



Commission for
Communications Regulation

Provision of Public Pay Telephones

Universal Service: Scope and Designation

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

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Additional Information

All responses to this consultation should be clearly marked:

“Reference: Submission re ComReg 14/27” as indicated above, and sent by post, facsimile, e-mail or on-line at www.comreg.ie (current consultations), to arrive on or before 5pm on May 7th 2014, to:

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

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1. Executive Summary

- 1 The Commission for Communications Regulation (“ComReg”) previously issued a consultation document (“Consultation 13/119”)¹ which sought the views of interested stakeholders on proposed Universal Service Obligations (“USO”) in relation to Public Pay Telephones (“public payphones”), the designation of a Universal Service Provider (“USP”) in this regard and the Removals Policy.²
- 2 Having considered the views of respondents’ this Response to Consultation, Further Consultation sets out ComReg’s preliminary views and on those issues which define the ways in and USO in relation to public payphones would be implemented. It considers the various regulatory options available to ComReg in relation to public payphones, and in relation to the possible designation of a USP, together with possible amendments to the procedures for removing payphones.
- 3 ComReg maintains its preliminary 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.
- 4 ComReg remains of the preliminary view that the current provision of public payphones throughout the State continues to meet (if not exceed) the reasonable needs of consumers and it is not proposing to increase penetration or facilities currently available.
- 5 ComReg considers that most payphone usage is likely to be 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 of the latter type, given the landline and mobile penetration in Ireland. ComReg is therefore of the view that usage levels are the most appropriate measure of the reasonable needs of consumers.
- 6 The proposed obligations set out in this consultation, have been drafted so as to ensure consumers currently using payphones still have access to payphones in the State, yet allow for the removal of public payphones where there is no longer a need, based on usage levels.

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

² ComReg document 06/14 “Universal Service Obligation- Removal/Relocation of Public Pay Telephones”, March 3rd 2006, (“Removals Policy”).

- 7 The proposed obligations set out in this document will minimise the amount of changes required to public payphones. ComReg is satisfied that these obligations will not result in any additional costs to the USP, nor will they result in substantial consumer detriment.
- 8 Therefore, following Consultation 13/119, in this consultation ComReg proposes that each of the current Universal Service payphones be maintained by Eircom unless their usage falls below a certain level, in which case they can be removed in accordance with the new process proposed.
- 9 In making these proposals, ComReg has taken into consideration the responses received in relation to Consultation 13/119, 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 Consultation 13/119 extended an invitation to all undertakings to express an interest in providing the Public Pay Telephone universal service for the proposed next designation period. No expressions of interest were received.
- 11 In light of the dynamic nature of the proposed obligation, ensuring that it allows the obligation to adjust to meet users' needs, this Response to Consultation, Further Consultation and Draft Decision proposes that Eircom should continue to be the universal service provider of public payphones for a period of 4 years.
- 12 ComReg is of the preliminary view that the options and proposals set out in this consultation will ensure consumers can still access public payphones, which continue to provide a basic service to many people throughout the State. ComReg is satisfied that these measures will ensure the reasonable needs of consumers are met.
- 13 ComReg looks forward to receiving responses from all stakeholders in relation to the proposals in this consultation. ComReg will review and fully take into account all responses it receives in reaching its final decision.

2. Background

- 14 Over the past number of years, due to the evolution in information and communication technologies, usage of public payphones³ has been in decline. Eircom is currently the only operator of public payphones in the country. ComReg is concerned that absent a USO, the needs of some consumers, particularly disadvantaged and vulnerable consumers, may not be met.
- 15 Currently the regulatory requirement (Regulation 5 of the Regulations⁴) provides that a designated undertaking shall ensure that public payphones 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.
- 16 In principle, no undertaking is excluded from being designated in relation to universal service obligations and Consultation 13/119 invited potential providers to express an interest in being designated with respect to public payphones⁵. 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.
- 17 On June 29th 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.
- 18 Accordingly, in light of the forthcoming expiration of the current USO designation, in Consultation 13/119, ComReg undertook a detailed review of the current public payphones, to ascertain what the most appropriate requirements on a USP (if any) should be.

³ 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

⁴ European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011, S.I. No. 337 of 2011 (“the Regulations”).

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

- 19 ComReg proposed in Consultation 13/119 that the obligation could be maintained in its current form or it may be amended to allow for the easier removal of payphones, for example those with low usage. It also proposed that unless expressions of interest were received, Eircom should be designated as USP for the next period.
- 20 ComReg notes that public payphones continue to be used to make calls to 1800 numbers, to emergency services, to mobile numbers, to help lines and to local, national and international numbers. Furthermore, consumers also use public payphones for the reverse charge calls service and for pre-paid phone cards.
- 21 ComReg consulted on a number of proposed obligations in relation to the public payphones USO in Consultation 13/119 and sought views on topics such as:-
- Is there a need for a public payphone USO obligation?
 - Does the current provision of public payphones meet or exceed the needs of consumers?
 - What should any future obligations be?
 - How long should any designation be for, and which undertaking(s) should be designated.
- 22 ComReg received two responses to Consultation 13/119. The respondents to Consultation 13/119 (“the Respondents”) were as follows:

The Respondents
Eircom
Solitaire Payphones Ltd.

- 23 One further response was received to Consultation 13/119 after the closing date for responses. ComReg has therefore not considered this response at this time, however the submission will be considered together with the responses received to this Response to Consultation, Further Consultation and Draft Decision.
- 24 ComReg fully considered the information provided in the responses to the consultation in reaching its preliminary views and draft decisions set out below.

- 25 ComReg has also revised the draft Regulatory Impact Assessment (“RIA”) based on responses received and the revised RIA is set out in Annex: 3 of this document.
- 26 Under Regulation 5 of the Regulations ComReg requires the consent of the Minister in relation to the aspects of the provision of public payphones. Prior to making a final decision under Regulation 5, ComReg will seek the consent of the Minister for Communications, Energy and Natural Resources.

3. Requirement for Payphone Universal Service Obligation

- 27 In Consultation 13/119, ComReg undertook a detailed review of the payphone market⁶ in Ireland. ComReg examined actual usage data Eircom provided to ComReg in response to a number of information requests in 2013. It considered the numbers of payphones, their locations and usage patterns, including average usage and Freephone calls.
- 28 It also looked at approaches taken in other European countries to public payphones USO, and found that various approaches have been taken in respect of mandating public payphones as a universal service. Many countries such as France, Italy, Spain and UK continue to impose a payphone USO. In the countries where an obligation remains, the obligation has been implemented in various ways.⁷
- 29 Consultation 13/119 noted that Eircom is the only provider of public payphones in the State. The number of public payphones in Ireland declined substantially from 2006 to 2009. However since then the number of public payphones has remained relatively static, with approximately 1,300 spread throughout the country at present⁸. The majority of these are considered by Eircom to be uneconomic.
- 30 Consultation 13/119 noted that the average usage of payphones is low and prices of calls from payphones have increased in recent years. The minimum fee for all coin calls from payphones is now €2 euro, and the price per minute for Local/National calls is €0.50 per minute and €1.00 per minute for calls to mobiles.
- 31 Payphone usage is declining, but payphones continue to be used to make calls to local, national, mobile numbers as well as to 1800 numbers and emergency services.
- 32 As above, ComReg notes that the number of public payphones has declined in recent years, yet despite this decline, it is apparent that public payphones continue to provide a basic service to some people throughout the State.

