



Commission for  
**Communications Regulation**

# **Provision of Public Payphones**

## **Universal Service: Scope and Designation**

### **Response to Consultation and Decision**

**Reference:** ComReg 14/69

**Decision** D08/14

**Version:** Final

**Date:** 07/07/2014

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# 1. Executive Summary

- 1 The Commission for Communications Regulation (“ComReg”) previously issued two consultation documents, Consultations 13/119<sup>1</sup> and 14/27<sup>2</sup> which sought the views of interested stakeholders on a number of proposed measures relating to the future provision of public pay telephones (“public payphones”) under the universal service, the designation of a Universal Service Provider (“USP”) in this regard and the Removals Policy.<sup>3</sup>
- 2 This Response to Consultation and Decision sets out ComReg’s views and decisions on those issues which define the way in which the designated Universal Service Provider (USP) is required to provide public payphones.
- 3 While ComReg maintains its view that public payphones continue to provide a basic service to people throughout the State, ComReg is mindful that payphone usage is in decline.
- 4 In this Decision ComReg has decided that each of the current Universal Service payphones should be maintained by Eircom unless their usage falls below a certain level, in which case they can be removed by Eircom, if it so decides, in accordance with a new process.
- 5 The conditions set out in the Decision Instrument in Annex 1 have been established so as to ensure consumers currently using payphones still have access to payphones in the State, yet allow for the removal by Eircom, if it so wishes, of public payphones where there is no longer a reasonable need, based on usage levels. ComReg is of the view that usage levels are the most appropriate measure of the reasonable needs of consumers. ComReg is satisfied that these conditions are transparent, proportionate and non-discriminatory.
- 6 ComReg notes, that some stakeholders appear to be of the view that ComReg may require the removal of public payphones. In the interests of clarity, ComReg notes that while ComReg can mandate a USP to provide payphones, and set the conditions under which USO payphones are permitted to be removed, it cannot mandate the removal of any payphones. This is a commercial decision by the payphone provider in which ComReg has no role.

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<sup>1</sup> Consultation “Provision of Public Pay Telephones, Universal Service: Scope and Designation”, Document No. 13/119, dated December 19<sup>th</sup> 2013. “Consultation 13/119”

<sup>2</sup> Response to Consultation, Further Consultation and Draft Decision “Provision of Public Pay Telephones, Universal Service: Scope and Designation”, Document No. 14/27, dated April 4<sup>th</sup> 2014. “Consultation 14/27”

<sup>3</sup> ComReg document 06/14 “Universal Service Obligation- Removal/Relocation of Public Pay Telephones”, March 3<sup>rd</sup> 2006, (“Removals Policy”).

- 7 In light of the dynamic nature of the proposed obligation, ensuring that it allows the obligation to adjust to meet users' needs, and having carefully considered the submissions received, ComReg has decided to designate Eircom as the universal service provider of public payphones for a period of 4 years. In this respect, ComReg will complete a review of the usage threshold contained in the decision by 30 June 2016.
- 8 In designating Eircom as the USP, ComReg has taken into account a variety of factors, including Eircom's network reach, and its experience and ability to provide this aspect of the universal service.
- 9 In making its Decision, ComReg has taken into consideration the responses received in relation to Consultations 13/119 and 14/27, information collected on foot of a number of information requests together with other relevant material. ComReg has endeavoured to summarise the key aspects of respondents' views, comments provided and ComReg's views in relation to these.
- 10 ComReg is satisfied that these measures will ensure the reasonable needs of consumers are met and that these obligations will not result in any additional costs to the USP, nor will they result in substantial consumer detriment. Under Regulation 5 of the Regulations<sup>4</sup> ComReg requires the consent of the Minister in relation to the aspects of the provision of public payphones. ComReg has sought and received the consent of the Minister for Communications, Energy and Natural Resources.

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<sup>4</sup> European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011, S.I. No. 337 of 2011 ("the Regulations")

## 2. Background

- 11 The universal service has been guaranteed by EU and national legislation since 1997. In a liberalised and competitive telecommunications market, the universal service ensures the provision of a basic telecommunications service throughout the State, particularly in areas of the State (such as rural or sparsely populated areas) where the market might not deliver these services. Thus, the universal service contributes to social and economic inclusiveness and cohesiveness in society.
- 12 Currently the regulatory requirement (Regulation 5 of the Regulations) provides that a designated undertaking shall ensure that public payphones<sup>5</sup> are provided to meet the reasonable needs of consumers in terms of the geographical coverage, the number of telephones, accessibility of such telephones to consumers with disabilities and the quality of service. Public payphones, that is, those which are inside the scope of universal service, are those which are located on the street and in other public areas available to the public at all times.
- 13 On June 29<sup>th</sup> 2012, ComReg designated Eircom as the USP with specific obligations, including the provision of public payphones for a period of two (2) years. Eircom, as the USP, is required to ensure that public payphones are provided to meet the reasonable needs of end-users.
- 14 Over the past number of years, due to the evolution of information and communication technologies, usage of public payphones has been in decline. Eircom is currently the only operator of public payphones in the State. ComReg is of the view that, although public payphone usage is declining, public payphones continue to provide a basic service to people throughout the State and therefore, there is a continued requirement to provide public payphones. ComReg is concerned that absent a USO, the needs of some consumers, particularly disadvantaged and vulnerable consumers, may not be met.
- 15 Accordingly, in light of the forthcoming expiration of the current USO designation, ComReg consulted on the proposed obligations in relation to the provision of public payphones as a USO in Consultation 13/119 and Consultation 14/27. These consultations proposed measures to ensure that the provision of public payphones throughout the State would continue to meet the reasonable needs of consumers.

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<sup>5</sup> The Regulations define a public pay telephone as: "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." Regulation 2(2) of the Regulations

- 16 In principle, no undertaking is excluded from being designated in relation to USOs and Consultation 13/119 invited potential providers to express an interest in being designated with respect to public payphones<sup>6</sup>. No expressions of interest were received.
- 17 ComReg proposed in Consultation 14/27 that the public payphone obligation could be amended to allow for the easier removal of payphones, for example those with low usage. It also proposed that, Eircom should be designated as USP for a period of 4 years.
- 18 ComReg consulted on a number of proposed obligations in relation to the public payphones USO in Consultation 14/27 and sought views on topics such as:-
- Is there a need for a public payphone USO
  - What the criteria for removal of payphones should be
  - How long should any designation be for, and which undertaking(s) should be designated.
- 19 This Response to Consultation and Decision addresses the coming period commencing July 2014.
- 20 ComReg notes the provision of a universal service may result in the 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 service. Any such funding requirements must be met by industry. 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.
- 21 The consultation period for Consultation 14/27 ran from 9<sup>th</sup> April 2014 to 7<sup>th</sup> May 2014. The respondents to Consultation 14/27 together with a response which was submitted after the closing date of Consultation 13/119 have been considered by ComReg. These respondents are as follows:

<b>The Respondents</b>
<b>Alternative Operators in the Communications Market (ALTO)</b>
<b>Border, Midland &amp; Western Regional Assembly (BMW Assembly)</b>

<sup>6</sup> Under Regulation 7(2) of the Regulations, ComReg may designate different undertakings or sets of undertakings to comply with the obligation in Regulation 5.

<b>BT Communications Ireland Limited (BT)</b>
<b>Dublin City Business Improvement District (Dublin City BID)</b>
<b>Dublin City Council (DCC)</b>
<b>Dublin Lord Mayor's Office</b>
<b>Eircom Group (Eircom)</b>
<b>UPC Communications Ireland Limited (UPC)</b>

- 22 Although the response to consultation submitted by the Dublin Lord Mayor's Office was submitted beyond the closing date for submissions, ComReg has, decided to take account of the submission, however, all interested parties should note that closing dates for ComReg consultations must be adhered to strictly.
- 23 A copy of all non-confidential responses received will be made available on ComReg's website and a high level discussion of general views is set out below. The views discussed below relate to the main relevant issues. They do not attempt to enumerate each point raised, but focus instead on the key issues addressed. It should be noted that all views were considered and account has been taken of the merits of the views expressed. However, it is not practical for ComReg to respond to every comment made and therefore this Response to Consultation and Decision summarises the key elements of comments provided and ComReg's views in relation to these.
- 24 It is noted that not all of the respondents addressed each question and proposed condition contained in Consultation 14/27.
- 25 Having considered the views of respondents this Response to Consultation and Decision sets out ComReg's final views on those issues which define the way in which the USO in relation to public payphones is to be implemented.
- 26 ComReg has also revised the draft Regulatory Impact Assessment ("RIA") based on responses received and the final RIA is set out in Annex: 3 of this document.



