



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# Provision of Public Pay Telephones

## Universal Service: Scope and designation

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### Consultation:

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**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**

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## Additional Information

All responses to this consultation should be clearly marked:

“Reference: Submission re ComReg 18/85” as indicated above, and sent by post, facsimile, e-mail or online at [www.comreg.ie](http://www.comreg.ie) (current consultations)

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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 Introduction

- 1 The Commission for Communications Regulation (“ComReg”), under the Universal Service Regulations (“the Regulations”),<sup>1</sup> is obliged to ensure that “*public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users.*”
- 2 The Regulations<sup>2</sup> provide that a designated undertaking shall ensure that:
  - public pay telephones (“public payphones”)<sup>3</sup> and 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; and
  - that it is possible to make emergency calls from a public payphone using the single European emergency call number “112”; and
  - that users of those telephones have access to a directory enquiry service.
- 3 Public payphones are payphones that are located in public areas (e.g. the street) and are available to, and accessible by the general public.
- 4 In July 2014, ComReg by Decision D08/14 (“D08/14”)<sup>4</sup> designated eir as the Universal Service Provider (“USP”) for public pay telephones for the period 7 July 2014 until 30 June 2018. In that Decision ComReg decided that the number of public payphones in operation at that time should be maintained by eir, unless their usage fell below a certain threshold level (as set by D08/14). If a payphone’s usage fell below the specified level however, eir was permitted to remove it<sup>5</sup>. The dynamic approach based on usage levels ensured that end-users who used public payphones could still have access to them, whilst permitting eir to remove public payphones for which there was no longer a reasonable need.

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<sup>1</sup> European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011, S.I. No. 337 of 2011 (“Universal Service Regulations”).

<sup>2</sup> Regulation 5 of the Regulations.

<sup>3</sup> Where “public pay telephone” means a telephone available to the general public for the use of which the means of payment may include coins, credit cards, debit cards or prepayment cards, including cards for use with dialling codes. Citations European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011, S.I. No. 337 of 2011 (“Universal Service Regulations”).

<sup>4</sup> Provision of Public Payphones – Universal Service Scope and designation, ComReg document 14/69, 7/07/14.

<sup>5</sup> The decision to remove those payphones which fall below the usage threshold is a commercial decision for eir.

- 5 Having considered respondents' views to Consultation 16/43<sup>6</sup> concerning the review of the specified usage threshold, ComReg decided that the usage threshold regime remained appropriate and, therefore, maintained the status quo.<sup>7</sup>
- 6 On 27 June 2018, ComReg published Consultation 18/57<sup>8</sup> which gave interested stakeholders the opportunity to share any views on ComReg's proposal to designate eir for 3 months after June 2018 and, to impose on eir a USO to maintain the approach to the provision of public pay telephones under USO as set out under D08/14, pending the outcome of a further consultation on the future of the payphone USO.
- 7 Having carefully taken into account the submissions, ComReg in Decision 09/18 (D09/18)<sup>9</sup> decided to designate eir with the provision of public payphones from 16 July for 3 months under the same obligations as previously in place for the 4 years to 30 June 2018 ("interim designation"). This designation remains in force until 15 October 2018.
- 8 ComReg now publishes this further consultation as the next stage in the process regarding a possible future scope of a public payphone USO beyond 15 October 2018. This Consultation considers the additional information provided by eir regarding its approach to the provision of public and private payphones which has assisted ComReg to better understand the counterfactual scenario.<sup>10</sup>
- 9 The purpose of this further consultation is to ensure that the reasonable needs of end-users will continue to be met in accordance with the Regulations. ComReg must ensure that, if deemed necessary, a public payphone USO is maintained from 15 October 2018 to meet the reasonable needs of end-users of payphones.
- 10 ComReg now seeks the views of stakeholders on whether a USO should continue to apply, and what approach is likely to provide the most optimum safety net to meet the reasonable needs of end-users, after 15 October 2018.
- 11 ComReg is also seeking expressions of interest in being a USP beyond the interim designation period, in the event that a USO continued to apply.
- 12 The timeframe for receipt of submissions to this consultation:
  - i. 5th October 2018 (5:30pm) – The deadline for responses

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<sup>6</sup> Universal Service – Provision of Public Payphones – Review of Usage Threshold for Removals Decision 16/43, 27/05/16 in July 2016.