⁶ See Section 3 of Consultation 13/119

⁷ See Section 3.3 of Consultation 13/119

⁸ See Figure 2 page 12 of Consultation 13/119

- 33 ComReg considers that payphones are used by some consumers when their mobile is not available to them. They may also be used by those without a land-line or a mobile phone, or because they choose to use a payphone rather than to have a landline.
- 34 Consultation 13/119 proposed a number of regulatory options in relation to the requirement for a payphone USO. ComReg's proposals, the view of respondents and ComReg's position in respect of each of these matters are summarised below.

3.1 Option 1: Remove the Obligation

- 35 Under the Regulations, ComReg may decide not to designate an undertaking in respect of public payphones. ComReg proposed that if the public payphone USO designation was removed, Eircom would 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.
- 36 Payphone usage is declining, and the average number of calls from some public payphones is extremely low. But payphones are still required by consumers, albeit on an ad-hoc basis. ComReg also noted that many EU countries continue to impose a public payphone USO.
- 37 ComReg stated that it was of the preliminary view that there is no need to increase the number of public payphones in the State. However ComReg was of the preliminary view that 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.
- 38 ComReg asked the following question in respect of the provision of public payphones:

Q. 1 Do you agree or disagree that there is a continued requirement to provide public payphones to meet the reasonable needs of end-users? Please provide reasons to support your views.

Views of Respondents

- 39 One respondent to the consultation, Solitaire Payphones, was of the view that the current obligation should be retained *"but if Eircom do decide that a Street Payphone should be removed then serious consideration is given to its local area replacement with a low cost, indoor supervised environment Solitaire 6000 or 6000 High Security Payphone"*.

- 40 The other respondent, Eircom, did not agree that there is a continued requirement to impose public payphone USO and claimed that *“where a universal service obligation is no longer justified, a Member State is not entitled to intervene”*.
- 41 Eircom contended that *“rather than attempting to impede or delay the removal of uneconomic payphones, ComReg should welcome and encourage the removals and rationalisation process”*.
- 42 Eircom also stated that *“ComReg must re-evaluate whether this universal service has any prospective merit. There is evidence that, with the development of usage in Ireland and the overwhelming presence of a much more efficient and effective form of communication by way of mobile phones, public payphones are in decline and that there is no justification to re-impose a USO on Eircom.”* Eircom asserts that *“circumstances in Ireland do not require any such USO designation”*
- 43 Eircom also contended that public payphones do not exist in remote rural locations and quoted a 2010 BEREC report⁹, which noted *“in some countries there are services which are not or no longer included in the USO, particularly the comprehensive Directory Enquiry Service, the Directory of Subscribers, the Public Pay Telephones.”*
- 44 Eircom stated that *“ComReg has not used expert evidence or any sufficient or contemporary empirical evidence to justify its conclusions”* and that *“No analysis of any such “reasonable needs” [under Regulation 5(1) of the Universal Service Regulations] has been carried out”*.

ComReg’s Preliminary View

- 45 ComReg has considered the two responses in relation to the requirement to provide public payphones. ComReg is of the view the current provision of public payphones throughout the State continues to meet (if not exceed) the reasonable needs of consumers and it is not proposing to increase penetration or facilities currently available.
- 46 ComReg does not agree with Eircom that it is attempting to impede or delay the removal of uneconomic payphones. Under the current Removals Policy, Eircom may, under certain conditions remove public payphones. However, ComReg agrees that in some instances removal of payphones under the Removals Policy may be unnecessarily onerous in the current environment.

⁹[http://www.erg.eu/streaming/BoR%20\(10\)%2035%20BEREC%20Report%20on%20USO_final.pdf?contentId=546910&field=ATTACHED_FILE](http://www.erg.eu/streaming/BoR%20(10)%2035%20BEREC%20Report%20on%20USO_final.pdf?contentId=546910&field=ATTACHED_FILE)

- 47 In this respect, ComReg notes that 50% of the public payphones generate only 20% of the revenue¹⁰. However Eircom has not attempted to remove any significant quantity of uneconomic public payphones in recent years, nor has ComReg intervened to prevent the removal of any payphone under this policy.
- 48 ComReg is aware that where a USO obligation is no longer required it is not required to intervene, however ComReg remains of the view that although public payphones usage is declining, public payphones continue to provide a basic service to people throughout the State.
- 49 Consultation 13/119 examined 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. ComReg is of the opinion that 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”*.
- 50 In light of this, ComReg’s view of reasonable needs is based on actual current usage not on hypothetical usage scenarios. ComReg is of that view that, as its focus at this juncture is to ensure that any removal of payphones is appropriate the most appropriate method of determining reasonable needs is by examining actual usage of the public payphones which are currently provided.
- 51 Historically, there was a much greater volume of payphones in the State, and therefore the geographic coverage was also greater. However, in recent years the USP was allowed to rationalise these payphones, due to their declining usage. Rationalisation was allowed, once the relevant community was engaged and did not object to the removal of the payphone.
- 52 ComReg is of the view that the use of surveys and statistical information on population are not relevant at this time as information on actual usage is a more appropriate and accurate representation of consumer need and detriment at this time. Rather than, for example specifying the number of payphones, dependent on the population in an area which should be provided, ComReg is of the view that usage levels would best reflect reasonable need. In any event, it is likely that defining reasonable need based on population density may result in an increase in the number of public payphones.

¹⁰ Includes coin, card, Freephone, reverse charge and advertising revenue

- 53 Option 2(b) “Amend existing obligation” of Consultation 13/119 and as set out below, set out de-regulatory options which go towards meeting the concerns of Eircom in relation to future-proofing the public payphones designation obligation (if the obligation is maintained).
- 54 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.”*
- 55 Payphones may be particularly valued, in both urban and rural communities, where there are disadvantaged and vulnerable consumers who currently 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.
- 56 ComReg acknowledges that for some consumers, in certain areas and certain circumstances, there are alternatives to public payphones available to consumers such as mobile offerings which allow prepaid users to make calls when they are out of credit, motorway SOS phones, and non-USO payphones.
- 57 ComReg therefore remains of the view that in comparing the cost of provision of public payphones with the benefit to consumers of their continued provision, there is a case to maintain this obligation.