## 3. Summary of Conclusions

### Requirement for Payphone Universal Service Obligation

- 27 Consultation 14/27 set out a number of regulatory options available to ComReg in respect of a public payphone USO. In Consultation 14/27, ComReg was of the preliminary view that it could either remove or maintain an obligation in respect of public payphones. In maintaining an obligation, Consultation 14/27 set out that it could be maintained in its current form or amended by redefining the conditions for public payphones removals.
- 28 ComReg set out its view that the current provision of public payphones throughout the State continues to meet (if not exceed) the reasonable needs of consumers and did not propose to increase their penetration or the associated facilities currently available.
- 29 Furthermore, ComReg was of the preliminary view that, although public payphones usage is declining, public payphones continue to provide a basic service to people throughout the State and that in comparing the cost of provision of public payphones with the benefit to consumers of their continued provision, there appeared to be a case to maintain the obligation.
- 30 ComReg acknowledged that for some consumers, in certain areas and certain circumstances, there are alternatives to public payphones available, such as mobile offerings, motorway SOS phones, and non-USO payphones.
- 31 ComReg proposed that if the public payphone USO designation was removed, Eircom would likely consider removing a large amount of payphones throughout the country. ComReg noted its concern that if the obligation were removed that certain public payphones would be discontinued even if they are being used and may be economic.
- 32 Consultation 14/27 also noted that many EU countries continue to impose a public payphone USO. ComReg noted that payphones continue to be used to make calls to 1800 numbers and to emergency services as well as to local, national and mobile numbers. Furthermore, customers also use payphones for the reverse charge calls service and for prepaid phone cards.
- 33 In Consultation 14/27 ComReg was of the view that the public payphone obligation should be amended by redefining the conditions for public payphone removals. ComReg proposed that these changes would allow for the removal of existing payphones based on usage rather than community representation and would therefore reflect the reasonable need of consumers.

34 ComReg was of the preliminary view that payphone usage levels are the most appropriate measure at this time of the reasonable needs of consumers.

35 ComReg asked the following question:

Question 1: Do you agree with ComReg's preliminary view that there is a requirement for a public payphones USO, which allows for the easier removal of public payphones? Please give reasons to support your view.

### **Views of Respondents**

36 The majority of respondents to the consultation agreed with ComReg's preliminary view.

37 ALTO and BT agreed with ComReg that there is a requirement for a public payphones USO which allows for the easier removal of public payphones. They also set out their opinion that where Eircom is exceeding consumers needs in terms of public payphone provision, that these choices should not form part of the USO charge.

38 Additionally, DCC set out its view that it *"supports a policy that allows for easier removal of public payphones while also accommodating some input from the local community"*.

39 The Dublin Lord Mayor's Office advised that it supported *"the comments made by Dublin City Council and Dublin City BID in relation to phone boxes in the City"*. It also was of the view that *"phone boxes have become the focus of antisocial behaviour, vandalism and street clutter"*.

40 BMW Assembly expressed its view that *"public payphones should continue to be provided where there was some evidence of continued public demand and therefore the obligations should be retained in some form."*

41 Dublin City BID disagreed and set out its view that payphones are *"an obsolete technology that have been overtaken by the primacy of mobile devices"*. It also noted that *"non-Eircom phones are damaged and defaced stumps...and remain an eyesore on city streets"* and its view that due to the level of misuse taking place in some public payphone locations these payphones *"have required the constant attentions of both BID and City Council cleaning crews"*. It also stated that *"we view these kiosks as a potential threat to public health."*

42 Eircom set out its view that *"In no part of ComReg's assessment has any evidence been provided, to the required standard, that a USO is necessary in relation to public payphones in Ireland."*

- 43 Furthermore Eircom argued that *“No reliable and objective, expert analysis of the circumstances relevant to this USO consultation has been carried out by ComReg so as to demonstrate that there remains any objective need to continue to impose the onerous public payphone USO obligation on eircom.”*
- 44 Eircom also highlighted that payphones usage is declining and that *“In light of this rapidly accelerating decline, it is incomprehensible that ComReg would seek to justify the maintenance of a payphones USO.”*
- 45 Eircom believed that mobile networks are fully capable of meeting the requirements and that the market satisfactorily provides for the needs of end-users in Ireland and also set out its view that *“the cost of mobile services in Ireland has fallen very significantly over the last number of years”.*
- 46 Furthermore Eircom stated that *“there is no evidence that public payphones are required for the purposes of preventing social exclusion or managing the needs of disabled users. By contrast, the cost of provision of such public payphones is entirely disproportionate by reference to the perceived benefits.”*
- 47 Eircom also set out that in its response to Consultation 13/119 it demonstrated that there are no payphones in extreme rural areas, in addition it stated that *“the absolute dearth of input from stakeholders such as groups representing the interests of end users, calls into question the validity of ComReg’s claims that payphones are relied upon by society in any part of the country to any reasonable extent.”*
- 48 With regard to the reasonable needs of consumers, Eircom highlighted there is mobile coverage at all public payphone sites, and that end-users could have a *“fully working....alternative to the public payphone for as little as €15 which would include twenty minutes (€5 worth) of usage. Twenty minutes of usage alone from a payphone would cost €10, demonstrating that the on-going running cost of a mobile phone would be half that of a payphone.”* Eircom believed that *“It is not acceptable for ComReg to base its decision on a static view of the market by suggesting that the proposed “dynamic” removals criteria would address declining public payphone use.”*

## **ComReg's View**

- 49 ComReg has considered the responses in relation to the requirement to provide public payphones. ComReg remains of the view that public payphones continue to provide a basic service to people throughout the State and that the obligation should allow for the easier removal of public payphones.
- 50 ComReg acknowledges that for some consumers, in certain areas and certain circumstances, there are alternatives to public payphones available to consumers such as mobile phones, motorway SOS phones, and non-USO payphones.
- 51 ComReg notes Dublin City BID's concerns about the misuse of some public payphones and in this respect ComReg notes that the amendments allow for the removal of public payphones which are the location for anti-social behaviour, if Eircom so decides. ComReg also notes that prior to this Decision, removal was also permissible where there was demonstrable evidence and community agreement that the removal of the public pay telephone was required as it was a focus for anti-social behaviour. ComReg also notes that while ComReg can mandate a USP to provide payphones and set the conditions under which USP payphones are permitted to be removed, it cannot mandate the removal of any payphones. This is a commercial decision by the payphone provider in which ComReg has no role.
- 52 In response to Eircom, and as set out previously in Consultation 14/27, ComReg has used up to date evidence with regard to, for example, the numbers of USO payphones throughout the country, the numbers of payphones by county and usage patterns when forming its views. It has also reviewed practices in other EU jurisdictions.
- 53 Furthermore, it is ComReg's view that in light of current payphone usage rates, it is reasonable and proportionate to use current usage data as an effective proxy for "reasonable needs".
- 54 ComReg is aware that payphone usage has been declining and remains of the view that the rules set out in the Decision Instrument will address this issue. Where usage drops below a certain level, the payphone is permitted to be removed without the need for public consultation. ComReg estimated in Consultation 14/27 that a usage threshold of 1 minute per day would result in Eircom having the ability to remove 37% of payphones if it so decided. (See Table 1 below at paragraph 68 below)

