this consultation.

Question 4. Do you agree or disagree with ComReg’s proposal that where no expressions of interest are received Eircom should continue to be the universal service provider for public payphones during the next designation period? Please give reasons to support your view.

²⁶ European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011, S.I. No. 337 of 2011 (“the Regulations”).

²⁷ European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (No. 336/2011) (“E-Privacy Regulations”)

5. Regulatory Impact Assessment (RIA)

169 This section considers the submissions received on, or relevant to, ComReg's draft Regulatory Impact Assessment (RIA) as described in Consultation 14/20, and sets out ComReg's position on these. ComReg's revised draft RIA can be found in Annex 2 of this document. The changes to the RIA arise from comments received from respondents to Consultation 14/20 and due to the progression of ComReg's views.

5.1 ComReg's Position in Consultation 14/20

170 In Section 6 of Consultation 14/20, ComReg carried out a draft RIA in accordance with the RIA framework, in order to identify a preferred option on the need to designate an undertaking as USP for the provision of public payphones following the end of the current designation in June 2014.

171 ComReg considered the two regulatory options available to it, namely:

Option 1: Remove the obligation.

No operator would be designated to provide a directory of subscribers. There would no longer be a requirement to distribute printed directories to each end-user in the State. Some consumers would be affected by the withdrawal of the printed directory.

Option 2: Maintain an Obligation

2(a) Maintain Existing Obligation

The obligation to provide printed directories would remain. Any USP must ensure printed directories are provided to each end-user in the State. Consumers would continue to receive a printed directory delivered to their address every year.

2(b) Amend the Existing Obligation

The obligation to provide a directory of subscribers would remain, but would be amended from its current format. The directory could be printed or for example could be provided electronically. Other issues which would also be reviewed include the possibility of:

- i. changing the distribution model to allow for a central collections point

- ii. allowing the USP to gather consumer preferences i.e. an opt in or opt out model
- iii. allowing the USP to charge for provision of the directory

172 ComReg considered, on balance, that Option 2 was the most proportionate option and accordingly put forward Option 2 as its preferred option.

173 Consultation 14/20 sought stakeholder's views on ComReg's draft RIA generally and asked the following specific question.

Q. 11 Do you agree or disagree with ComReg's draft assessment of the impact of the proposed options? Please set out reasons for your answer.

Views of Respondents

174 Sky was of the view that *"ComReg needs to conduct a rigorous regulatory impact assessment of all relevant options, that takes due account of all relevant costs and benefits, based on the best available evidence, before it makes a final decision"*.

175 Eircom stated its view that *"In order to offer a view on ComReg's assessment we will need sight of ComReg's analysis quantifying the costs and benefits of the options considered. This is absent from what is presented in the consultation paper under the heading of Regulatory Impact Assessment."*

176 Eircom also argued that the *"RIA presented by ComReg ...falls well short of the mark and can in no way be held out to be an example of good practice. The RIA put forward by ComReg is nothing more than an unsubstantiated qualitative point of view which raises more questions than it purports to answer."*

177 Eircom also set out its belief that the *"net cost burden on eircom will increase year on year as the advertising revenue declines and FCR Media seeks compensation from eircom for the losses it incurs.... No proper conclusions can be reached from ComReg's draft RIA."*

ComReg's Preliminary View

178 ComReg has considered the responses and has made changes to its RIA. These changes arise as a result of comments received and also due to the progression of ComReg's views on the proposed obligations.

179 Following publication of Consultation 14/20 ComReg wrote to each of the authorised DQ operators requesting information which it hoped would assist in determining the costs of each proposed amendment. ComReg has analysed this information and where appropriate incorporated it into the RIA.

180 ComReg has endeavoured to quantify some of the costs and the benefits. However, in addition to the quantified benefits, there are other benefits which were not assessed qualitatively due to the lack of data for a quantitative assessment.

181 No respondents to Consultation 14/20 quantified the costs or benefits associated with the various regulatory options set out therein. Any such information provided in submissions to this Response to Consultation and Further Consultation will be fully considered by ComReg.

182 ComReg is of the preliminary view that the amendments to the Directory Services USO that are proposed in this consultation are appropriate, proportionate and justified.