3.2 Option 2: Maintain an Obligation

- 58 Consultation 13/119 proposed that removing the obligation to provide public payphones is not appropriate at this time. It was of the view therefore, that the existing obligations could be maintained (Option 2(a)), or amended (Option 2(b)).
- 59 ComReg was of the preliminary view that due to the continued decline in public payphone usage, together with the availability of other means to make calls such as mobile phones, SOS phones and non-USO payphones, there may be reason to amend the current US payphone obligation.
- 60 Consultation 13/119 set out three possible ways in which the existing public payphone USO could be amended yet ensure there are no significant negative impacts on consumers and, in particular, on vulnerable users. These were
- i. Remove need for coin payment

- ii. Define payphones which would be retained
- iii. Re-define the conditions for public payphone removals

61 ComReg asked the following questions:

- Q. 2 Do you agree or disagree with the regulatory options as set out above? Are there other options that ComReg should consider? Please give reasons to support your view.
- Q. 3 Which of the above options, in your opinion, would best ensure that public payphones continue to meet the reasonable needs of consumers? Please give reasons to support your view.

Views of Respondents

62 One respondent, Eircom, answered these questions.

63 Eircom indicated that it believes none of the options “*goes far enough, and that the USO on payphones should be removed entirely.*” However, it set out its view that the option of an amended removals policy, “*could be slightly preferable...but only if it provided eircom with the flexibility to remove any payphone that does not reach a particular usage threshold, without the need for the current complex engagement process.*”

64 Eircom agreed with ComReg’s view that removing the need for coin payment and that of defining payphones which would be retained are not options which should be pursued.

65 However, Eircom did not agree that the proposed options offer any meaningful basis for the continuation of the public payphone USO, and stated its belief that “*ComReg has not demonstrated a reasonable need*”.

ComReg’s Preliminary View

66 As set out above, ComReg is of the view that usage levels are the most appropriate measure at this time of the reasonable needs of consumers.

67 ComReg remains of the view that if the obligation is not amended, and public payphone usage declines below current levels, payphones may become more uneconomic and lead to an increased net cost of the obligation.

- 68 ComReg notes that following recent reductions in the Telephone Allowance Scheme¹¹, a scheme administered by the Department of Social Protection (DSP), it may be the case that some changes in call traffic levels may arise. Additionally, following storms usage of public payphones may also increase. However, where this is the case, these increases will be reflected in actual payphone usage and removal of the payphone would only be permissible where the criteria set out in the Decision Instrument are satisfied.
- 69 ComReg notes Eircom's agreement that the removal of the requirement for coin payments or defining specific payphones which should be retained are unlikely to achieve the objectives.
- 70 Removing the need to allow payment by coins might require current phone boxes to be modified to not accept coins and therefore this may result in additional costs to the USP in the short term, with potential savings in the longer term. Therefore, in Consultation 13/119 ComReg was of the view that amending the obligation in this way could lead to a large decrease in call volumes and may lead to more payphones becoming uneconomic. ComReg remains of this view.
- 71 Defining payphones which would be retained would entail ComReg designating particular payphones which would be provided. Other payphones could be provided, at the discretion of the USP. Although this option could allow the easier removal of some payphones, but protect particular geographic areas, it would therefore benefit consumers by the maintaining payphones to ensure their reasonable needs. The USP may also benefit from reduced costs.
- 72 However, ComReg was, and still is, of the view that defining the public payphones which need to be maintained would not allow for changing needs of consumers and would be static for the duration of the designation. For these reasons ComReg is of the view that amending the obligation in this way would not achieve its objectives.
- 73 No respondent proposed alternative options which should be considered by ComReg. ComReg is therefore of the view that the public payphone obligation should be amended by redefining the conditions for public payphone removals (Option 2(b)(iii)). These changes will allow for the easier removal of existing payphones and will reflect payphone usage and therefore the reasonable need of consumers.
- 74 Details of the proposed amendments are set out in detail in the following section.

¹¹ The monthly rate of the Telephone Allowance was reduced from €22.58 to €9.50 effective from January 1st 2013, and from January 1st 2014 was withdrawn completely

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.

4. Removals Criteria

- 75 As set out above, ComReg is of the view that Option 2(b)(iii), maintaining the obligation but reviewing the conditions for public payphone removals, will best achieve its objectives. ComReg is of the view that the amendments should ensure that public payphones are provided where they are currently used (and hence needed) by consumers. ComReg is of the preliminary view, that this should allow individual public payphones to be removed, 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.
- 76 Currently in effecting any reduction in the number of public payphones, the USP must ensure that the USO is met and, in this respect, the Removals Policy sets out the process to be adopted by the USP. The current Removals Policy (ComReg 06/14) is provided in Annex: 2.
- 77 ComReg is 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 without the current process of community consultation. This is dynamic and would allow the obligation to reflect actual payphone need. This means that as usage declines so too would the obligation.
- 78 Currently, in some instances removal of payphones under the Removals Policy may be unnecessarily onerous. For example, where usage has been low over the previous 12 months the payphone may be removed, but only in the absence of any community feedback.
- 79 Consultation 13/119 proposed that the basis of any amendment to the criteria for removal of payphones could be based on public payphone usage rather than community representation. For example, it could
- Allow for the removal of public payphones where it is a focus of anti-social behaviour.
 - No longer require relocation of a regularly vandalised payphones
 - Permit the removal of a payphone where it is uneconomic, where usage (while in reasonable working order) has been below a certain number of minutes AND where the payphone has not been used regularly to make calls to helplines (or similar numbers) taking into consideration other public payphones located nearby.

- No longer require community agreement for the removal of a public payphone where usage meets the requirements above.

80 ComReg is of the preliminary view that rather than amending the removals policy, the necessary changes could be made by way of the addition of criteria in the Decision Instrument. However, the criteria as set out above remain relevant.

81 No additional options were proposed by respondents to Consultation 13/119 and hence these options are considered in detail below.

4.1 Anti-social Behaviour/Vandalised Payphones

82 Under the Removals Policy

- *Removal will be permissible where there is demonstrable evidence and community agreement that the removal of the public pay telephone is required as it is a focus for anti-social behaviour.”*
- *In the absence of community pressure, where a public pay telephone has been repeatedly vandalised, relocation should be considered unless alternative sites are not available.*

83 The issue of community representation is dealt with in the following section and therefore is not considered here. ComReg is of the preliminary view that where a public payphone is a focus for anti-social behaviour removal of such payphones should be permitted.

84 ComReg understands that there are a number of public payphones that continue to be vandalised and therefore, there may be difficulty maintaining them in working order (in accordance with Document 06/14). During Q2 2013 7.7% of payphones were not in full working order, this was, 8.8% in Q1 2013 and 5.8% in Q4 2012.¹²

85 ComReg is of the view that the relocation of repeatedly vandalised payphones may be unnecessarily onerous, in particular where usage is low. ComReg is therefore of the preliminary view that the relocation of regularly vandalised payphones should no longer be required.