- 55 ComReg has also previously noted that as a consequence primarily of the growth in mobile telephony, reductions in the number of payphones in both urban and rural areas may be unavoidable due to a continuing fall in demand for public payphones. Furthermore, in Consultation 13/119 ComReg noted that mobile phone penetration appears to have affected payphone usage.
- 56 Consultation 13/119 also set out that while initially price may have been a factor in choosing payphones over mobile, current reasons for using a payphone may be more likely to include:
- Consumers either could not use their mobile (e.g. they had no call credit or no mobile coverage etc), or
  - The consumer's mobile was unavailable (for example due to no battery or lost or forgotten phone)
- 57 ComReg remains of the view that, while there are alternatives to public payphones, there may still be reasons for making calls from a public payphone – (i) from users who make no calls from a landline or mobile and use a payphone to wholly substitute for a landline or mobile; and (ii) from users who have their own landline or mobile but use a payphone when they have no alternative means of making a call or for privacy reasons. ComReg considers that most payphone usage is likely to be of the latter type, given the landline and mobile penetration in Ireland. However usage due to no landline/mobile phone may also contribute.
- 58 Payphones may be particularly valued, where there are disadvantaged and vulnerable consumers who rely on payphones. In this respect, ComReg again notes that payphones continue to be used to make calls to 1800 numbers and to emergency services. Furthermore, customers also use payphones for the reverse charge calls service and for prepaid phone cards.
- 59 In relation to the reasonable needs of consumers, ComReg notes that in Consultation 13/119 it used up-to-date evidence with regard to, for instance, the numbers of USO payphones country-wide; the numbers of payphones by county; payphone usage patterns, including Freephone call usage and average usage; and practice with regard to USO payphones in other EU jurisdictions. In light of the current rate of decline, it is reasonable and proportionate to use current usage data as an effective proxy for “reasonable needs”. Furthermore, Regulation 5(1) itself does not prescribe how a “reasonable needs” analysis should be carried out. It is therefore inaccurate for Eircom to state that “no analysis of any such “reasonable needs” has been carried out”.

- 60 As above, ComReg acknowledges that for some consumers, there are alternatives to public payphones available to consumers; however ComReg remains of the view that public payphones continue to provide a basic service to people throughout the state.
- 61 ComReg therefore remains of the view that there is a need for a public payphones USO.

## **Permissible Removals Criteria**

- 62 As set out above, ComReg is of the view that maintaining a public payphone obligation will best achieve its objectives. However, Consultation 14/27 proposed that the obligation could be amended from its current form, in that the conditions applicable to permit public payphone removal would be reviewed.
- 63 In Consultation 14/27 ComReg was of the preliminary view, that the existing Removals Policy should be withdrawn, and conditions specified in the Decision Instrument which would allow for the easier removal of existing payphones, where justified. This could allow uneconomic payphones which satisfy certain low usage criteria to be removed by the USP if it wishes without the current process of community consultation. This is dynamic and deregulatory and allows the obligation to reflect actual payphone need. This means that as usage declines so too would the number of public payphones.
- 64 ComReg was of the preliminary view that the relocation of repeatedly vandalised payphones may be unnecessarily onerous, in particular where usage is low and that therefore the relocation of regularly vandalised payphones should no longer be required. Additionally, where removal is required by a local authority such removal should be permitted under the removals criteria.
- 65 ComReg was of the preliminary view that the focus of the removals criteria should be on public payphone usage rather than community representation. By changing the focus of the criteria for removal of public payphones from consumer representation to being usage based, the USP may benefit from reduced costs, for example from not having to consult on an individual basis from the removal of individual payphones and from reduced maintenance costs in the future. Consumers would benefit from still having access to public payphones which have usage above the defined usage levels.

66 ComReg was of the preliminary view that with respect to public payphones, low usage could be considered to be on average less than 1 minute per day in the preceding 6 months. ComReg was also of the view that where payphones are used predominantly by vulnerable users, the percentage of calls from these payphones to Freephone and Emergency Services would be high and hence proposed a threshold of 30 seconds for the usage of these calls.

67 Paragraph 104 of Consultation 14/27 set out that

*ComReg was of the preliminary view that removal of payphones from a location should be permitted where*

- *average usage (including local, national, mobile, international, emergency, Freephone and reverse charge minutes) is less than 1 minute per day, unless*
- *the average number of minutes to Freephone numbers and Emergency Services combined is not more than 30 seconds per day.*

68 The usage threshold of 1 minute per day means that based on average usage<sup>7</sup>, illustrated in Table 1 below, Eircom would not have a universal service obligation and therefore, Eircom could decide to remove approximately 37% of public payphones, if it so wishes. However, when the second condition (Freephone and Emergency calls usage) is applied this may decrease.

**Table 1: current profile of payphone usage**

Average Minutes per day from USO Payphones	# USO Payphones that Eircom could decide to remove	% Total USO payphones
1	495	37%
2	880	66%
3	1097	82%

<sup>7</sup> Based on July 2013- February 2014 data

- 69 ComReg was of the preliminary view that the amendments should ensure that public payphones are provided where they are currently used (and hence needed) by consumers. ComReg was also of the preliminary view, that this would allow individual public payphones to be removed, if Eircom so decides, without public consultation, where the usage for an individual payphone has been so low in the preceding period, so as to suggest a payphone is no longer needed in that location.
- 70 If usage levels continue to decline, it is possible that these percentages and the number of payphones which Eircom would be permitted to remove and which it could decide to remove will rise in the near future.
- 71 ComReg was of the view that the USP could identify such public payphones twice annually; based on January- June usage and July to December usage. This information would be reported to ComReg prior to the removal of any public payphones.
- 72 ComReg was of the preliminary view that in situations where there are multiple payphones in a location, the combined usage must be considered in determining whether the payphone usage is so low as to justify its removal. This would prevent the complete removal of payphones where usage may be high but split across more than one payphones in the vicinity. Therefore for this purpose ComReg proposed that a location will be regarded as being a single site if there is no additional public pay telephone phone within a reasonable proximity such as 100 metres or line of sight e.g. either side of a road or on adjacent roads.
- 73 Furthermore, in the interests of maintaining the visual landscape and public safety, ComReg was of the preliminary view that where the usage criteria are met, the entire payphone kiosk must be removed and not just the payphone unit. This would prevent the kiosk becoming subject to vandalism or anti-social behaviour.
- 74 ComReg asked the following questions:



Question 2: Do you agree with ComReg's preliminary view that criteria for removal should be as set out as above in paragraph 104 and specified in the Draft Decision Instrument in Section 9? Please give reasons to support your view.

Question 3: Do you agree with the usage criteria which are to be used for determining which payphones can be removed as set out above and specified in the Draft Decision Instrument in Section 9? Please give reasons to support your view.

### **Views of Respondents**

- 75 A number of respondents to the consultation agreed with the criteria for permissible removal. ALTO and BT, agreed that criteria should be set out, but believed that the limit should be the duration of a €2.00 call or the duration of a minimum priced coin call.
- 76 Dublin City BID set out its view that usage should not be the only criteria considered. It set out that *"The major issue in Dublin City Centre in relation to phone boxes is their use for antisocial behaviour such as aggressive begging and drug use, we believe this should be a priority issue due to the serious negative impression it gives of the city centre. Safer locations such as within business premises are available for the rare and occasional use that may be required for a public phone."*
- 77 Another respondent, DCC, although agreeing with the proposed criteria, believed *"that in a city environment a phone usage of more than a minute a day would not imply a compelling case for the phones retention"*. It also suggested that repeated vandalism should be included in the criteria for anti-social behaviour under the removals policy. DCC also sought clarification *"on which criterion takes precedence in a situation where two competing criteria are met i.e. A Local Authority requests removal but Eircom deem the payphone necessary under the usage criteria."*
- 78 UPC agreed *"that the removal criteria should be based on demonstrable and objective criteria and that public payphone usage is a reasonable basis"*. However, UPC views the usage thresholds proposed by ComReg as far too low.

