



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Provision of Public Pay Telephones

Universal Service: Interim designation

Consultation

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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1 Introduction

1 The Universal Service Regulations¹ provide that a designated undertaking shall ensure that:

- public pay telephones (“public payphones”)² and other public voice telephony access points are provided to meet the reasonable needs of consumers in terms of the geographical coverage, the number of telephones or other access points, accessibility to disabled end-users and the quality of services; and
- that it is possible to make emergency calls from a public payphone using the single European emergency call number “112”; and
- that users of those telephones have access to a directory enquiry service.

2 Public payphones are payphones that are located in public areas (e.g. the street) and are available to, and accessible by the general public.

3 In July 2014, ComReg in Decision D08/14 (“D08/14”)³ designated eir as the Universal Service Provider (“USP”) for public pay telephones for a period of four years. In that Decision ComReg had decided that the number of public payphones in operation at that time should be maintained by eir, unless their usage fell below a certain threshold level as set by D08/14. If payphone usage fell below the specified level however, eir was permitted to remove them. The dynamic approach based on usage levels ensured that end-users who used public payphones could still have access to them, whilst permitting eir to remove public payphones for which there was no longer a reasonable need. ComReg undertook to complete a review of the usage threshold contained in D08/14 by July 2016. In this respect, ComReg conducted a Consultation and having considered respondents’ views decided that the usage threshold regime remained appropriate, and therefore maintained the status quo.⁴

¹ Regulation 5 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011, S.I. No. 337 of 2011 (“Universal Service Regulations”).

² Where “public pay telephone” means a telephone available to the general public for the use of which the means of payment may include coins, credit cards, debit cards or prepayment cards, including cards for use with dialling codes. Citations European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011, S.I. No. 337 of 2011 (“Universal Service Regulations”).

³ Provision of Public Payphones – Universal Service Scope and designation, ComReg document 14/69, 7/07/14.

⁴ Universal Service – Provision of Public Payphones – Usage Threshold for Removals Decision 16/62, 26/07/16 in July 2016.

- 4 In light of the forthcoming expiration of the current designation, ComReg 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 beyond 30 June 2018 and, what, if any, are the most appropriate designation requirements.
- 5 ComReg 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. In these circumstances, and where these services are valued and needed at this time, the requirements of the Universal Service Regulations would not be met.
- 6 ComReg issued an information request to eir in February 2018 to collect information on public payphones to assist with this review. eir responded to this information request in March 2018.
- 7 In the course of finalising the Consultation, ComReg, received new information on public payphones from eir on 21st June 2018.
- 8 ComReg is 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 ("interim designation"), and to designate eir, for 3 months after June 2018 ("an interim period").
- 9 This Consultation therefore seeks stakeholders' views on ComReg's proposal for an interim designation of eir as the USP for public pay telephones for the period up to 30th September 2018 or, until the date that ComReg makes an ultimate decision on the future need for a designation of a USP for public pay telephones, whichever is the earlier.

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 30th September 2018. Please provide reasons to support your view.

- 10 The timeframes for receipt of submissions to this Consultation paper is 5th July 2018
- 11 When ComReg has considered the responses received to this Consultation, ComReg will issue a decision.

2 Draft Decision Instrument

2.1 STATUTORY FUNCTIONS AND POWERS GIVING RISE TO DECISION

2.1.1 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 No18/57.
- v. Having regard to the analysis and reasoning set out in ComReg Document No.
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2. DESIGNATION OF UNIVERSAL SERVICE PROVIDER

Public Pay Telephones

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 do the following:

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

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

Geographically Averaged Pricing

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

3. MAINTENANCE OF OBLIGATIONS

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

4. REMOVAL OF PUBLIC PAY TELEPHONES

Criteria for permissible removals

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

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

or

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

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

Notification requirements

- 4.3. The USP must notify ComReg eight (8) weeks in advance of any public pay telephone removal
 - i. This notification to ComReg should contain at a minimum:
 - Details of the proposed public pay telephone to be removed
 - Proposed date of cessation of service and for removal of public pay telephone
 - Details of which of the above criteria have been met and how
 - Demonstrative evidence that the public pay telephone was in full working order, i.e. within reasonable repair standards, for 6 months prior to its removal except in cases where it has been repeatedly vandalised.
 - Usage reports for the relevant six month period, in a format specified by ComReg.
- 4.4. The USP must post a notice on the public pay telephone for a minimum period of six (6) weeks in advance of the proposed removal, to clearly inform users of the intention to remove the public pay telephone and include the proposed date for removal of public pay telephone.
- 4.5. Notification should also be posted on the USP’s website.

5. EFFECTIVE DATE AND DURATION

- 5.1. This Decision and Decision Instrument is effective from **XX** July 2018 to 30th September 2018.

6. SEVERANCE:

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

7. CONFLICT:

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

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE **XXth DAY OF **XX** 20**XX****

Annex: 1 Legal Basis

Regulation 5 of the European Communities (Electronic Communications Network and Services) (Universal Service and Users' Rights) Regulations 2011 ("USO Regulations") states:

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

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

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

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

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

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

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

(7) *An undertaking that fails to comply with—*

(a) *a requirement of paragraph (1), (5) or (6), or*

(b) *a term or condition specified under paragraph (2),*

commits an offence.

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

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

(b) *it was not possible to comply with the relevant requirement, term or condition.*