<sup>7</sup> Universal Service – Provision of Public Payphones – Usage Threshold for Removals Decision 16/62, 26/07/16 in July 2016.

<sup>8</sup> Provision of Public Pay Telephones Universal Service: Interim Designation, ComReg Document no. 18/57, June 2018.

<sup>9</sup> Provision of Public Pay Telephones Universal Service: Interim Designation ComReg 18/67, July 2018

<sup>10</sup> A Statutory Information request, pursuant to Section 13D of the Act, dated 13 July 2018.

- 13 When ComReg has considered the responses to this consultation, it may consult further or reach a final decision(s).

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## 2 Executive Summary

- 14 In this consultation ComReg seeks the views of stakeholders on whether a USO should continue to apply, and what approach is likely to provide the most optimum safety net to meet the reasonable needs of end-users.
- 15 In publishing this consultation, ComReg is cognisant of its statutory objectives, as set out in Section 12 (1) (a) (iii) of the Communications Regulation Act, 2002 (as amended) (“the Act”), including the promotion of interests of end-users of services and protecting end-user welfare.
- 16 Universal service is an important measure of end-user welfare as it provides a safety net that ensures certain basic fixed line services are available at an affordable and uniform price to all citizens and consumers throughout the State, particularly in areas of the State (such as rural or sparsely populated areas) where the market might not deliver these services.
- 17 Services provided under the USO include reasonable access to voice telephony services from public payphones.
- 18 On the basis of the analysis conducted, ComReg believes that there is a societal case to be made for a designation for public payphones in the medium term. The role of the public payphone while diminished remains important. ComReg notes that a significant percentage, 66.12<sup>11</sup> %, of public payphone freephone call volume is generated from calling help lines. There is potentially a cohort of end-users who may have no other means of accessing these services other than via public payphones. In order to protect end-users and ensure that the requirements of the Regulations are met, a public payphone USO in the medium term is likely to be required to meet the reasonable needs of this cohort end-users. Accordingly, ComReg is of the preliminary view that, removing the USO altogether at this time would seem premature.
- 19 Should a USO be required, ComReg considers the following within this Consultation:
  - I. The various options available to ComReg and the potential form of any future obligation(s); and
  - II. An optimal approach, in order to ensure the USO responds to end-users’ reasonable needs;
  - III. Which undertaking(s) could be designated and for how long.

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<sup>11</sup> Average during the period 2014 - 2017

- 20 Having regard to the various available options to ComReg concerning the potential form of any future obligation(s), ComReg is of the preliminary view that maintaining the existing obligations in place may strike an appropriate balance between the number of public payphones that would meet the reasonable needs of end-users and providing the USP with an appropriate level of commercial freedom.
- 21 ComReg's objective for this review, is to ensure that any USO measure is implemented in an effective manner, minimising the potential costs and disruption to end-users and to the USP(s). ComReg is cognisant that any USO, if required, should not be more burdensome than necessary.
- 22 ComReg is of the preliminary view that, on balance, the dynamic approach (based on usage levels) that was set out in D09/18 is likely to continue to provide the most optimum safety net to meet the reasonable needs of end-users. The continued gradual decline of public payphones based on a usage threshold protects end-users in an effective manner and, in a way that helps ensure that the reasonable needs of end-users are met, without being unduly burdensome on the USP.
- 23 eir, the public and other stakeholders are already familiar with the existing obligations. There would be no implementation timeframe necessary and any USP would have flexibility to choose not to retain certain payphones below the usage threshold if it so wished.
- 24 ComReg is cognisant that no undertaking should be excluded from being designated as the public payphone USP. This Consultation extends an invitation to all undertakings to express an interest in providing public pay telephones universal service beyond 15 October 2018 (when the interim designation expires) and for a proposed designation period of 2 years, until circa October 2020.
- 25 If expressions of interest are received ComReg will consider such proposals and possible further steps which may include further consideration of the designation of USP's and the designation period and other aspects proposed in this consultation, and the responses to consultation.
- 26 If no expressions of interest to be the public payphone USP are submitted by undertakings, ComReg must consider and decide which undertakings(s) would best meet the requirements of the obligation. In accordance with the relevant legislation, ComReg is not required to secure the agreement or consent of any undertaking for it to be designated as the USP. However, ComReg proposes that, unless expressions of interest are received, eir should continue to be the USP, should a USO be required. ComReg also proposes a review of the threshold criteria after 1 year.