- 79 Eircom, *“does not agree that the removals policy should operate as set out in the consultation”* and was of the view that the *“proposed removals criteria of 1 minute of ... has been set in the absence of any empirical analysis”*. Eircom also stated its concerns *“regarding the proposed arbitrary usage threshold which is set at one tenth of the level of usage that would be expected from a single household, while also placing undue emphasis on freephone usage as a determinant for the retention of payphones.”*
- 80 With regard to Freephone usage from Payphones, Eircom was of the opinion that *“ComReg has completely ignored the salient points made by eircom with respect to the likely economic drivers of Freephone usage, in the form of excessive wholesale Freephone call origination charges from mobiles and below cost Freephone call origination charges from payphones, both of which should be reviewed and which undoubtedly artificially inflate the volume of Freephone minutes from public payphones. A forward looking approach must take account of the effect of removing such distortions. It is astounding that ComReg would overlook this issue when relying to a large degree on Freephone usage as a justification of the USO while it simultaneously makes Freephone usage an integral element in the proposed new removals criteria.”*
- 81 Eircom was of the view that *“ComReg’s focus on freephone use appears to stem from its observation that “a substantial amount of Freephone calls from payphones were to helpline numbers”, which suggests a general need for access to various helpline numbers. .... ComReg should have observed that just 4% of freephone calls related to helpline numbers other than the Dublin City Council helpline number.”*
- 82 Eircom also stated that *“ComReg assumes that the relative effort on eircom to identify usage to particularly sensitive helpline numbers is not warranted. This is despite the fact that eircom has demonstrated to ComReg its ability to carry out such analysis with relative ease. This analysis showed that 74% of Freephone calls have been identified with non-sensitive reverse charge and international calling card numbers the inclusion of which would artificially perpetuate the unjustified retention of individual payphones.”*

- 83 Eircom also referred to Emergency Calls and in this respect called on ComReg to analyse the proportion of emergency calls that were “normal” calls (i.e. not miss-use of the emergency numbers). Eircom was of the view that there is a *“likelihood of a significantly higher degree of abuse of payphones based on the low proportion of normal calls reported by the ECAS”*. It was also of the view that *“in the majority of emergency situations a mobile phone is far more likely to be used than a payphone, particularly given the limited number of locations served by public payphones. ComReg is both obliged and in a position to seek evidence from ECAS of the proportion of emergency incidents that were reported solely through the use of a public payphone.”*
- 84 With respect to the proposed removal criteria Eircom also set out its view that *“the new reporting and notification requirements would mean that certain phones could not be removed for up to 9 months and on average 6 months after usage falls below the threshold”*. It believes *“The single site rule is written such that multiple phones in a single site would be viewed in respect of their combined usage which means that none might be removed until long after all had passed below the threshold. The rule should allow for all but one to be removed. Also the draft decision fails to refer to the combined treatment leaving multiple-sites in limbo.”*
- 85 Eircom was of the view that the proposed removals policy *“is far more demanding as the criteria was previously “low” usage, absent a specific threshold.”* It also noted that it has seen a greater number of calls from local authorities for the removal of public payphones rather than objections to their removal.

### **ComReg’s View**

- 86 ComReg has considered the respondents views and remains of the opinion that the average call duration is the best indication of Public Payphone usage. Using a monetary value or other measure which is linked to the call price would complicate the threshold calculations as the call duration would vary depending on the call type made. For example €2 will last longer where the call is made to a local number than if a call is made to an international number.
- 87 ComReg agrees with Dublin City BID however, that usage should not be the only criteria, and hence the Decision Instrument sets out 3 criteria for permissible removal:
- where the public payphone is a focus for anti-social behaviour;
  - where usage is low;

- where required by a local authority.

- 88 ComReg notes the view of a number of respondents that the threshold is too low. ComReg however, notes that based on information provided to it by Eircom, the threshold could allow for more than one third of current USO payphones to be removed at current usage levels if Eircom so wishes. If usage continues to decline the number of payphones falling below the threshold may increase. Therefore ComReg does not believe it would be appropriate at this time to increase the threshold. However, ComReg remains of the view that the new usage criteria above could be reviewed, the review of which would be completed within 2 years as set out further below.
- 89 In response to Eircom's opinion on the usage of Freephone numbers, ComReg is of the view that Freephone numbers are subject to change, and additional ones could be introduced. Therefore, ComReg does not believe that defining particular Freephone numbers to be considered if removing payphones would be appropriate. In any case, although the calls to Freephone numbers from public payphones are currently primarily to two particular Helplines, ComReg is of the view that the ability of consumers to call other Helplines is equally important. Due to the breakdown of the volumes of calls to particular Freephone numbers, ComReg is of the view that wholesale charges would not appear to influence consumers.
- 90 In any case where there are no calls to Freephone numbers, or where the duration of such calls is below the threshold, Eircom will be permitted to remove the payphone (subject to average usage being below the threshold), if it so wishes.
- 91 ComReg remains of the view that there is a need to ensure that payphones which are needed and used by consumers, particularly vulnerable consumers, to make Freephone and ECAS calls are not removed.
- 92 ComReg again notes Eircom's argument that a larger percentage of calls to Emergency services from payphones may not be 'normal'. Eircom has not established that calls from public payphones to ECAS are primarily nuisance in nature. It is likely that the volume of calls to ECAS from public payphones is small proportionate to the volume of nuisance calls. In addition, ComReg again notes that ECAS has not raised any concerns with ComReg in relation to the volume of calls from public payphones.
- 93 ComReg notes Eircom's concerns on the reporting and notification requirements and therefore is amending the process to allow the USP to identify such public payphones monthly, where necessary, based on the previous 6 whole calendar months usage. This information should be reported to ComReg 8 weeks prior to the removal of any public payphones.

- 94 ComReg remains of the view that in situations where there are multiple payphones in one location, the combined usage must be considered in determining whether the payphone usage is so low as to justify its removal. However, regardless of usage levels, in such instances, where there are a number of payphones in one location, these payphones may be removed, if Eircom so wishes, once one payphone is left in-situ. ComReg also notes that the final Decision Instrument has been amended to clarify in respect of Eircom's concern in this regard.
- 95 For a number of reasons, ComReg strongly disagrees with Eircom that the amended policy "*is far more demanding*". Under the Removals Policy, Eircom was obliged to consult with the community prior to removing a payphone. Furthermore, where usage had been low over the previous 12 months the payphone may be removed, but only in the absence of any community feedback. Under the amended policy, consultation with the community is no longer required and low usage is now determined based on the previous 6 months rather than 12.
- 96 The Removals Policy also necessitated each site being visited a number of times and the process could take up to 3 months to complete, the amended policy will allow the process to be completed within 8 weeks. Additionally, where previously removal was permissible where required by a local authority but relocation of the payphones needed to be considered, under the new policy, relocation of public payphones is not required.
- 97 In order to clarify the issue raised by DCC on which criterion takes precedence, ComReg notes that the decision would allow the removal of a payphone where requested by a Local Authority, but where the usage is above the low usage criteria. However, ComReg notes that although it has the power to mandate the provision of public payphones and their permissible removal, the decision on whether to remove a public payphone remains with Eircom. This is a commercial decision which is taken by Eircom, in which ComReg has no role.

## 4. Designation of Universal Service Provider (s)

### 4.1 Designation Period and Mechanism

98 The Regulations state that ComReg may designate one or more undertakings to guarantee the provision of the universal services to ensure the entire State is covered<sup>8</sup>. 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 State<sup>9</sup>.

99 In principle, no undertaking should be excluded from being designated to provide the public payphone universal service, in all or part of the State. In theory, other operators in Ireland may be able 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.

100 The Regulations provide that the designation methods adopted must ensure that the obligations are provided in a cost effective manner and that they may be used as a means of determining the net cost of the universal service obligation<sup>10</sup>. Consultation 13/119 invited stakeholders to express an interest in providing this aspect of the universal service. No expressions of interest were received.

101 In Consultation 14/27 ComReg proposed in light of the dynamic nature of the proposed obligation a designation period of 4 years, from July 1<sup>st</sup> 2014 to June 30<sup>th</sup> 2018. However, ComReg was of the preliminary view that the usage criteria above could be reviewed after a period of 2 years.

102 ComReg asked the following question:

Question 5: Do you agree or disagree with ComReg's preliminary view that the next designation period should be 4 years, with an option to review the threshold values after 2 years? Please provide reasons to support your views.

