



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Provision of Public Pay Telephones

Universal Service: Scope and Designation

Submissions to Consultation 20/85

NON-CONFIDENTIAL

Submissions to Consultation

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Response to ComReg Consultation:

**Provision of Public Pay Telephones Universal Service:
Scope and Designation**

ComReg Document 20/85



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DOCUMENT CONTROL

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The comments submitted in response to this consultation document are those of Eircom Limited and Meteor Mobile Communications Limited (trading as 'eir' and 'open eir'), collectively referred to as 'eir Group' or 'eir'.

Summary

- eir agrees with ComReg's preliminary view that no USO Payphone designation should be imposed beyond 31 December 2020.
- As ComReg identifies in the consultation usage is declining as users switch to alternative means of communications.
- As ComReg states in the consultation there are only 9 payphones in the State that currently exceed the usage threshold to be considered to be USO Payphones and this number is expected to continue to decrease.
- There is no objective justification for a USO Payphone designation to be imposed beyond 31 December 2020.
- eir notes ComReg's review of the usage threshold and payment methods under the existing designation. However as the existing designation expires on 31st December 2020, delays in ComReg's administrative process render this a meaningless exercise and a questionable use of ComReg's resources.

Response to consultation

Q.1 Do you agree with ComReg's preliminary view that there is no requirement to amend the current universal service public payphone usage threshold level for the remainder of the current designation (i.e. prior to 31 December 2020)?

1. eir has no view on the merits of ComReg's preliminary view as the lateness of ComReg's review renders this a pointless exercise. It is very concerning that ComReg is consulting in October 2020 on whether changes should be made to the current Payphone USO before it expires on 31st December 2020. Given ComReg's internal administrative processes it is unlikely that a Decision to amend the existing designation would issue before December thereby meaning that any changes arising would have to be implemented and be in effect for less than a month. This does not seem to be a proportionate approach to regulation.
2. ComReg is seeking to discharge a commitment made in ComReg 19/06. Mindful of its duty to act proportionally, ComReg undertook to "*conduct an analysis of the usage after year one of the designation period, and, based on this review, it will decide if it needs to commence a new consultation process in relation to the provision of public payphones in the State and will publish an information notice regarding this.*" The Information Notice (ComReg 20/52) was published on 24th June 2020 by which time we assume ComReg had finished its analysis of usage and concluded that it would be meaningful to commence a new consultation process as it stated that "*ComReg now proposes to conduct a public consultation on the usage threshold and payment methods to be in place until the end of the current designation as well as the need, if any, for a public payphone universal service after the current designation*". ComReg advised in the Information Notice that it "*plans to issue this consultation in early Q3 2020.*" However as we now know the consultation was not issued until the end of Q3 2020 (21st September 2020).
3. ComReg's decision to conduct a consultation on the usage threshold and payment methods suggests that its prior analysis at the start of 2020 indicated that some element had materially changed. However there is no material change evident in ComReg's analysis in the current consultation or its proposal to leave the status quo for the last few days of the current designation. Even if there had been a material change, as already noted, implementing changes to the current designation in respect of usage thresholds or payment methods so late in the day could have no meaningful effect.

4. It is not at all clear to us why ComReg has decided to use its resources to undertake a consultation process that can have no meaningful effect. It is disappointing that ComReg has once again failed to undertake a review in a timely and meaningful matter.

Q.2 Do you agree with ComReg’s preliminary view that there is no requirement to amend the current universal service public payphone payment methods for the remainder of the current designation (i.e. prior to 31 December 2020)?

5. Please see our response to question 1 which applies equally here.

Q.3 Do you agree with ComReg’s preliminary view that considering eir’s approach to public payphones (in the counterfactual scenario), a universal service public payphone designation would not be appropriate, post 31 December 2020?

6. eir considers that this is not the correct question to ask regarding whether there is any justification for a further period of designation. In the preceding section 4.2 ComReg considers current and projected usage of USO Payphones. As ComReg advises in the consultation¹ “[t]he reasonable need is not determined by the quantity or distribution of payphones throughout the State, rather by the usage of currently provided public payphones”. Following its analysis of usage ComReg observes that usage is declining rapidly and the majority of end-users appear to be increasingly utilising alternative methods and concludes² that it “is of the preliminary view, based on its analysis not to designate a USP(s) in respect of public payphones (including a usage threshold level), post 31 December 2020, as to do so would not be appropriate”.
7. eir agrees that there is no reasonable justification for a USO Payphone designation. As ComReg notes in the consultation there were only 15 payphones that exceed the USO usage threshold as at 31 December 2019 and this has declined currently to 9 payphones. This number will have declined further during 2020 consistent with ComReg’s usage trend analysis. There is simply no justification for an intrusive regulatory intervention in the form of a Payphone USO.
8. The fact that eir has entered into commercial arrangements that may see some payphones being available for public use, subject to the agreement of local Councils, should not be a determinative factor in the this decision making process.

¹ ComReg 20/85, Para. 91

² ComReg 20/85, Para. 122

Q.4 Do you agree with ComReg’s preliminary view, that after consulting with the Minister, and having regard to views expressed to it under a public consultation it may decide not to designate an undertaking, for universal service public payphones, post 31 December 2020?

9. eir notes ComReg’s use of the word ‘may’ in this question. Given the conclusive evidence that there is no reasonable need, ComReg’s position should be more definitive that it **should** decide not to designate an undertaking.
10. eir would also question the legal basis for a designation to be imposed under the terms of the Electronic Communications Code. Article 87 of Directive (EU) 2018/1972 states that Member States may continue to: “*ensure the availability or affordability of other services...that were in force on 20 December 2018, if the need for such services is established in light of national circumstances*”. As a matter of fact there were no measures in force in Ireland for USO Payphone on 20 December 2018 as the previous designation (D09/18) ceased to have effect on 15th October 2020.

Q.5 Do you agree with ComReg’s preliminary views the regulatory options which could be adopted to meet ComReg’s objectives in undertaking a review of the public payphone usage threshold level and payment methods under the current designation?

11. Given the subject matter of questions 1 and 2 it is not clear to us what ComReg is seeking to achieve with this question 5.

Q.6 Do you agree with ComReg’s preliminary views the regulatory options which could be adopted to meet ComReg’s objectives in undertaking a review of public payphones post 31 December 2020?

12. Given the subject matter of questions 3 and 4 it is not clear to us what ComReg is seeking to achieve with question 6.

Q.7 Do you have any comments on ComReg's draft decision instrument?

13. The current designation is timebound and will cease to have effect from 31 December 2020. On this basis it is arguable that no further formal Decision is required. That said it is helpful and adds clarity to have the outcome of ComReg's review to be formalised and provide a focal point should any interested party take issue with the outcome of the review. eir assumes ComReg will apply this approach consistently in other policy reviews where it concludes no action is required.
14. With regard to the text of the draft decision instrument eir notes that section 6.9.1 duplicates the effect of section 6.6.1 and should therefore be deleted.

Q8. Do you agree or disagree with ComReg's draft regulatory impact assessment of the impact of the proposed options?

15. The draft regulatory impact assessment is simply a restatement of ComReg's observations in the preceding chapters and does not appear to add any value to the consultation exercise.