- 27 Under Regulation 5 of the Regulations ComReg requires the consent of the Minister for Communications, Climate Action and the Environment (“DCCAE”) to specify terms and conditions applicable to the provision of public pay telephones or other voice telephony access points provided to meet the reasonable needs of end-users in terms of geographical coverage, the number of telephones or other access points, accessibility to disabled end-users and the quality of services, and/or the removal of such services.
- 28 It is noted that ComReg in accordance with the Regulations may only decide not to designate an undertaking with a USO after consulting with the Minister and having regard to views expressed to it under a public consultation.
- 29 ComReg is of the preliminary view that its proposals as set out in this consultation will help ensure reasonable access to public payphones for end-users in the medium term.
- 30 ComReg looks forward to receiving responses from all stakeholders in relation to these proposals. ComReg will review and take into account all responses it receives.

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## 3 Payphone USO and Trends

### Payphone USO

31 As outlined in the introduction section, ComReg has an obligation to ensure that *“public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users”*.

32 Under D09/18 (Decision 16/62 maintained the usage thresholds set out in D08/14):

*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.”*

33 ComReg is of the preliminary view that at this time end-user usage levels continue to be the most appropriate measure of the reasonable needs of end-users. That is, the reasonable need is not determined by the quantity or distribution of public payphones throughout the State, but by the usage of currently provided public payphones. If a public payphone is sufficiently used, the USP must maintain it, however, the USP is not required to retain a public payphone where there is evidence of anti-social behaviour, or its physical removal is requested by a Local Authority.

- 34 Decision D09/18 permits eir to cease providing existing public payphones based on usage, as ComReg considers usage levels to be the most appropriate measure of the reasonable needs of end-users.
- 35 ComReg may mandate a USP to provide public payphones or other public telephony access points, and set the conditions under which USO public payphones are permitted to be ceased (including permissible removal criteria). ComReg cannot mandate the physical removal of any payphone. The decision to physically remove a public payphone, in which ComReg has no role, is either a commercial decision by the payphone provider(s), may be requested by a Local Authority; or where there is demonstrable evidence that the removal of the public payphone is necessary as the public payphone concerned is a focus of anti-social behaviour.
- 36 The provision of universal service public payphones may result in USP(s) providing designated services at a net cost. The Regulations allow the USP(s) to seek funding to meet a net cost of the universal service.<sup>12</sup> The Regulations provide that if ComReg finds that the net cost of the USO represents an unfair burden on the USP, the funding requirement must be met by industry.<sup>13</sup>
- 37 eir has submitted USO funding applications in respect of 2014/15 and 2015/16. The portion of the net cost submitted by eir which relates to payphones is €320,223 in 2014/15 and a higher figure of [€< [REDACTED]] in 2015/16. ComReg's preliminary view of the net cost of eir's 2014-2015 funding application is that the net cost (before intangible benefits) is €12,263,277 and that the portion of this net cost which relates to the provision of USO public payphones is €122,057.
- 38 ComReg has not completed its assessment of eir's 2015-2016 USO funding application. eir has chosen not to submit a USO funding application in respect of 2016-2017<sup>14</sup>.
- 39 In July 2014, ComReg designated eir as the USP for payphones for a period of four years. ComReg, having reviewed the usage threshold level for public payphones decided that the existing usage threshold regime remained appropriate, with no change to the threshold status quo.<sup>15</sup>
- 40 In July 2018, ComReg designated eir as the USP for an interim period of three months until 16 October 2018 (Decision D09/18).

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<sup>12</sup> Regulation 11(1) of the Regulations.

<sup>13</sup> Regulation 12(1) of the Regulations.

<sup>14</sup> ComReg Information Notice 18/76R "eir's 2016-2017 Universal Service Funding Application"

<sup>15</sup> Universal Service – Provision of Public Payphones – Usage Threshold for Removals Decision 16/62, 26/07/16 in July 2016.