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<sup>8</sup> Regulation 7(1)

<sup>9</sup> Regulation 7(2)

<sup>10</sup> Regulation 7(3)

## Views of Respondents

- 103 Two respondents to Consultation 14/27, ALTO and BT, were of the view that ComReg should consider a sunset or break clause for payphone USO in two years time, rather than having further on-going reviews.
- 104 One respondent, UPC agreed that the threshold levels should be reviewed after 2 years, *“given the rapidly changing and decreasing usage levels of payphones”*
- 105 Dublin City BID, on the other hand believed that if a USP is designated the designation period should be *“for a maximum period of 12 months followed by a review of usage and should be reviewed annually thereafter”*.
- 106 Eircom contended that *“there can be no justifiable basis for ComReg doing anything other than lifting completely the USO on public payphones in Ireland.”*
- 107 With regard to the designation period Eircom was of the view that *“the designation period cannot be influenced by the nature of the removals policy that is applied and must be based on a thorough forward looking analysis of the need for public payphones.”* It was also of the opinion that *“the declining use of payphones alone would suggest that the re-designation should be limited to 1 year.”*
- 108 Eircom was of the view that ComReg has not adopted an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated in this case. Eircom believed that *“ComReg has failed to adequately consider, the designation of other undertakings for this obligation. .... It is entirely insufficient for ComReg to have merely invited expressions of interest in providing the Public Pay Telephone USO for the next designation period as an aside within the initial consultation.”*
- 109 Eircom also objected because it believed ComReg discouraged expressions of interest by expressing the view that Eircom should continue to be the universal service providers due to its ubiquity, experience and capability.
- 110 Eircom also expressed its opinion that *“It is not surprising that no such expressions of interest were received given the serious competitive disadvantage this obligation imposes on a provider”*.

## ComReg's View

111 ComReg notes the respondent's views that there should be a sunset clause after a period of two years. However, ComReg notes that in order to remove the obligation, ComReg needs to assess the conditions in the market at that time. Furthermore, although usage of public payphones is currently in decline, ComReg does not know what the level of usage of those payphones remaining will be at in 2 years time. Hence, ComReg is of the view that it would be more appropriate to review the low usage threshold in 2 years, as set out in Consultation 14/27.

112 ComReg ensured that the designation mechanism set out in section 6 of Consultation 14/27 was in accordance with relevant legal requirements set out in the Regulations. For instance, in paragraph 173, ComReg stated: "In principle, no undertaking should be excluded from being designated to provide the public payphone universal service, in all or part of the State. In theory, other operators in Ireland may be able 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."

113 ComReg stated that if expressions of interest were received, ComReg would consider such proposals. No expressions of interest were received. As set out in Consultation 14/27 ComReg does not agree that its approach is unfair or discriminatory towards Eircom. ComReg has carefully considered Eircom's response to the consultation, Eircom's ability to provide this element of the USO, its experience, its network and existing public payphone infrastructure are factors considered by ComReg in proposing Eircom as the USP.

114 No expressions of interest were received and hence ComReg understands that currently no undertaking is willing to provide this element of the universal service. ComReg therefore remains of the view that in light of the dynamic nature of the proposed obligation, ensuring that the obligation can adjust to users' needs, the designation should be for a period of 4 years, from July 7<sup>th</sup> 2014 to June 30<sup>th</sup> 2018.

115 However, ComReg remains of the view, that if deemed necessary, the low usage criteria as set out could be reviewed. Such a review would be completed 2 years from now.

## 4.2 Designation for the Entire State

116 Consultations 13/119 and 14/27 considered whether or not it is appropriate to continue to designate a USP to provide a payphone universal service to cover the entire State.



- 117 ComReg found that prices and tariff structures for payphone access and calls are homogeneous nationally (geographically averaged) and that on a general basis there is higher payphone penetration in more urban areas due to a greater concentration of demand.
- 118 It also found that although there are differences in the provision and availability of services between urban and rural areas, and these are important considerations for a universal service designation for the entire State or for specific areas, in urban areas, where historically there was competition in the payphone market, this is no longer the case. ComReg therefore was of the view that it would not be appropriate to remove the obligation in urban areas.
- 119 ComReg was of the view that it is most appropriate and in the best interests of consumers who need to use public payphones to designate for the entire State (whether or not it is delivered by different USP(s)), for the next designation period. Furthermore ComReg was of the view that geographically averaged prices should apply throughout the State.

### **4.3 Universal Service Provider**

- 120 In Consultation 14/27 ComReg proposed that Eircom should continue to be the universal service provider due to its ubiquity, experience and capability, during the next designation period.
- 121 Although, in ComReg's view, there are no significant barriers which prevent an operator from entering the market for the provision of public payphone services, there are no other providers currently providing payphones in the State.
- 122 Before designating a USP ComReg requires evidence about the willingness and capability of the undertaking in question to be a USP. Consultation 13/119 invited potential providers to express an interest in being designated with respect to public payphones. No expressions of interest were received; and hence ComReg understands no undertaking is willing to provide this element of the universal service.
- 123 However, Eircom currently provides this element of the USO, and has been the USO provider of public payphones since 1999. Therefore, Eircom is capable of being the USO.

- 124 ComReg was of the view that to designate another undertaking at this time, would result in that undertaking having to either enter into an agreement with Eircom to take control of its public payphones, or alternatively to install new public payphones. ComReg does not believe that this is an appropriate, cost effective or efficient option. In particular, given no undertaking has expressed an interest in providing this universal service element.
- 125 ComReg noted that the Regulations<sup>11</sup> stipulate that a USP can seek funding for the net costs of meeting the obligation concerned, however, funding will only be permitted if it is determined by ComReg that the net cost may represent an unfair burden. In this regard, ComReg document 11/42 (D04/11)<sup>12</sup> illustrates how the net cost for all USO, including payphones, will be calculated and how an unfair burden will be determined. In the event a net cost is deemed to be an unfair burden, the requirement for a sharing mechanism is then triggered.
- 126 In Consultation 14/27 ComReg remained of the preliminary view that Eircom is the most appropriate undertaking to be designated for the payphone Universal Service for the next designation period.
- 127 ComReg asked the following question in respect of the designation of a USP:

Question 6: Do you agree or disagree with ComReg's proposal that Eircom should continue to be the universal service provider for public payphones during the next designation period? Please provide reasons to support your views.

### **Views of Respondents**

- 128 Dublin City BID expressed its view that while it does not believe there is a need for a USP, *"if ComReg decide to pursue this further and continue with a USP we believe that this responsibility should remain with Eircom."*
- 129 Eircom set out its view that ComReg has not adopted a proper designation mechanism in this case. It believed that *"ComReg has failed to consider, or adequately consider, the designation of other undertakings for this obligation"*.

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<sup>11</sup> Regulation 11

<sup>12</sup> Report on Consultation and Decision on the Costing of universal service obligation: Principles and Methodologies.

- 130 Eircom was of the view that ComReg failed to assess the specifics of the Irish market or to adequately factor-in the rapid evolution of the Irish market while relying on an invalid presumption that Eircom should be designated because of a perceived need for public payphones. Furthermore, Eircom was of the opinion that *“In doing so it has ignored the guidance of the European Commission, BEREC and the OCED while proposing to act contrary to the growing number of informed decisions among regulatory authorities across Europe that are resulting in the removal of the Payphones USO.”*
- 131 In Eircom’s opinion, *“ComReg could and should have procured and consulted on an objective external economic analysis to determine whether the conditions for designating eircom as USO, in relation to public payphones, are still warranted. ComReg could and should also have carried out a detailed survey of persons who had used public payphones in the last number of years. The failure by ComReg to procure and consult on such an objective and expert analysis renders its decision not only unlawful and unreasonable, but also tainted by predetermination and objective bias as is detailed more fully later in this submission.”*
- 132 With regard to the approach taken by other NRA’s, Eircom noted that a number of Member States, either had none or no longer have a designated universal service provider for public payphones. Eircom also supplied details of the methodology and assessment used in Belgium which it considered to be *“a fair and appropriate comparator to Ireland.”*
- 133 Eircom believed that *“ComReg has ignored the many different types of approach taken by other Member States in relation to this USO as more fully explained in the 2010 BEREC Report and has not provided a sufficient level of regulatory justification for the continued USO designation.”*

### **ComReg’s View**

- 134 ComReg, in assessing the potential USO obligations in relation to public pay telephones, the designation of a USP in this regard, and the Removals Policy, has at all times been mindful of its legal obligations under Regulation 7(3) of the Regulations to, *“adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated”*.
- 135 ComReg has set out its view on the designation method and its consideration of other undertakings in section 4.1 above.