Question 5. Do you agree with ComReg's revised draft assessment of the impact of the proposed options as set out here and in Annex 2? Please give detailed reasons, including details on costs and benefits to support your view,

6. Submitting Comments

183 The consultation period will run from 27th May 2014 to Monday June 23rd 2014, during which time ComReg welcomes written comments on any of the issues raised in this paper. It is requested that comments be referenced to the relevant question numbers from this document.

184 Having analysed and considered the comments received, ComReg will publish a further consultation. In order to promote further openness and transparency, ComReg will publish all respondent's submissions to this consultation, subject to the provisions of ComReg's Guidelines on the Treatment of Confidential Information – ComReg 05/24. We would request that electronic submissions be submitted in an unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

185 ComReg appreciates that some of the issues raised in this paper may possibly require respondents to provide confidential information if their comments are to be meaningful.

186 As it is ComReg's policy to make all responses available on its website and for inspection generally, respondents are requested to clearly identify confidential material and place such material in a separate Annex to their response.

187 Such information will be treated subject to the provisions of ComReg's Guidelines on the Treatment of Confidential Information – ComReg 05/24.

7. Draft 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;
 - 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. 14/20²⁸ and
 - v. Having regard to the following analysis and reasoning set out in ComReg document No. [-].

2. DESIGNATION OF UNIVERSAL SERVICE PROVIDER

Directory Services

- 2.1 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 (“Eircom”) 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.
- 2.2 The USP shall ensure that a comprehensive printed directory or directories of subscribers, based on the data provided to it in accordance with Regulation 19(4) of the Regulations, and updated at least once in each year, is made available to end-users who: during the period of the first two years of operation of this Decision and Decision Instrument, have not opted out of receiving that directory or directories.
- 2.3 The USP shall ensure that a comprehensive printed directory or directories of subscribers, based on the data provided to it in accordance with Regulation 19(4) of the Regulations, and updated at least once in each year, is made available to end-users who during the period of the final two years of operation of this Decision and Decision Instrument:
- (a) have not opted out of receiving that directory or directories, or

²⁸ Consultation on “Provision of Subscriber Directories: Universal Service: Scope and Designation”, Document No. 14/20, dated March 18th 2014.

(b) have opted in to receive that directory or directories,

whichever model is judged, by the USP, to be most cost-effective for the USP.

2.4 The USP shall ensure that an opt in model is implemented together with an advance communications campaign, where consumers can opt in using a variety of accessible, easy and cost free ways. In this respect ComReg reserves its right to approve any such approach.

Geographically Averaged Pricing

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

3. CONTINUATION OF OBLIGATIONS

3.1 All other obligations imposed on the USP by ComReg in relation to its universal service obligations, which were immediately in force prior to the effective date of this Decision and Decision Instrument, shall continue to have full force and effect. Such obligations include, without limitation, those set out in the following:

- ComReg Decision No. D9/05.
- ComReg Decision No. D02/08.

4. EFFECTIVE DATE AND DURATION

4.1 This Decision and Decision Instrument is effective from 1 July 2014 until 30 June 2018.

Annex: 1 Legal Basis

Regulation 4 of the European Communities (Electronic Communications Network and Services) (Universal Service and Users' Rights) Regulations 2011 ("USO Regulations") states:

4. (1) A designated undertaking shall ensure, based on data provided to it in accordance with Regulation 19(4)-

- a) That a comprehensive directory of subscribers is made available to all end-users in a form approved by the regulator, whether printed or electronic or both, and is updated at least once in each year, or*
- b) That a comprehensive telephone directory enquiry service is made available to all end-users, including users of public pay telephones.*

(2) The designated undertaking concerned shall ensure that the directory or the directory enquiry service referred to in paragraph (1) comprises all subscribers of publicly available telephone services in the State (including those with fixed, mobile and personal numbers) who have not refused to have their personal particulars included in those directories. This paragraph is subject to Regulation 12 of the Privacy and Electronic Communications Regulations.

(3) A designated undertaking shall for the purpose of this Regulation apply the principle of non-discrimination to the treatment of information that has been provided to it by other undertakings or which it has in its possession or under its control.