41 The following is a brief summary of events leading to the publication of this consultation:

- In effecting any reduction in the number of public pay telephones, eir, as the USP, was obliged to ensure that the USO was met and; in this respect, D08/14, Section 4 of the Decision Instrument “*removal of public pay telephones*”, as established in July 2014, applied until 30 June 2018 (when the designation expired).
- Early in 2018 ComReg commenced a detailed review of public pay telephones the purpose of which was to prepare a public consultation on the continued need (or absence of the need) for reasonable access to public payphones under a USO beyond June 2018 and, what, if any, may be the most appropriate future designation requirements.
- ComReg required information to assist with its review and preparing the planned consultation. In this respect, and amongst other things, on 26 February 2018, ComReg issued an information request to eir,<sup>16</sup> as the USP for previous periods and as the majority supplier of payphones, asking “*In the absence of a designation please provide details of eir’s likely commercial future approach to the ongoing provision of (1) public payphones and (2) private payphones.*”
- On 12 March 2018 eir responded stating “*In the absence of a designation eir would likely seek to remove all public payphones and private payphones.*” eir did not provide any detailed information with this statement. ComReg relied on this information and considered the risk that eir could possibly engage in an imminent and widespread removal of payphones in the absence of USO.
- As ComReg prepared to finalise its planned consultation, ComReg corresponded with eir on 21 June 2018 and received new information (in bold below), with eir stating “*In the absence of a designation eir would likely seek to remove all public payphones and private payphones. **This would be managed over time and on a case by case basis, taking account of a number of factors and commercial criteria that may extend beyond the revenue and costs specific to each payphone.***” [emphasis added]. eir had not provided ComReg with detailed information regarding its submitted approach to payphones post D08/14.
- On 28 June 2018, ComReg advised eir that this new information (which ComReg had no prior visibility of until 21 June 2018) significantly altered eir’s previous response on eir’s approach absent a USO, and it raised questions in respect of eir’s commercial approach to the provision of public and private payphones.

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<sup>16</sup> A Statutory Information request, pursuant to Section 13D of the Act, dated 26 February 2018.

- On 28 June 2018, ComReg published Consultation 18/57 which gave interested stakeholders an opportunity to submit any views on ComReg's proposal to designate eir for 3 months after June 2018 and, in this regard, impose on eir a USO with a view to maintaining the approach to the provision of public pay telephones under USO as set out under D08/14 pending the outcome of a consultation on the future of the payphone USO.
- ComReg issued a further Information Request to eir to clarify and provide more information in respect of eir's approach to the provision of public and private payphones in order to assist ComReg to better understand the counterfactual scenario <sup>17</sup>(paragraphs 118 to 125).
- Having taken into account the information which we collected on foot of this Statutory Information request, together with other relevant material, and in light of the forthcoming expiration of the current interim designation, ComReg is undertaking a detailed review of public payphones, to ascertain what, if any, should be the most appropriate universal service designation requirements.

42 This consultation document seeks view on topics such as:

- Does the current provision of public pay telephones meet the reasonable needs of end-users?
- Is there a need for a public pay telephone USO?
- What should the nature of any future obligations be (if any)?
- If there is a need for a public pay telephone USO, how long should any designation be for, and which undertaking(s) should be designated?

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<sup>17</sup> A Statutory Information request, pursuant to Section 13D of the Act, dated 13 July 2018.

## Payphone trends

### Payphone market in Ireland

- 43 Public payphones may be provided by an operator over its own network (as eir does, using payphone equipment, an access line and call conveyance) or over a third party's network (operator purchases one or more wholesale access products to deliver a payphone service)
- 44 Currently there are two payphone own network providers in Ireland. A third own network provider of payphones exited the market in Q4 2014.
- 45 The total number of payphones has been gradually declining year on year.
- 46 Additional payphone revenue is generated through (1) the payphone access charge (PAC) and (2) the sale of advertising space on payphones. Payphone originating freephone calls also contribute to total market freephone revenues.
- 47 Other service providers pay eir a payphone access charge (PAC)<sup>18</sup> for using its payphones to make calls to other networks. eir's payphone access charge revenue was [€ ] per eir's 2014/15 USO funding application<sup>19</sup>; and [€ ] per eir's 2015/16 USO funding application.
- 48 eir earns additional revenue through the sale of advertising space on a sub-set of its payphone base. eir's payphone advertising revenue was [€ ] per eir's 2014/15 USO funding application; and slightly lower [€ ] per eir's 2015/16 USO funding application.