- 136 In response to Eircom's claim that ComReg ignored approaches taken by other Member States, ComReg notes that Consultation 13/119 contained detailed discussion of other NRA approaches in section 3.3. The decision of any one NRA in the EU, like BIPT, is not itself determinative of how ComReg must act. Belgium is likely to have less remote rural areas than Ireland. Paragraph 54 of 14/27 stated: "*Although some countries no longer include public payphones in the USO, the 2010 BEREC report noted the "vast majority...indicated that all of the services included in the scope of the Universal Service....were included in the USO at national level."*
- 137 As ComReg noted previously, Eircom currently provides this element of the USO, and has been the USO provider of public payphones since 1999, and therefore Eircom is capable of being the USO. Furthermore, and as noted previously, to designate another undertaking at this time, would result in that undertaking having to either enter into an agreement with Eircom to take control of its public payphones, or alternatively to install new public payphones. ComReg does not believe that this is an appropriate or cost effective or efficient option. In particular, given no undertaking has expressed and interest in providing this universal service element.
- 138 Eircom is currently the only provider of public payphones in the State, and although other network infrastructure operators are present in the market, they do not provide public payphones.
- 139 ComReg therefore remains of the view that Eircom is the most appropriate undertaking to be designated for the payphone Universal Service for the next designation period. . Furthermore ComReg is of the view that geographically averaged prices should apply throughout the State.

## 5 Regulatory Impact Assessment (RIA)

140 This section considers the submissions received on, or relevant to, ComReg's draft Regulatory Impact Assessment (RIA) as described in Consultation 14/27, and sets out ComReg's position on these. ComReg's final RIA can be found in Annex: 3 of this document. The changes to the RIA arise from comments received by respondents to Consultation 14/27 and due to the progression of ComReg's views.

### ComReg's Position in Consultation 14/27

141 In Annex 3 of Consultation 14/27, 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

142 ComReg considered the two regulatory options available to it, namely to remove the obligation (Option 1), or to maintain an obligation (Option 2). In maintaining an obligation, ComReg was of the view it could maintain the existing obligation (Option 2(a)) or amend the existing obligation (Option 2(b)).

143 ComReg proposed that if the existing obligation was amended, there were 3 sub-options, one or all of which could be implemented:

- i. Amend to remove the need for coin payments (Option 2(b)(i));
- ii. Amend by defining specific payphones which must be maintained (Option 2(b)(ii));
- iii. Amend by setting usage criteria by means of changing the Removals Policy (Option 2(b)(iii)).

144 ComReg considered, on balance, that Option 2 was the most proportionate option and accordingly put forward Option 2(b)(iii) as its preferred option. Consultation 14/27 sought stakeholder's views on ComReg's revised draft RIA and asked the following specific question:

Question 7: Do you agree with ComReg's revised draft assessment of the impact of the proposed options as set out here and in Annex: 3? Please provide reasons to support your views.

## Views of Respondents

- 145 ALTO and BT were of the view that the proposals will lead to a reduction in payphones over time, and that ComReg should prepare to discontinue this USO.
- 146 Dublin City BID, put forward its view that the removal of kiosks which are used for anti-social behaviour should be of primary importance.
- 147 Dublin City Council *“supports the proposed revision to the Regulatory Impact Assessment, most notably the proposed revisions to the removals policy as it represents a more streamlined approach rationalising the current provision of public phone boxes”*.
- 148 Eircom was of the opinion that the RIA *“lacks the necessary detailed analysis that is warranted.... The RIA merely lists options along with speculative effects that have no grounding other than their arising from ComReg’s views. ComReg has only admitted incremental costs in its analysis while omitting the take account of the fact that significant reductions in cost of in excess of €1m that could be achieved by calling an end to the significant losses that arise from public payphones under the USO. Similarly, ComReg neglects to consider the cost of piecemeal removals as opposed to the reduction in costs that might be achieved if ComReg decides not to re-designate the USO. With respect to claimed benefits, ComReg’s estimation of claimed benefits from Public Payphones remain entirely un-quantified and without any supporting evidence, while even the general claims in respect of the number of end-users with an apparent need are littered with inconsistencies.”*
- 149 Eircom was also of the view that *“the draft decision is based on the false premise that there would be no additional cost burden on eircom. “ Furthermore Eircom was of the view that ComReg *“has failed to take a forward looking approach to the USO designation, while assuming that the existing cost burden on eircom is a given and one that would not be avoided if the obligation were removed.”* In Eircom’s view this leads to a flawed RIA *“as the bar against which any benefits are measured (with those that have been put forward having been unsubstantiated), is set far below the actual annual costs of over €1m that would continue to arise from the imposition of the USO.”**
- 150 Furthermore in relation to the net cost Eircom was of the view that *“It is the disproportionate nature of the burden on eircom, by comparison with the perceived (and in eircom's view, non-existent) on-going benefit of the USO for the provision of public payphones that renders ComReg's proposed decision as being unreasonable, disproportionate, discriminatory and ultimately unlawful.”*

## ComReg's View

- 151 ComReg seeks to ensure that a RIA is proportionate and does not become overly burdensome. A common sense approach is taken towards the level of detail in a RIA. As decisions are likely to vary in terms of their impact, if, after initial investigation, a decision appears to have relatively low impact, then ComReg would expect to carry out a less exhaustive RIA in respect of those decisions<sup>13</sup>.
- 152 In determining the impacts of various regulatory options, current best practice appears to recognise that full cost benefit analysis would only arise where it would be proportionate, or, where robust, detailed and independently verifiable data is available. This approach will be adopted where necessary.
- 153 ComReg is of the opinion that the amendments to the public payphones USO that are made in this Decision are appropriate, proportionate and justified.
- 154 ComReg remains of the view that the obligations set out allow for the easier removal of payphones that under the existing removals policy. The USP could benefit from reducing the number of payphones it provides, and therefore benefit from reduced maintenance costs, yet also continue to benefit from having its brand displayed on the payphones which remain. ComReg is of the view that the obligation is unlikely to result in a disproportionate cost burden.
- 155 ComReg remains of the view that permitting payphones to be removed by focusing on usage rather than community representations takes account of the fact that need and usage are inextricably linked.
- 156 ComReg remains of the view that the amended Payphone USO will afford Eircom the opportunity to remove public payphones in certain circumstances, if it so decides. ComReg does not agree that this will result in "*piecemeal removals*", as given current usage levels, more than one third of payphones would now be permitted to be removed if Eircom so decides.
- 157 ComReg has carefully considered the comments made by respondents in respect of the draft RIA. ComReg has not received any further information suggesting that it is appropriate to amend the preferred option or to propose an alternative option. Therefore, ComReg intends to adopt Option 2(b)(iii) as set out in its revised RIA.

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<sup>13</sup> See paragraph 1.10 of ComReg document 07/56a Guidelines on ComReg's Approach to Regulatory Impact Assessment.

158 ComReg has adjusted the Regulatory Impact Assessment outlined in Consultation 14/27; the final RIA is set out in Annex: 3.



# Annex: 1 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. 13/119 and 14/27; and
  - v. Having regard to the analysis and reasoning set out in ComReg document No. 14/69.

## 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 phones except in accordance with the criteria for permissible removal specified in section 4 of this Decision Instrument.
  - ii. Ensure that it is possible to make emergency calls from a public pay telephone using the single European emergency call number “112”, the National emergency call number “999” and any national emergency call

number that may be specified by ComReg, in each case free of charge and without the necessity to use coins or cards or any other means of payment.

- iii. Ensure that users of its public pay telephones have access to a directory enquiry service.
- iv. Ensure that all public pay telephones provide appropriate payment means;

## **Geographically Averaged Pricing**

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

## **3. CONTINUATION OF COMREG DECISIONS**

- 3.1 All other decisions imposed by ComReg in relation to 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:
- i. ComReg Decision No. D9/05.
  - ii. ComReg Decision No. D02/08.
  - iii. ComReg Decision No. D04/11.

## **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 metres 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 of cessation of service and for removal of public pay telephone.