(4) An undertaking that fails to comply with a requirement of paragraph (1), (2) or (3) commits an offence.

Annex: 2 Revised Draft RIA

188A RIA is an analysis of the likely effect of a proposed new regulation or regulatory change. It helps identify regulatory options, and should indicate whether or not a proposed regulation is likely to have the desired impact. The RIA should also in certain cases suggest whether regulation is or is not appropriate. The RIA is a structured approach to the development of policy, and analyses the probable impact of regulatory options on different stakeholders.

189ComReg's approach to RIA is set out in the Guidelines published in August 2007, in ComReg Document No. 07/56 & 07/56a. In conducting this RIA, ComReg takes account of the RIA Guidelines,²⁹ adopted under the Government's Better Regulation programme.

190A RIA should enable ComReg to determine the impact of any regulatory change or new regulation, and should assess the alternatives to regulation- such as no intervention, self-regulation or performance based regulation amongst others. RIA's aim to identify areas where regulation can be reduced.

191A RIA should identify the impact of the various options on stakeholders, on competition and on consumers and also the key risks associated with each option. RIA's therefore increase transparency of decision making and ensures the best possible outcome for stakeholders, consumers and competition.

192 The following sets out ComReg's RIA in relation to this matter.

Step 1: Describe the Policy Issue and identify the Objectives

193ComReg is proposing to review the current directory of subscribers USO to assess whether or not an undertaking or undertakings need to be designated as USP following the end of the current designation in June 2014.

194There are currently a number of ways in which consumers can access information on telephone numbers, including DQ and online. ComReg is of the view that directories of subscribers continue to provide a vital service to consumers, particularly to vulnerable users and those in remote rural areas.

195Eircom has been designated as the USP for the directory of subscribers from July 1st 2012 to June 30th 2014. As this designation nears an end, ComReg feels it is appropriate to now review the need for a directory of subscribers USO.

²⁹ http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

196 Should a directory of subscribers USO be required, the regulations require ComReg to designate one, or more operators to guarantee the provision of the service, ComReg is proposing that Eircom should continue to be the USP.

Step 2: Identify and Describe the Regulatory Options

197 ComReg has identified the following regulatory options which may be adopted in order to meet the objectives set out above.

- **Option 1: Remove the Obligation**

No operator would be designated to provide a directory of subscribers. There would no longer be a requirement to distribute printed directories to each end-user in the State. Some consumers would be affected by the withdrawal of the printed directory.

- **Option 2: Maintain an Obligation**

2(a) Maintain Existing Obligation

The obligation to provide printed directories would remain. Any USP must ensure printed directories are provided to each end-user in the State. Consumers would continue to receive a printed directory delivered to their address every year.

2(b) Amend the Existing Obligation

The obligation to provide a directory of subscribers would remain, but would be amended from its current format. The directory could be printed or for example could be provided electronically. Other issues which would also be reviewed include the possibility of:

- i. changing the distribution model to allow for a central collections point
- ii. allowing the USP to gather consumer preferences i.e. an opt in or opt out model
- iii. allowing the USP to charge for provision of the directory

Steps 3 & 4: Determine the impacts on stakeholders and competition

198 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.

199 This is set out below.

Measure Proposed	Impact on Industry		Impact on Consumer	
	Costs	Benefits	Costs	Benefits
<p>Option 1</p> <p>Directory of Subscribers Obligations Removed</p> <p>No USP designated to provide a directory of subscribers.</p>	<p>Additional costs incurred by DQ providers to deal with increased call volumes.</p>	<p>Eircom could cease distribution of the printed directory.</p> <p>No net cost claim or impact in respect of sharing of any unfair burden as relevant.</p> <p>Eircom claims the designation in its current form to cost $\text{€} <$ for the year 2013 and $\text{€} <$ in 2014. If the obligation was removed they would not incur these costs.</p> <p>DQ providers may see an increase of approx 7m calls per annum, leading to an increase in revenue.</p>	<p>It is likely that distribution of the printed directory would cease.</p> <p>Those without internet access may not have access to an affordable directory service.</p> <p>Those who previously used printed directory have alternatives to the printed directory, however these may be expensive for consumers e.g. DQ call.</p> <p>Vulnerable consumers no longer have access to service that they currently use, and may only have access to expensive alternatives</p> <p>Based on survey data and an adult population of approx 3.4m ComReg estimates there are close to 7m referrals p.a. to the printed directory for local numbers. Should the obligation be</p>	<p>Alternatives to the printed directory would remain, such as DQ & online directories.</p>