86 The USP may benefit from reduced costs, for example from not having to relocate individual payphones and from reduced maintenance costs in the future. Regularly vandalised payphones and those which are the focus of anti-social behaviour are likely to have low usage and therefore ComReg is of the view that consumers are unlikely to suffer detriment from the removal of these payphones.

¹² ComReg documents 13/47, 13/63 and 13/91 Provision of Universal Service by Eircom

4.2 Community Agreement

87 Currently community representation can prevent the removal of public payphones. The Removals Policy refers to “community agreement”, “community pressure” and “community feedback” where removal or relocation of a public pay telephone is being considered. Consultation 13/119 proposed that community agreement could no longer be required for the removal of a public payphone where usage levels were low.

88 The current Removals Policy also requires that

- *Eircom must post a notice on the public pay telephone for a minimum period of 6 weeks to clearly inform users of the intention to remove a public pay telephone and to allow for the making of comments. Notice should be sent to the relevant department of the local authority within whose functional area the public pay telephone is located and also posted on the Eircom website. The notice should contain at a minimum:*
 - *Details of the proposed public pay telephone to be removed*
 - *Proposed date of cessation of service/removal of public pay telephone*
 - *Location of alternative public pay telephone(s)*
 - *Eircom’s contact details*
 - *The timeframe within which comments are to be received*

Eircom shall take full account of all comments received and reconsider the proposals accordingly.

89 Therefore to date, community representation could have prevented the removal of the payphone, even though usage was negligible. In some cases the consultation process may require multiple trips to the payphone in question and therefore may be unnecessarily onerous.

90 ComReg is of the view that community representation may no longer be appropriate and that consumer need is more accurately determined by usage levels. The removal of payphones could be determined by usage rather than community representations (see below). This could allow payphones which satisfy certain criteria to be removed without the current process of community representation.

91 By changing the focus of the criteria for removal of public payphones from consumer representation to 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 are above the usage levels.

92 ComReg is therefore of the preliminary view that the focus of the removals criteria should be on public payphone usage rather than community representation.

4.3 Uneconomic Payphones

93 ComReg was of the preliminary view in Consultation 13/119 that although some payphones have low usage, the USP may choose to maintain these payphones as it may be able to obtain advertising revenue from these payphones.

94 Consultation 13/119 proposed that the amended Removals Policy could permit the removal of a payphone where it is uneconomic, where usage (while in reasonable working order) has been below a certain number of minutes AND where the payphone has not been used regularly to make calls to helplines (or similar numbers) taking into consideration other public payphones located nearby.

95 As noted in Consultation 13/119 during the period January 2012 to December 2012 the average number of public payphones was 1,352. According to Eircom, there are currently 1,329 public payphones, of which 92 are considered, by Eircom, to be economic.

96 There is a chance that if the public payphone obligation is not amended, and public payphone usage declines below current levels, payphones may become more uneconomic and lead to an increased net cost of the obligation¹³.

97 However, rather than allowing the removal of “uneconomic payphones”, ComReg is of the view that removal should be based on usage, allowing payphones which satisfy certain low usage criteria to be removed.

98 “Uneconomic payphones” refer to those payphones where the cost of providing the payphones exceeds the revenue or benefit gained by the provider by providing the payphone. For this purpose, revenue includes advertising revenue for example and also takes into consideration intangible benefits. This approach is more practical as a benchmark based on the economic status of a payphone may change over time whereas a usage threshold once set would provide a balanced approach.

¹³ The provision of a Universal Service may result in USP(s) providing designated services at a net cost. Regulation 11(1) of the Regulations allows the USP(s) to seek funding to meet a net cost of the universal service.

99 An obligation reflecting usage is therefore dynamic as it reflects actual payphone usage.

100 ComReg is of the preliminary view that with respect to public payphones, low usage could be considered to be on average less than a certain number of (X) minutes per day in the preceding 6 months. The average X minutes per day value would be determined taking into consideration payphone usage and the number of payphones which could potentially be removed for any given value of X.

101 As suggested in Consultation 13/119, initially the X value could be set using international benchmarks, or set to ensure that a certain percentage of payphones could/could not be removed.

102 The following graph outlines the usage levels for the 6 month period January to June 2013 and for the period July 2013 to February 2014. This shows that the vast majority of public payphones are used for less than 7 minutes per day.

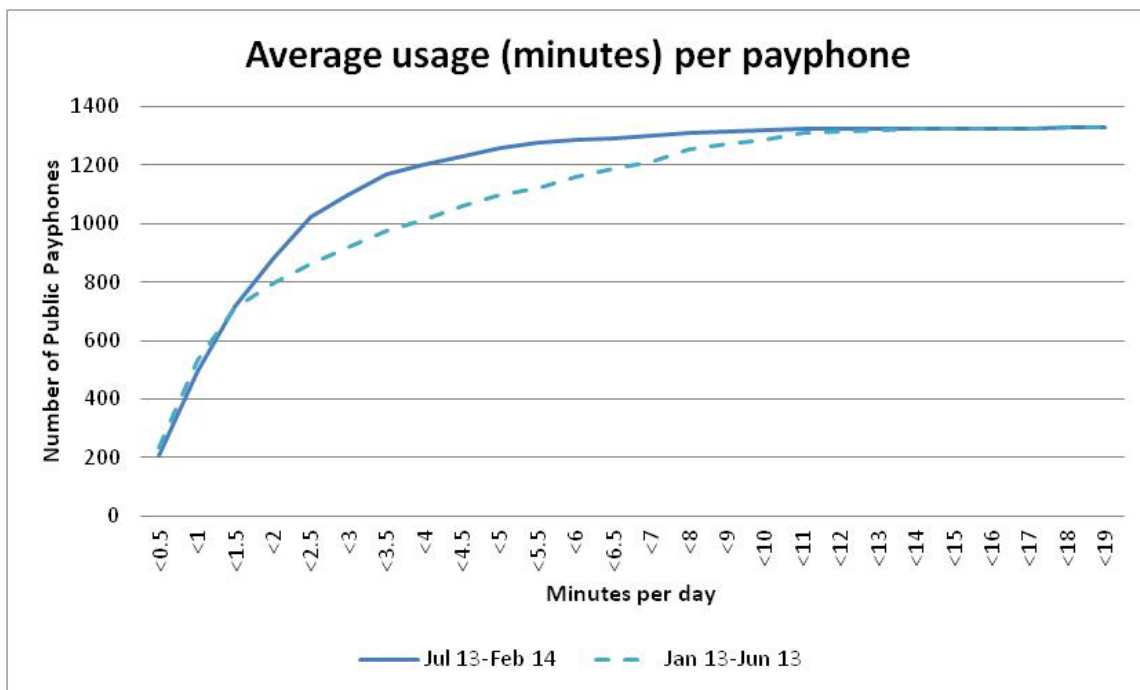


Figure 1

103 Consultation 13/119 set out that other criteria, such as usage for helpline calls and calls to Emergency Services may also need to be considered.