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

## 5. REVOCATION

5.1 ComReg Document 06/14<sup>14</sup> is hereby revoked.

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<sup>14</sup> Information Notice “Universal Service Obligation – Removal/Relocation of Public Pay Telephones “ Document No. 06/14, dated March 3<sup>rd</sup> 2006

## **6. EFFECTIVE DATE AND DURATION**

6.1 This Decision and Decision Instrument is effective from 7 July 2014 until 30 June 2018, unless otherwise amended by ComReg.

**KEVIN O'BRIEN**

**CHAIRPERSON**

**THE COMMISSION FOR COMMUNICATIONS REGULATION**

**THE 7<sup>th</sup> DAY OF JULY 2014**

## Annex: 2 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.*

## Annex: 3 Final RIA

A 3.1A 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.

A 3.2 ComReg's approach to RIA is set out in the Guidelines published in August 2007<sup>15</sup>. In conducting this RIA, ComReg takes account of the RIA Guidelines,<sup>16</sup> adopted under the Government's *Better Regulation* programme.

A 3.3A 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. RIAs aim to identify areas where regulation can be reduced.

A 3.4A 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. RIAs therefore increase transparency of decision making and ensures the best possible outcome for stakeholders, consumers and competition.

A 3.5 The following sets out ComReg's RIA.

### Step 1: Describe the Policy Issue and identify the Objectives

A 3.6 ComReg is reviewing the current public payphone 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.

A 3.7 Payphone numbers have declined in recent years, as have the volumes of calls. However ComReg is of the view that payphones continue to provide a vital service to consumers, particularly to disadvantaged and vulnerable consumers.

A 3.8 Eircom has been designated as the USP for public payphones from June 2012 to June 2014. As this designation nears an end, ComReg believes it is appropriate to now review the need for a public payphone USO.

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<sup>15</sup>in ComReg Document No. 07/56 & 07/56a

<sup>16</sup>[http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2011/Revised\\_RIA\\_Guidelines\\_June\\_2009.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf)

## Step 2: Identify and Describe the Regulatory Options

A 3.9ComReg identified the following three 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 payphone services. Current public payphones throughout the State can be removed without consultation. Consumers may be affected by the removal of all payphones in certain geographic areas.

- **Option 2: Maintain an Obligation**

### **2(a) Maintain Existing Obligation**

The USP must ensure payphones meet reasonable needs of consumers. Public payphones may be removed/relocated subject to conditions in the Removals Policy. The USP must ensure that, where possible, all public payphones provide for a number of payment means. In addition, it must be possible to make emergency calls free-of-charge from all public payphones.

### **2(b) Amend the Existing Obligation**

The obligation to provide payphones could be amended from its current form. The designated USP would have some obligations in respect of the provision of public payphones; however the obligations may be lessened. Consumers who depend on public payphones, whether in an emergency situation or for general day to day usage, would still be able to access them. Three sub-options were identified, one or a combination of which could be implemented.

- i. Remove the need for coin payments: to allow for payphones which are remote or potential targets for robberies to use card only payment methods (i.e. calling card, debit/credit card);
- ii. Defining specific payphones which must be maintained, for example define a number of payphones in each county which must be maintained, allowing for a reduced number of payphones;
- iii. Set usage criteria, to allow for easier removal of payphones, in particular where usage is low or the payphone is regularly vandalised.



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

A 3.10 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. This is set out below.

Measure Proposed	Impact on Industry		Impact on Consumer		Impact on other stakeholders
	Costs	Benefits	Costs	Benefits	
<p><b>Option 1</b></p> <p><b>Payphone US Obligations Removed:</b></p> <p><b>No USP designated to provide public payphones;</b></p>	<p>Eircom may incur costs for the physical removal of public payphones, however maintenance costs would decrease.</p> <p>USP would lose the brand benefit of having its logo displayed on phone boxes throughout the country.</p>	<p>No net cost claim or impact in respect of sharing of any unfair burden as relevant.</p> <p>Eircom could benefit from the removal of uneconomic public payphones &amp; may therefore benefit from reduced costs.</p> <p>USP may benefit from brand no longer being associated with anti-social areas if payphones are removed</p>	<p>In some areas, all public payphones may be removed.</p> <p>Vulnerable consumers and consumers who wish to use payphones no longer have access to service that they currently use.</p>	<p>Consumers may be able to use non-USO payphones.</p> <p>Consumers living in areas where payphones have become the location for anti-social behavior may benefit from their removal.</p> <p>Some payphones remain; these may be primarily in urban locations.</p>	<p>Local Authorities may benefit from reduced cleaning costs (where kiosks are physically removed).</p> <p>If public payphones are removed</p> <ul style="list-style-type: none"> <li>• No longer negative impact on streets where public payphone usage is source of anti-social behaviour.</li> <li>• Pavement space can be used for bicycle stands/ information points</li> </ul>
<p><b>Option 2 (a)</b></p> <p><b>Current Payphone USO Remains:</b></p>	<p>Additional costs incurred if Eircom re-designated are minimal.</p> <p>Recent price increase will assist to minimise net cost but there is likely to</p>	<p>Payphones can be removed subject to Removals Policy.</p> <p>Eircom could benefit from the removal of uneconomic public</p>	<p>Payphones may be removed from individual locations subject to Removals Policy</p> <p>Obligation may exceed reasonable need and the</p>	<p>Payphones still provided to meet reasonable needs of end users.</p> <p>Consumers aware of payphone locations and can use when</p>	<p>Local Authorities may benefit from reduced cleaning costs (where kiosks are physically removed)</p> <p>Payphones can be</p>

Measure Proposed	Impact on Industry		Impact on Consumer		Impact on other stakeholders
	Costs	Benefits	Costs	Benefits	
<p><b>USP designated to provide payphones.</b></p>	<p>be a net cost.</p> <p>Payphone removal may be difficult even where usage is low due to removals policy</p> <p>Costs incurred consulting with community which may be costly and time consuming</p> <p>Net cost may be claimed.</p> <p>Impact on industry in respect of sharing of any unfair burden</p>	<p>payphones &amp; would therefore benefit from reduced costs</p> <p>USP may benefit from having its logo displayed on phone boxes throughout the country.</p> <p>Removal of those payphones used for anti-social purposes means USP may benefit from brand no longer being associated with anti-social areas</p>	<p>benefit of some payphones is in doubt due to low usage.</p>	<p>necessary.</p> <p>Community representations may prevent the removal of public payphones</p> <p>Vulnerable consumers and consumers in who wish to use payphones have access to service that they currently use.</p>	<p>removed where required by a local authority therefore where these payphones are removed:</p> <ul style="list-style-type: none"> <li>• There is no longer negative impact on streets where public payphone usage is source of anti-social behaviour.</li> <li>• Pavement space can be used for bicycle stands/ information points</li> </ul>
<p><b>Option 2(b)(i)</b></p> <p><b>USP designated to provide payphones. In certain</b></p>	<p>Costs incurred by Eircom, if re-designated minimal.</p> <p>Costs may be incurred in modifying payphones equipment to not accept coins</p>	<p>Reduced maintenance costs, due to removal of need to collect coins.</p> <p>Payphones can be removed subject to Removals Policy</p> <p>USP may benefit from</p>	<p>Consumers may not be able to use payphone if they do not have access to other payment means.</p>	<p>Payphones continue to be provided to meet reasonable needs of end users.</p> <p>Consumers aware of payphone locations and can use when</p>	<p>Local Authorities may benefit from reduced cleaning costs (where kiosks are physically removed)</p> <p>Payphones can be removed where required by a local</p>