### Calls from Payphones to the Emergency Call Answering Service

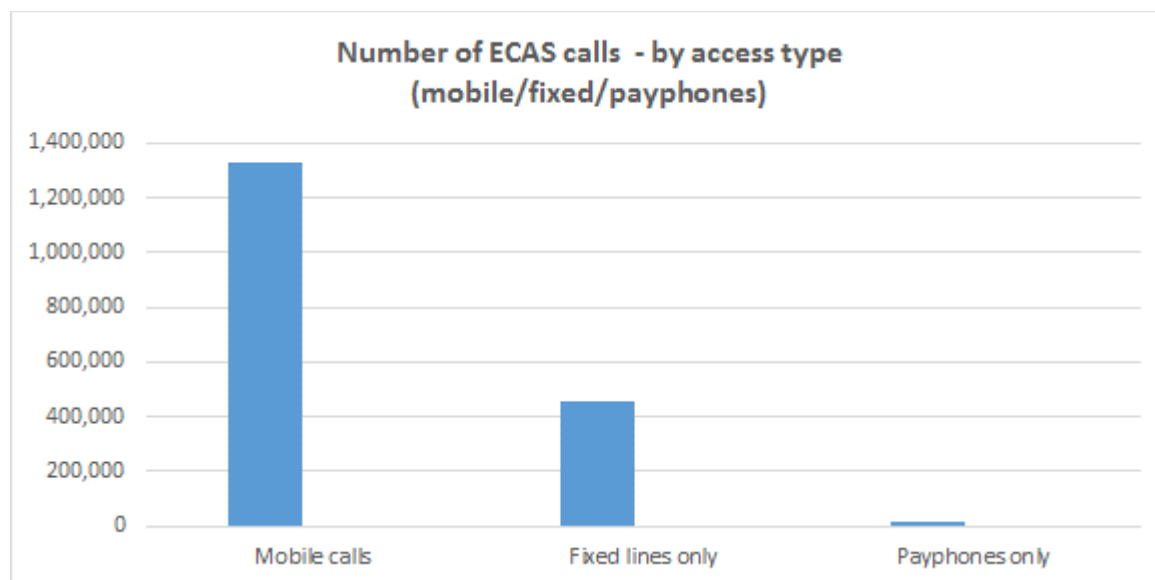
- 49 ComReg has engaged with the Emergency Call Answering Service (ECAS) to establish the number of ECAS calls by access type. The majority of calls to the emergency services are made using mobile phones (Figure 1).

<sup>18</sup> A PAC Charge is the call origination charge levied in respect of calls made from eligible UNI PAC Lines for calls to 1800 xx numbers terminating either on the open eir network or other operators interconnected to the open eir network.

<sup>19</sup> [€ ]



**Figure 1 Source: ECAS January – December 2017**



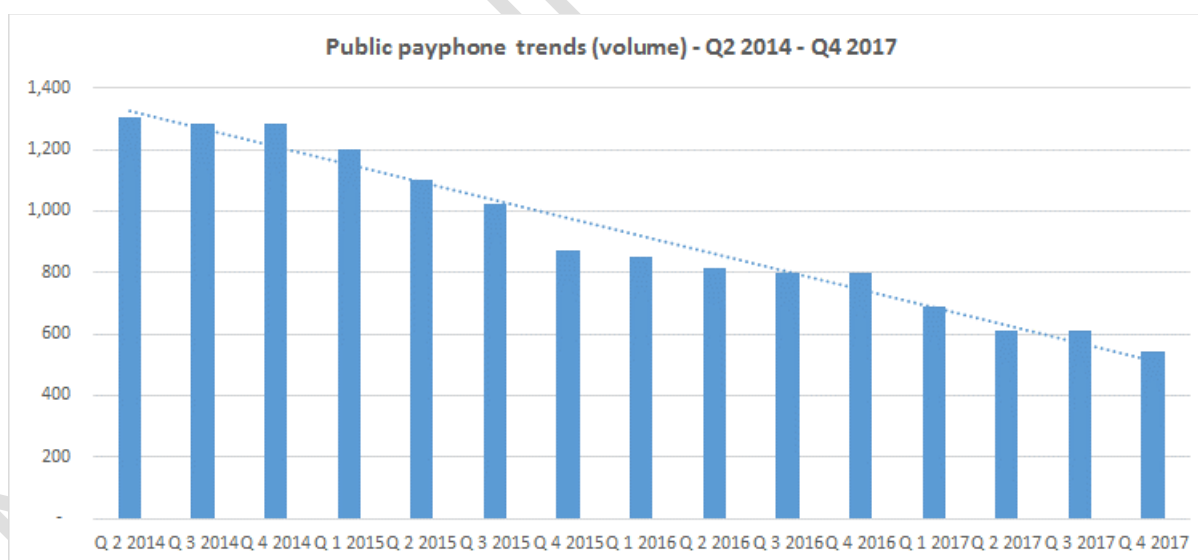
- 50 The majority of landline line calls to the emergency services are made using landline phones located in residential premises. A small number of calls are made using payphones.
- 51 Analysis of payphones calls (2017) to ECAS highlights that [ ██████%] of calls originate from private payphones and the remaining majority [ ██████%] originate from public payphones. Further details are set out in Annex 1.