104 ComReg is 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.

105 The usage threshold of 1 minute per day means that based on the current average usage, illustrated in Figure 1 above and Table 1 below, Eircom would not have a universal service obligation and therefore, Eircom could decide to remove approximately 37% of public payphones. However, when the second condition is applied this may decrease.

106 If usage levels continue to decline, it is possible that these percentages and number of payphones which Eircom could decide to remove will rise in the near future.

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%

Table 1

107 An average of 1 minute of calls per day from a payphone is proposed as the appropriate threshold as it indicates low usage and therefore indicates that the payphone is not needed to meet reasonable needs. However, a threshold of an average of 1 minute per day it will ensure payphones which are used more regularly are retained. The second condition will ensure that where payphone usage is low, but this usage is primarily for calls to Freephone and ECAS numbers, these payphones will be prevented from being removed by Eircom at that time. ComReg is of the preliminary view that these payphones may continue to be needed by consumers, particularly vulnerable consumers.

108 Ideally, ComReg would apply this condition to only Freephone helpline numbers and ECAS, however, ComReg is of the view that deciding which numbers are individual Helpline numbers and keeping details of call durations to these specific numbers from payphones would be onerous. ComReg is of the view therefore that Freephone usage is a reasonable proxy for helplines in this circumstance.

109 The criteria above have been chosen to reflect usage by vulnerable consumers and taking into consideration approaches taken in other European countries. Where average usage is extremely low i.e. less than 30 seconds per day, the payphone may be removed, regardless of what types of call the payphone has been used to make.

110 ComReg is 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. It was demonstrated in Consultation 13/119 that 35% of Freephone calls from payphones were reverse charge calls, while 26% were to helplines.

111 In Consultation 13/119, 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 should be reported to ComReg prior to the removal of any public payphones. ComReg remains of this view.

4.4 Other Issues

112 There are also a number of other criteria and procedures for the removal of public pay telephones, which are reviewed in turn below.

113 Firstly, consideration of other payphones in the locality is also a factor. For this reason ComReg is of the view that the total usage from all payphones in a location should be used when applying the usage criteria.

114 That is, ComReg is of the view that in situations where there are multiple payphones, the combined usage must be considered in determining whether the payphone usage is so low as to justify its removal. This would protect 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 proposes the following:

“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.”

115 This would not prevent Eircom from reducing the number of payphones in the location; however complete withdrawal would not be permitted where the usage is above those levels specified.

116 ComReg is of the preliminary view that where removal is required by a local authority such removal should be permitted.

117 These changes would ensure that public payphones 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.

118 The proposed amendments to the Decision Instrument are set out in the following section of this Consultation.

ComReg's Preliminary View

119 ComReg is therefore of the preliminary view that 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.

120 ComReg is of the preliminary view that the focus of the removals criteria should be on public payphone usage rather than community representation. Furthermore, ComReg is of the preliminary view that the criteria for removal should be X and Y as set out above, and in the Draft Decision Instrument as set out in Section 9 below.

121 Furthermore, in the interests of maintaining the visual landscape and public safety, ComReg is 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 will prevent the kiosk becoming subject to vandalism or anti-social behaviour.

122 ComReg is 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.

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.

5. General comments received

123 In its submission to Consultation 13/119 Eircom also raised a number of issues, which were not in response to the questions asked. In this section ComReg seeks to address Eircom's concerns in relation to these matters.

Views of Respondents

124 Eircom was of the view that *"ComReg has not reached any properly analysed position and this is a material flaw in its approach to this matter"*, and contended that no analysis *"reasonable needs"* has been carried out."

125 Eircom is also of the view that *"ComReg has failed to properly define the consumer groupings" whose needs justify the public payphones USO* and that there are *"no payphones in extreme rural areas"*. Eircom also notes that *"ComReg has not undertaken any recent consumer research to establish the sections of society that rely on payphones"*.

126 Eircom presented a figure on payphone usage and noted that *"usage per public payphone.... has reduced to 14% of 2006 levels"*, it further noted that *"Freephone minutes have not declined by the same rate as other usage, average Freephone usage.....is less than 59% of what it was in 2006"*.

127 Eircom also referred to calls to helplines and argued that Helpline A as referred to in Consultation 13/119 relate to a service specific to Dublin City Council area and this *"cannot be held to justify a national designation"*

128 Eircom also referred to Emergency calls and argue that it is conceivable that *"higher levels of abuse from public payphones may be tying up vital resources in the ECAS"*.

129 Eircom believes that *"ComReg has begun its review from an incorrect starting point by posing the question from the perspective that the status quo should be retained or modified"*. In this regard, Eircom set out that *"large areas of rural Ireland do not have payphone coverage"* and highlighted some such areas. It also looked at the number of unique payphone locations (712) and the payphone distribution density. Eircom also notes that *"the distribution of payphones has evolved in response to declining usage and third party damage"*.

130 Eircom also contended that “ComReg has failed to consider comparable services” and stated that it “has long been accepted that mobile services provide a substitute for payphones”.

ComReg’s Preliminary View

131 In Consultation 13/119 ComReg used up to date evidence with regard to, for example, the numbers of payphones throughout the country, the payphones by county and payphone usage patterns, including Freephone call usage and average usage. ComReg was, and remains of the view, that it is reasonable and proportionate to use current usage data as a proxy for “reasonable needs”. It is therefore inaccurate for Eircom to state that “*no analysis of such “reasonable needs” has been carried out*”.

132 As noted in Section 3 above, ComReg is of the view that the use of surveys and statistical information on population are not relevant at this time as information on actual usage is a more appropriate and accurate representation of consumer need in a declining market.

133 In Consultation 13/119 ComReg noted that usage of public payphones is declining, however ComReg is of the view that as long as usage of a particular payphone is above a certain level, this would indicate its continued need. Furthermore, Consultation 13/119 analysed usage levels and found that a substantial percentage of calls from public payphones were to Freephone numbers.

134 ComReg investigated why calls to Freephone numbers contributed to such a high percentage of calls from payphones. This found that a substantial amount of Freephone calls from payphones were to helpline numbers, Eircom has also noted in its submission that “*Freephone minutes have not declined by the same rate as other usage*”.

135 ComReg remains of the view that the complete removal of payphones throughout the State would mean those disadvantaged and vulnerable who rely on public payphones to call helplines would no longer have access to a facility to allow them to make these calls.

136 ComReg strongly disagrees with Eircom’s contention that the large volume of calls to a specific Dublin City Council area is being used by ComReg to justify a national designation. The criteria for removals as set out in the Draft Decision Instrument are based on overall usage of payphones in a particular location and in this respect calls to a particular Freephone have no impact.