			removed survey data suggest 35% of these could potentially switch to calling DQ. With prices ranging from €0.13 (landline) to €4.26 (mobile) for a 30 second call ³⁰ , the cost to consumers of switching could be in the region of €5m	
<p>Option 2 (a)</p> <p>Current Directory USO Remains</p> <p>USP designated to provide printed directories. to end-users.</p>	<p>If Eircom designated potential for net cost due to decreasing advertising revenues and low volumes of consumers opting not to receive the directory. Annual cost expected to be less than € p.a.</p> <p>Eircom has previously estimated the contract costs from companies (other than that currently contracted) to be € hence ComReg is of the view that this is the approximate cost which would be incurred if an undertaking other than Eircom was designated as USP.</p>	<p>USP benefits from the ability to have its company logo on the printed directory, leading to brand awareness.</p>	<p>In event there is a net cost resulting in an unfair burden, the sharing mechanism may mean that ultimately these costs are passed onto consumers through service providers</p>	<p>Consumers have access to free directory and can access when necessary.</p> <p>Consumers can opt out of receiving the printed directory</p> <p>Consumers not forced to make costly calls to DQ, therefore saving approx €5m v's the situation where the printed directory is no longer provided.</p>

³⁰ This is a conservative estimate, as the average duration of a DQ call is in fact longer than this.

<p>Option 2(b)</p> <p>Obligation to remains but changed</p> <p><u>Change Format</u></p> <p>USP designated to provide directories. But Format changed from paper to electronic/DQ</p>	<p>.</p> <p>USP would incur costs for the provision of the directory in the format required.</p> <p>Mandating free/affordable DQ would foreclose the DQ market to competing DQ providers</p>	<p>Potential for reduction in costs depending on the format chosen.</p>	<p>If the format chosen is DQ, this could potentially lead to consumers incurring costs to access the required information</p> <p>Electronic format would mean the 1 in 5 of the population who have never accessed the internet would suffer detriment.</p> <p>In event there is a net cost resulting in an unfair burden, the sharing mechanism may mean that ultimately these costs are passed onto consumers through service providers.</p>	<p>Consumers would continue to have access to directory of subscribers.</p> <p>Electronic formats more accessible on the move, potentially better access for internet users</p>
<p><u>Change Distribution Model</u></p> <p>Allow for central</p>	<p>USP would incur costs for printing, distributing etc.</p> <p>Advertising revenue likely to</p>	<p>The costs could potentially be lower than distribution to individual addresses from potentially reduced delivery and printing costs</p>	<p>With a central distribution model consumers may be negatively affected by having to collect the directory, depending on the location of</p>	<p>Consumers would continue to have access to directory of subscribers</p> <p>Those who do not want a</p>

<p>distribution</p>	<p>decrease with decreased directory volumes</p> <p>Additional costs incurred by USP due to engagement with businesses for the use of premises as distribution point.</p> <p>Increased calls to DQ may increase DQ providers costs</p>	<p>DQ providers may benefit from increased revenues due to those not collecting the directory changing to use DQ</p>	<p>the collection points.</p> <p>In event there is a net cost resulting in an unfair burden, the sharing mechanism may mean that ultimately these costs are passed onto consumers through service providers.</p> <p>Assuming the 49% of consumers who have no preference do not collect a directory, and that these are the consumers who currently use the printed directory < 4times per annum, this could lead to additional costs to consumers of calling DQ of approx €0.5m p.a.</p>	<p>directory do not have one.</p>
<p><u>Change Preferences</u></p> <p>Allow for collection of consumer preferences on opt in or opt out basis</p>	<p>Eircom, as current USP has indicated that an opt out model where 20% of consumer opt out would lead to reduced costs. Therefore ComReg is of the opinion an opt out model, once certain thresholds are reached would be more cost efficient than a blanket distribution model.</p> <p>After a period of 2 years</p>	<p>USP has the ability to reduce the number of printed directories distributed each year by encouraging those who do not want to receive the directory to state this preference.</p>	<p>In event there is a net cost resulting in an unfair burden, the sharing mechanism may mean that ultimately these costs are passed onto consumers through service providers.</p> <p>Assuming the 49% of consumers who have no preference do not opt in to a directory, and that these are</p>	<p>Consumers would continue to have access to directory of subscribers</p> <p>Consumers who opt to have a printed directory can access when necessary.</p> <p>Those customers who do not wish to receive a</p>