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## Public payphone market in Ireland

- 52 As set out in paragraph 1, a public payphone for the purposes for Universal Service relates to those located on the street and in other public areas available to the general public at all times (i.e. unrestricted access).
- 53 This does not include payphones located in private areas which have restricted access or are typically covered by commercial arrangements between the premises owner and provider (and where access to a payphone is dependent on the pre-existence of a commercial relationship – e.g. pubs, hotels, restaurants and shopping centres) where the payment to the premises owner may involve a fixed amount or a percentage of the revenue earned on calls made from the relevant payphone.
- 54 Public payphone users can pay for calls with coins, pre-paid calling card<sup>20</sup> or credit cards. Calls are generally charged on a per unit basis, and the length of time allowed per unit will vary depending on the call destination. The price of calls from USO public payphones is the same throughout the State (geographically averaged).
- 55 eir is currently the only own network operator of public payphones in the State (i.e. payphone with unrestricted access).

**Figure 2: Public payphone (number) trends Q2 2014- Q4 2017**



- 56 Generally, all revenue earned from public payphones is received by the service provider.

<sup>20</sup>The distribution by eir of phone cards ceased in 2016. [REDACTED]

- 57 Additionally, the public payphone operator may earn income (actual or notional) through own or third party advertising (paragraph 51).
- 58 Figure 3 shows eir's published public payphone reduction<sup>21</sup> by site type, by year, for the period December 2015 to March 2018. The number of single-site payphones may increase, reflecting that a multi-site public payphone may become a single-site payphone location over time (i.e. where the number of payphones is reduced to one remaining payphone at a particular location).

**Figure 3: Summary of eir's published year on year (July-June) public payphone movements**

Site type	2014-2015 July -June	2015-2016 July -June	2016-2017 July -June	2017-2018 July -June (half year)
Single site	293	250	172	120
Multi-site	1,014	850	643	490
<b>Total</b>	<b>1,307</b>	<b>1,100</b>	<b>815</b>	<b>610</b>
YOY Reduction		207	285	205