137 ComReg notes Eircom's argument that a larger percentage of calls to Emergency services from payphones may not be 'normal' i.e. because they are not ultimately routed to one of the emergency services. To reach this conclusion Eircom compares the volumes based on the total percentage of calls made from fixed lines. However ComReg is of the view that the actual number of calls from payphones received by ECAS is the appropriate measurement. This number is quite small. In this respect ComReg notes that ECAS has not raised any concerns with ComReg on the volume of calls from public payphones.

138 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.

139 ComReg notes the statistics as supplied by Eircom in relation to payphone locations and their distribution. ComReg does not believe it would be a sensible approach at this time to impose an obligation which is dependent on the population in the geographic area. This approach may radically change the locations where payphones would be required and hence potentially lead to additional payphones and costs.

140 ComReg notes Eircom's view that payphone distribution has evolved in response to declining usage.

141 For these reasons, ComReg remains of the view that the obligation should be dependent on usage, and to avoid potential additional costs due to the relocation/ introduction of new payphones, allowing for the decrease in the current payphone base should be considered.

6. Designation of Universal Service Provider (s)

6.1 Designation Period and Mechanism

142 The Regulations require ComReg to designate one, or more, operators to guarantee the provision of the universal services to ensure the entire State is covered¹⁴. 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 State¹⁵.

143 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.

144 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 obligation¹⁶. Consultation 13/119 invited stakeholders to express an interest in providing this aspect of the universal service. No expressions of interest were received.

145 Given the declining usage patterns, ComReg was of the preliminary view that a designation period of 3 or 4 years was most appropriate for the designation in relation to the public payphones universal service obligation unless expressions of interest in providing the service are received or representations are made which substantially alter ComReg's view.

146 Consultation 13/119 set out that the designation period chosen would depend on the nature of the obligation imposed; ComReg believed that where an obligation is dynamic a longer designation period would be appropriate.

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

¹⁴ Regulation 7(1)

¹⁵ Regulation 7(2)

¹⁶ Regulation 7(3)

148 ComReg asked the following question in respect of the designation period:

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

Views of Respondents

149 Eircom noted "ComReg is proposing that eircom should continue as USP up to possibly 2018", and expressed its view "that there will be practically no usage of payphones well before 2018".

150 Eircom further contended that "there can be no justifiable basis for ComReg doing anything other than lifting completely the USO on public payphones in Ireland."

ComReg's Preliminary View

151 ComReg remains of the preliminary view that where an obligation is dynamic and caters for the changing needs of users, a longer designation period would be appropriate. In this situation, if Eircom's view that there will be no usage of public payphones by or before 2018 is correct, Eircom will, under the proposed criteria for removals be allowed to remove public payphones if it so decides.

152 In light of the dynamic nature of the proposed obligation, ensuring that it allows the obligation to adjust to users' needs, ComReg proposes a designation period of 4 years, from July 1st 2014 to June 30th 2018.

153 However, ComReg is of the preliminary view that the usage criteria above could be reviewed after a period of 2 years.

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.

6.2 Designation for the Entire State

154 Consultation 13/119 considered whether or not it is appropriate to continue to designate payphone universal service obligations to cover the entire State.

155 Consultation 13/119 found that prices and tariff structure 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.

156 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.

157 ComReg was of the preliminary view that a universal service for the entire State, (whether or not it is delivered by different USP(s)), remained a requirement for the proposed next designation period.

158 However, ComReg committed to consider whether separate designations for separate areas are necessary if expressions of interest are received for separate geographic areas.

159 ComReg asked the following question in respect of designation for the entire state:

Q. 5 Do you agree or disagree with ComReg's proposal that, for the proposed next designation period, the required universal services should be designated for the entire State and that prices should be geographically averaged? Please provide reasons to support your view.

Views of Respondents

160 Eircom did not agree with the proposal *“for the reasons presented in this response document”*.

ComReg's Preliminary View

161 ComReg has considered Eircom's view and the reasons it provided. However, ComReg is of the view that it is most appropriate for the reasons set out in Consultation 13/119 and in the best interests of consumers who need to use public payphones to designate for the entire State for the next designation period.

6.3 Universal Service Provider

162 In Consultation 13/119 ComReg proposed that Eircom should continue to be the universal service provider due to its ubiquity, experience and capability, during the next designation period, unless ComReg receives suitable expressions of interest from other providers.

163 Although, in ComReg's view, there are no significant barriers which prevent an operator from entering the market for the provision of retail payphone services, there are no other providers currently providing payphones in the State. Following liberalisation of the market a sufficient number of operators entered the market to compete with Eircom. Currently, Eircom is the only provider of public payphones in the country.

164 Consultation 13/119 extended an invitation to all undertakings to express an interest in providing the Public Pay Telephone universal service for the proposed next designation period.

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

Q 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, unless there are expressions of interest from other providers? Please provide reasons to support your view.

Views of Respondents

166 Eircom stated its view that *“ComReg’s proposed designation process is that eircom will be the de facto USP unless another entity expresses and interest in fulfilling universal service objectives associated with public payphones”*. It further stated it does not consider this *“to be a fair and non-discriminatory mechanism.”*

167 It also objected to the proposal because *“The proposed mechanism is fundamentally flawed because it does not provide any indication to interested parties as to how they would be compensated in the event that a positive net cost is incurred by the USP for the provision of public payphones.”*

168 It further set out its view that *“eircom does not have any unique advantage in respect of ubiquity given that public payphones are located in areas with one or more alternative network infrastructure operators present.”*

169 Eircom refer to Article 3(2) of the Universal Services Directive, and highlight: *“Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality.”*

170 Eircom also put forward the argument that *“ComReg has not explored the role of wireless networks in fulfilling universal service such as public pay phones.”*

ComReg’s Preliminary View

171 In Consultation 13/119, ComReg stated that if expressions of interest were received, ComReg would consider such proposals. No expressions of interest were received.

172 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.

173 Before designating a USP ComReg requires evidence about the willingness and capability of the undertaking in question to be a USP. No expressions of interest were received; and hence ComReg understands no undertaking is willing to provide this element of the universal service.

174 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.

175 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 an interest in providing this universal service element.

176 ComReg disagrees with Eircom that Eircom does not have an advantage in respect of public payphones. 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.

177 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 Universal Service Regulations to, in designating an undertaking in relation to this USO, “adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated”.

178 Regulation 11 of the Regulations stipulates 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 14/03 (D04/11) 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.

179 ComReg notes that Eircom is free to use wireless technology to provide public payphones should it so wish.

180 ComReg therefore remains of the preliminary view that Eircom is the most appropriate undertaking to be designated for the payphone Universal Service for the next designation period.

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.

7 Regulatory Impact Assessment (RIA)

181 This section considers the submissions received on, or relevant to, ComReg's draft Regulatory Impact Assessment (RIA) as described in Consultation 13/119, and sets out ComReg's position on these. ComReg's final RIA can be found in Annex: 2 of this document. The changes to the RIA arise from comments received by respondents to Consultation 13/119 and due to the progression of ComReg's views.