<p><u>Charge for directory</u></p>	<p>should the USP deem an opt inopt in model with public awareness campaign to be more cost effective this model could be implemented.</p> <p>Costs involved would include for example maintenance of database of preferences</p> <p>Costs incurred in collecting the revenue</p> <p>Increased calls to DQ may mean DQ providers incur extra costs</p>	<p>Would ensure no net cost to the USP. Therefore other undertakings would not need to contribute to sharing mechanism</p> <p>DQ calls may increase, leading to increased revenue.</p>	<p>the consumers who currently use the printed directory < 4times per annum, this could lead to additional costs to consumers of calling DQ of approx €0.5m p.a.</p> <p>Each consumer wishing to access the directory would have to pay to gain access to it</p> <p>Those not wishing to pay may incur other costs to access the numbers they require for example through calling DQ.</p>	<p>printed directory can inform the USP of this. Once opt inopt in model is introduced a public awareness campaign will ensure that those who</p> <p>Charge only incurred by those who wish to pay for access to the directory.</p>
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Step 5: Assess the Impacts and choose the best option.

- 2 ComReg is of the preliminary view that removing the USO (option 1) in relation to directories at this time would be premature. Directory Enquiry services together with advances in technology mean there are other ways in which consumers can access this information; however ComReg's survey has shown that many consumers continue to rely on the printed directory.
- 3 In the absence of a USO, ComReg is of that view that printed directories would be removed, leading to detriment to consumers who rely on these as their primary/sole access to directory information. It would also result in potential significant costs to consumers who switch to DQ to find the required phone number.
- 4 For these reasons, ComReg is of the preliminary view that a USO for provision of a directory of subscribers should continue. However, ComReg is of the view that the current obligations could be maintained or amended yet still meet the needs of consumers.
- 5 ComReg is of the preliminary view that the changes could be in the form of Any amendments would protect consumers from a blanket removal of directories, yet could allow changes to the distribution model or allow for consumer preferences to be recorded for example.
- 6 For regulation to be effective, ComReg must ensure that compliance with its obligations can be monitored and, where necessary enforced. ComReg's compliance functions include monitoring ongoing compliance with obligations, enforcing existing obligations, and handling formal disputes. ComReg will monitor and enforce compliance with any directory of subscribers' obligations in line with these functions.
- 7 ComReg is of the view that the designation of a USP for directory services, is unlikely to result in a disproportionate cost burden and for the reasons set out above, the benefits to consumers are likely to be significant. In contrast, if the obligation was removed no such benefits would follow.

Annex: 3 List of Questions

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Question 1 Do you agree with ComReg’s preliminary view that there is a need for a directory services USO? Please give reasons to support your view.

Question 2 Do you agree or disagree that consumer preferences should be gathered on an opt out approach for a period of 2 years followed by an opt in approach if this is deemed cost effective? Please give reasons to support your view.....27

Question 3 Do you agree or disagree with ComReg’s preliminary view that the next designation period should be 4 years? Please give reasons to support your view.....30

Question 4 Do you agree or disagree with ComReg’s proposal that where no expressions of interest are received Eircom should continue to be the universal service provider for public payphones during the next designation period? Please give reasons to support your view.....33

Question 5 Do you agree with ComReg’s revised draft assessment of the impact of the proposed options as set out here and in Annex 2? Please give detailed reasons, including details on costs and benefits to support your view,.....36