Measure Proposed	Impact on Industry		Impact on Consumer		Impact on other stakeholders
	Costs	Benefits	Costs	Benefits	
<p><b>circumstances requirement to provide for payment by means of coins is removed</b></p>	<p>Payphones usage (and therefore revenue) may decrease due to inability to pay by coin, therefore net cost may increase.</p> <p>Payphone removal may be difficult even where usage is low.</p> <p>Recent price increase will assist to minimise net cost but there is likely to be a net cost.</p> <p>Net cost may be claimed.</p> <p>Impact on industry in respect of sharing of any unfair burden</p>	<p>having its logo displayed on phone boxes throughout the country. (once those associated with anti-social behaviour are removed)</p>		<p>necessary.</p> <p>Community representations may prevent the removal of public payphones</p> <p>Vulnerable consumers and consumers who wish to use payphones have access to service that they currently use.</p>	<p>authority therefore where these payphones are removed:</p> <ul style="list-style-type: none"> <li>• There is no longer negative impact on streets where public payphone usage is source of anti-social behaviour.</li> <li>• Pavement space can be used for bicycle stands/ information points</li> </ul>
<p><b>Option 2(b)(ii)</b></p> <p><b>USP designated to provide</b></p>	<p>Costs incurred by Eircom, if re-designated minimal. Recent price increase expected to mean payphone net cost is minimised.</p>	<p>Payphones may be removed but specified payphones may not.</p> <p>Potential for reduced maintenance costs due to reduced number of</p>	<p>Some payphones may be removed, as only requirement is to provide payphones in particular areas.</p> <p>Where payphones are</p>	<p>Payphones still provided to meet reasonable needs of end users.</p> <p>Consumers aware of payphone locations and can use when</p>	<p>Local Authorities may benefit from reduced cleaning costs (where kiosks identified for removal are physically removed)</p>

Measure Proposed	Impact on Industry		Impact on Consumer		Impact on other stakeholders
	Costs	Benefits	Costs	Benefits	
<p><b>payphones.</b></p> <p><b>Certain payphones identified as necessary</b></p>	<p>Net cost may be claimed.</p> <p>Impact on industry in respect of sharing of any unfair burden</p>	<p>payphones</p> <p>USP may benefit from having its logo displayed on phone boxes throughout the country.</p> <p>Potential for reduced maintenance costs due to reduced number of payphones</p>	<p>removed, consumers needing to make calls in certain locations may now need to find alternative means of making calls.</p>	<p>necessary.</p> <p>Vulnerable consumers and consumers who wish to use payphones have access to service that they currently use.</p>	<p>Payphones would not be removed where required by a local authority therefore where these payphones are removed</p>
<p><b>Option 2(b)(iii)</b></p> <p><b>USP designated to provide payphones</b></p> <p><b>Removals procedure is amended</b></p>	<p>Costs incurred if Eircom re-designated may reduce over time.</p> <p>Recent price increase expected to mean payphone net cost is minimised.</p> <p>Costs to Eircom relate to the physical removal of public payphones</p> <p>Net cost may be claimed.</p> <p>Impact on industry in</p>	<p>Potential for reduced maintenance costs due to reduced number of payphones</p> <p>If low usage payphones are removed, the net cost will reduce over time</p> <p>Payphones can be removed if Eircom so wishes to; subject to criteria which are less onerous than the current Removals Policy</p>	<p>Some Payphones may be removed subject to less onerous removals criteria. However, the number of calls made from these payphones is low and so the consumer impact is minimised.</p> <p>Where payphones are removed, consumers needing to make calls in certain locations may now need to find alternative means of</p>	<p>Payphones still provided to meet reasonable needs of end users in terms of usage</p> <p>Consumers aware of payphone locations and can use when necessary.</p> <p>Consumers informed (by notice in payphone) of intention to remove payphone</p> <p>Vulnerable consumers</p>	<p>Local Authorities may benefit from reduced cleaning costs (where kiosks are physically removed)</p> <p>Payphones can be removed where required by a local authority therefore where these payphones are removed:</p> <ul style="list-style-type: none"> <li>• There is no longer negative impact on</li> </ul>

Measure Proposed	Impact on Industry		Impact on Consumer		Impact on other stakeholders
	Costs	Benefits	Costs	Benefits	
	respect of sharing of any unfair burden	USP may benefit from having its logo displayed on phone boxes throughout the country.	making calls.	<p>may still be able to use payphones, once average usage is above the threshold and freephone calls do not account for more than 30 seconds of these calls</p> <p>Consumers living in areas where payphones have become the location for anti-social behavior may benefit from their removal</p> <p>Consumers may be able to use non-USO payphones</p>	<p>streets where public payphone usage is source of anti-social behaviour.</p> <p>Pavement space can be used for bicycle stands/ information points</p>

## **Step 5: Assess the Impacts and choose the best option.**

A 3.11 ComReg is of the view that removing the USO (option 1) in relation to payphones at this time would be premature. Usage data as supplied by Eircom shows that calls continue to be made from payphones. ComReg notes that payphones continue to be used to make calls to 1800 numbers and to emergency services as well as to local, national and mobile numbers. Furthermore, customers also use payphones for the reverse charge calls service and for prepaid phone cards.

A 3.12 Consumers therefore continue to rely on public payphones to make calls and in the absence of a USO, ComReg is of that view that these payphones would be removed, leading to detriment to consumers who continue to use these payphones.

A 3.13 Payphones are primarily used by consumers to make Freephone calls many of which are to helplines. ComReg is of the view that if the obligation to provide public payphones was removed, a large number of public payphones throughout the State would be removed. This could lead to detriment particularly for disadvantaged and vulnerable consumers.

A 3.14 For these reasons, ComReg is of the view that the USO for payphones should continue. ComReg is of the view that maintaining the obligation in its current format (Option 2(a)) would not achieve its objectives, because payphones removal may be difficult, even where usage is low, due to the current Removals Policy.

A 3.15 However, ComReg is of the view that the current obligations could be amended yet still meet the reasonable needs of consumers (Option 2(b)).

A 3.16 Any amendment to the obligation would protect consumers from a blanket removal of payphones, yet could allow the easier removal of some payphones.

A 3.17 ComReg is of the view that amending the obligation to remove the requirement to provide for payment by coins (Option 2b(i)) could result in additional costs to the USP due to the modifications required to equipment in the public payphones. It could also lead to consumer detriment due to the loss of the ability in some instances to pay by coin.

A 3.18 Furthermore the loss of revenue due to consumers' inability to pay by coin could potentially lead to an increase in the net cost of the provision of public payphones. Therefore ComReg is of the view that other options set out would best achieve ComReg's objectives.

A 3.19 The identification of particular payphones which should be provided, would allow for the removal of some public payphones (Option 2(b)(iii)), while maintaining those which are necessary to meet the reasonable needs of consumers in terms of the geographical coverage. The existing Removals Policy would therefore no longer apply.

A 3.20 A set of rules would need to be established in order to define which payphones would be protected from removal. The factors included could include the population in the vicinity, the presence of other payphones, incidences of vandalism, call volumes and/or call types made from the payphone.

A 3.21 The benefit of this from a consumer perspective is that the payphones maintained would be chosen to ensure their reasonable needs. The USP may benefit from reduced costs, due to a reduced number of payphones and reduced costs from not having to consult on the removal of individual payphones.

A 3.22 However, defining the public payphones which need to be maintained does not allow for the easier removal of payphones, which in the future may be suitable for removal. Therefore ComReg is of the view that other options set out would best achieve ComReg's objectives.

A 3.23 ComReg is of the view that the removal of payphones determined by usage rather than community representations (Option 2(b)(iii)) would be beneficial to industry, consumers and other stakeholders. With this amendment the USP could benefit from reducing the number of public payphones which are provided, if it so wishes, and although consumers may be negatively affected by the removal of some public payphones, those public payphones which are used and therefore do not fall below certain threshold levels would be maintained.

A 3.24 In addition where a public payphone is the focus of anti-social behaviour, or where a local authority requests its removal, Eircom may remove these public payphones.

A 3.25 Eircom could therefore benefit from reduced costs due to decreased maintenance costs and also benefit from having its brand on those public payphones which remain.



A 3.26 ComReg therefore remains of the view that the measures are unlikely to result in a disproportionate cost burden and for the reasons set out above the benefits of Option 2 are likely to be significant. For these reasons ComReg is of the view that Option 2(b)(iii) would best achieve ComReg's objectives. In contrast if Option 1 were followed no such benefits would follow. Therefore ComReg considers that Option 2(b)(iii) is the best option.

A 3.27 ComReg, is of the view that the designation of a USP for payphones, where the obligation has been lessened, 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 to provide payphones was removed no such benefits would follow.

A 3.28 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 public payphone obligations in line with these functions.