ComReg's Position in Consultation 13/19

182 In Section 6 of Consultation 13/119, 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

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

Option 1: Remove the obligation. No operator would be designated to provide public payphone services. Current payphones throughout the State can be removed without consultation. Consumers would be affected by the removal of all payphones in certain geographic areas.

Option 2: Maintain an Obligation. This would lead to further sub-options as follows:

2(a) Maintain Existing Obligation

The obligation to provide payphones would remain; no changes to the existing obligation would be made. Payphones can be removed subject to the Removals Policy.

2(b) Amend the Existing Obligation

The obligation to provide public payphones would remain, but would be amended from its current form. ComReg proposed 3 sub-options, one or all of which could be implemented.

- i. Amend to 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. Amend by 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. Amend by setting usage criteria by means of changing the Removals Policy, to allow for easier removal of payphones, in particular where usage is low or the payphone is regularly vandalised

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

185 Consultation 13/119 sought stakeholder's views on ComReg's draft RIA generally and also asked the following specific question.

Q. 7 Do you agree or disagree with ComReg's draft assessment of the impact of the proposed options? Please set out reasons for your answer.

Views of Respondents

186 Eircom did not agree with ComReg's draft Regulatory Impact Assessment. It was of the view that "*ComReg has failed to undertake an objective and evidence based analysis and as a result has reached the wrong conclusion.*"

187 Eircom states that "*ComReg must substantiate its assertions*" and referred to particular quotes as set out in Chapter 6 of Consultation 13/119. In particular Eircom believes ComReg's assertions that additional costs incurred if Eircom re-designated are minimal is incorrect. It also believes "*Reasonable need has not been defined.*"

188 Eircom also believe that "*ComReg must undertake a proper cost benefit analysis to inform its decision making.*"

ComReg's Preliminary View

189 ComReg's position on Eircom's response submitted in relation to the draft RIA is as follows.

190 In Consultation 13/119 ComReg used up to date evidence with regard to, for example, the numbers of payphones throughout the country, the payphones by county and payphone usage patterns, including Freephone call usage and average usage. ComReg was, and remains of the view, that it is reasonable and proportionate to use current usage data as a proxy for “reasonable needs”. It is therefore inaccurate for Eircom to claim that ComReg has failed to undertake an objective and evidence based analysis and as a result has reached the wrong conclusion.

191 ComReg remains of the preliminary view that where the current Payphone USO remains, additional costs incurred by Eircom, if it is re-designated are minimal. Eircom has the ability under the Removals Policy to remove public payphones in certain circumstances; Eircom has not attempted to remove any public payphones in recent years.

192 ComReg considers that usage is the most appropriate indicator of need for consumers, as is clear from the Removals Policy which states “*Where the usage of the public payphones....has been low therefore indicating an absence of “reasonable need”..*”. ComReg is of the preliminary view that allowing payphones to be removed by focusing on usage rather than community representations highlights its view that need and usage are inextricably linked.

193 To ensure that a RIA is proportionate and does not become overly burdensome. A common sense approach is taken towards 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.

194 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, in exceptional cases, where robust, detailed and independently verifiable data is available. This approach will be adopted where necessary.

195 ComReg is of the preliminary opinion that the amendments to the public payphones USO that are proposed by this consultation are appropriate, proportionate and justified.

196 ComReg has carefully considered the comments made by Eircom in respect of the draft RIA. ComReg has not received any further information suggesting that it is appropriate to amend the preferred option in Consultation 13/119 or to make an alternative option. Therefore, ComReg intends to adopt Option 2 as set out in its revised RIA.

197ComReg has adjusted the Regulatory Impact Assessment outlined in Consultation 13/119; the revised RIA is set out in Annex: 2.

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: 2? Please provide reasons to support your views.

8 Submitting Comments

198 The consultation period will run from Wednesday April 9th 2014 to Wednesday May 7th 2014, during which time ComReg welcomes written comments on any of the issues raised in this paper. It is requested that comments be referenced to the relevant question numbers from this document. Submissions should be made to retailconsult@comreg.ie

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

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

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

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

9 Draft Decision Instrument

1. STATUTORY FUNCTIONS AND POWERS GIVING RISE TO DECISION

1.1 This Decision and Decision Instrument, made by the Commission for Communications Regulation (“ComReg”), relates to the provision of universal services in the Irish telephony market and is made:

- i. Having regard to sections 10 and 12 of the Communications Regulations Act 2002;
- ii. Having regard 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”); and
- iii. Having regard to Regulation 5(2) of the Regulations; and
- iv. Having taken account of the representations of interested parties submitted in response to ComReg Document No. • and •.

2. DESIGNATION OF UNIVERSAL SERVICE PROVIDER

Public Pay Telephones

2.1 In accordance with Regulation 7 of the Regulations, Eircom Ltd. is hereby designated as the 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 removal criteria 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” 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 Ltd., as the USP, shall apply geographically averaged prices throughout the State for the services referred to in this Decision.

3. CONTINUATION OF OBLIGATIONS

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

- ComReg Decision No. D9/05.
- ComReg Decision No. D02/08.
- ComReg Decision No. D04/11.

4. REMOVAL/RELOCATION OF PUBLIC PAY TELEPHONES

Criteria for removals

- Eircom is permitted to remove a public pay telephone on a single site where:
 - 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
 - the usage 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) is less than 1 minute per day and
 - Average minutes to Freephone numbers and Emergency Services combined is not more than 30 seconds of these minutes
 - Average usage is determined bi-annually based on January-June usage and July to December usage; or
 - required by a local authority.

Procedures for removals

- A location will be regarded as being on a single site if there is no additional public pay telephone within a reasonable proximity such as 100 metres or line of sight e.g. either side of a road or on any adjacent roads.
- There should be 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.

Notification requirements

- Eircom must post a notice on the public pay telephone for a minimum period of six (6) weeks to clearly inform users of the intention to remove a public pay telephone

- Eircom must notify ComReg eight (8) weeks in advance of any public pay telephone removal
- Notification should also be posted on the Eircom website.
- The notice 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

Usage reports

- Usage reports must be provided to ComReg 1 month after the end of the bi-annual period, in a format specified by ComReg.

5. EFFECTIVE DATE AND DURATION

4.1 This Decision and Decision Instrument is effective from 1 July 2014 until 30 June 2018, unless otherwise amended by ComReg.

Annex: 1 Legal Basis

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

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

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

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

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

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

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

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

*(7) An undertaking that fails to comply with—
(a) a requirement of paragraph (1), (5) or (6), or
(b) a term or condition specified under paragraph (2),
commits an offence.*

*(8) In proceedings for an offence under paragraph (7) it is a defence to establish that—
(a) reasonable steps were taken to comply with the relevant requirement, term or condition, or
(b) it was not possible to comply with the relevant requirement, term or condition.*

Annex: 2 Current Removals Policy (06/14)

Removal/Relocation of Public Pay Telephones (ComReg 06/14)

The criteria and procedures for the removal/relocation of public pay telephones are based on the following factors:

- Public pay telephones may be rationalised on commercial grounds provided there is no total removal from the location unless the factors relevant to single site locations apply. For this purpose, 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.

Procedures for single site locations

- Removal will be permissible where there is demonstrable evidence and community agreement that the removal of the public pay telephone is required as it is a focus for anti-social behaviour.
- In the absence of community pressure, where a public pay telephone has been repeatedly vandalised, relocation should be considered unless alternative sites are not available.
- Where the usage of the public pay telephone over the previous 12 months (while in reasonable working order) has been low therefore indicating an absence of “reasonable need” in that location, removal will be permissible but only in the absence of community feedback for retention of the public pay telephone.
- Removal will be permissible where required by a local authority but relocation as above should be considered.
- There should be 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.
- Eircom must post a notice on the public pay telephone for a minimum period of 6 weeks to clearly inform users of the intention to remove a public pay telephone and to allow for the making of comments. Notice should be sent to the relevant department of the local authority within whose functional area the public pay telephone is located and also posted on the Eircom website. The notice should contain at a minimum:
 - Details of the proposed public pay telephone to be removed
 - Proposed date of cessation of service/removal of public pay telephone
 - Location of alternative public pay telephone(s)
 - Eircom’s contact details
 - The timeframe within which comments are to be received

Eircom shall take full account of all comments received and reconsider the proposals accordingly.

Annex: 3 Revised Draft RIA

203A 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.

204 ComReg's approach to RIA is set out in the Guidelines published in August 2007¹⁷. In conducting this RIA, ComReg takes account of the RIA Guidelines,¹⁸ adopted under the Government's *Better Regulation* programme.

205A RIA should enable ComReg to determine the impact of any regulatory change or new regulation, and should assess the alternatives to regulation—such as no intervention, self-regulation or performance based regulation amongst others. RIA's aim to identify areas where regulation can be reduced.

206A RIA should identify the impact of the various options on stakeholders, on competition and on consumers and also the key risks associated with each option. RIA's therefore increase transparency of decision making and ensures the best possible outcome for stakeholders, consumers and competition.

207 The following sets out ComReg's RIA.

Step 1: Describe the Policy Issue and identify the Objectives

208 ComReg is proposing to review 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.

209 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 vulnerable users and in remote rural areas.

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

¹⁷in ComReg Document No. 07/56 & 07/56a

¹⁸http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

Step 2: Identify and Describe the Regulatory Options

211 ComReg has 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 would be affected by the removal of all payphones in certain geographic areas.

- **Option 2: Maintain an Obligation**

2(a) Maintain Existing Obligation

Under this option the obligation to provide payphones would remain. Any USP must ensure payphones meet reasonable needs of consumers. Public payphones may be removed/relocated subject to conditions in 06/14. 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

Under this option the obligation to provide payphones would remain, but would 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, depending on which of the sub-options are selected. 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. There are 3 sub-options, one or a combination of which could be implemented.

- i. Amend to 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. Amend by 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. Amend by setting 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

212 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
<p>Option 1</p> <p>Payphone US Obligations Removed</p>	<p>No USP designated to provide public payphones; No net cost claim or impact in respect of sharing of any unfair burden as relevant.</p> <p>Eircom could decide to remove all public payphones</p> <p>Eircom would benefit from reduced costs</p>	<p>In some areas, all public payphones have been removed. If the obligation is removed, although some payphones may remain, it is likely that all public payphones in certain geographic areas would be removed.</p> <p>Vulnerable consumers and consumers in who wish to use payphones no longer have access to service that they currently use.</p>
<p>Option 2 (a)</p> <p>Current Payphone USO Remains</p>	<p>USP designated to provide payphones.</p> <p>Additional costs incurred if Eircom re-designated are minimal. Recent price increase will assist to minimise net cost but there is likely to be a net cost.</p> <p>Payphones can be removed subject to Removals Policy, however removal may be difficult even where usage is low.</p>	<p>Payphones still provided to meet reasonable needs of end users.</p> <p>Consumers aware of payphone locations and can use when necessary.</p> <p>Payphones may be removed from individual locations subject to Removals Policy</p> <p>Obligation may exceed reasonable need and the benefit of some payphones is in doubt due to low usage.</p>

<p>Option 2(b)(i)</p> <p>Obligation to provide Public Payphones Remains, but in certain circumstances requirement to provide for payment by means of coins is removed</p>	<p>USP designated to provide payphones.</p> <p>Costs incurred by Eircom, if re-designated minimal. Recent price increase will assist to minimise net cost but there is likely to be a net cost.</p> <p>Reduced maintenance costs, due to removal of need to collect coins.</p>	<p>Consumers may not be able to use payphone if they do not have access to other payment means.</p>
<p>Option 2(b)(ii)</p> <p>Obligation to provide Public Payphones Remains but certain payphones identified as necessary</p>	<p>USP designated to provide payphones.</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>Payphones still provided to meet reasonable needs of end users.</p> <p>Some payphones may be removed, as only requirement is to provide payphones in particular areas.</p> <p>Where payphones are removed, consumers needing to make calls in certain locations may now need to find alternative means of making calls.</p>
<p>Option 2(b)(iii)</p> <p>Obligation to provide Public Payphones Remains, Removals Policy is amended</p>	<p>USP designated to provide payphones.</p> <p>Costs incurred if Eircom re-designated minimal. Recent price increase expected to mean payphone net cost is minimised.</p> <p>If sufficient payphones are removed,</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>Eircom may decide to remove certain Payphones, subject to less onerous</p>

	<p>payphones may reach breakeven point</p> <p>Payphones can be removed if Eircom so decides subject to criteria which are less onerous than the current Removals Policy</p>	<p>removals criteria. However, the number of calls made from these payphones is low and so the consumer impact is minimal.</p> <p>Where payphones are removed, consumers needing to make calls in certain locations may now need to find alternative means of making calls.</p>
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Step 5: Assess the Impacts and choose the best option.

213 ComReg is of the preliminary 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. Of those payphones with low usage, Eircom can remove these, should it so choose, in accordance with the Removals Policy.

214 Consumers 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.

215 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 vulnerable consumers.

216 For these reasons, ComReg is of the preliminary view that the USO for payphones should continue. However, ComReg is of the view that the current obligations could be amended yet still meet the reasonable needs of consumers.

217 Any amendments would protect consumers from a blanket removal of payphones, yet could allow the easier removal of some payphones if considered necessary. Removal of payphones could be determined by usage rather than community representations.

218 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.

219 ComReg, is of the view that the designation of a USP for payphones, 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.

Annex: 4 Further Consultation Questions

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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.	17
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.....	26
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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.....	31
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.....	35
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: 2? Please provide reasons to support your views.	39