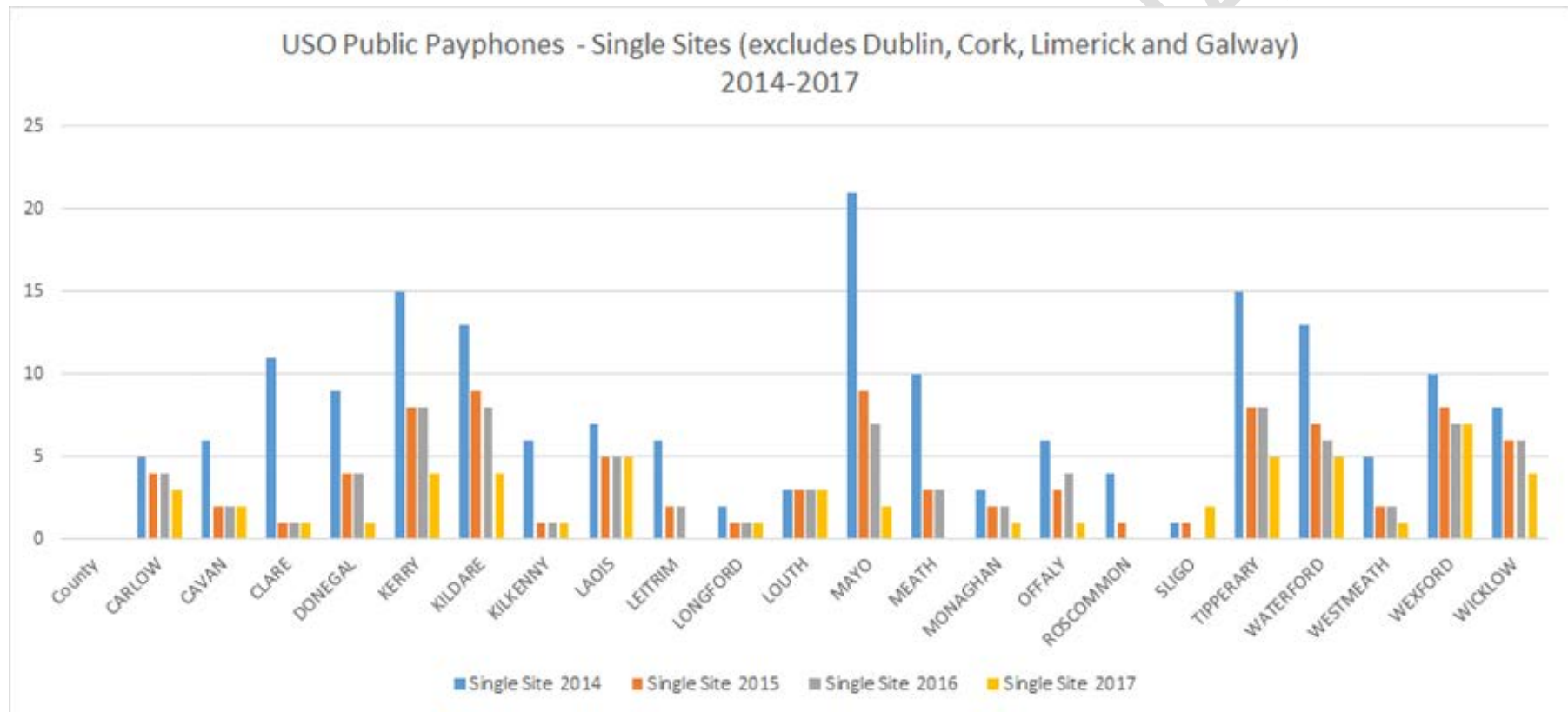
Source: eir website: <https://www.eir.ie/regulatoryinformation/public-payphones/>

- 59 Figure 4 shows the trend in the number of single site public payphones by location (excluding Dublin, Cork, Limerick and Galway) for the period 2014-2017<sup>22</sup>. Public payphone distribution by geography. Further details are set out in Annex 1.

<sup>21</sup> <https://www.eir.ie/regulatoryinformation/public-payphones/> (as at 1 May 2018)

<sup>22</sup> <https://www.eir.ie/regulatoryinformation/public-payphones/> (as at 1 May 2018)

**Figure 4: Public payphones – Single-sites (excluding Dublin, Cork, Limerick and Galway)**



60 eir's published payphone numbers as of 31 March 2018 are outlined in Figure 5 below. This shows a total of 541 public payphones, consisting of 109 single site and 432 multi-site public payphones.

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**Figure 5: eir's published public payphone numbers - Jan - March 2018 (source: eir website)**

USO Public Payphones: January to March 2018									
County	Single Sites				Multiple Sites				Total No. of multiple payphone sites that became single sites
	No of payphones at start of QTR	No of payphones removed	No of payphones Installed	No of payphones at end of QTR	No of payphones at start of QTR	No of payphones removed	No of payphones Installed	No of payphones at end of QTR	
CARLOW	3	2	1	2	2	2	0	0	1
CAVAN	2	0	0	2	7	0	0	7	0
CLARE	1	0	0	1	6	0	0	6	0
CORK	3	0	0	3	67	0	0	67	0
DONEGAL	1	0	0	1	4	0	0	4	0
DUBLIN	41	0	0	41	162	0	0	162	0
GALWAY	6	0	0	6	36	0	0	36	0
KERRY	4	0	0	4	18	0	0	18	0
KILDARE	4	0	0	4	12	0	0	12	0
KILKENNY	1	0	0	1	6	0	0	6	0
LAOIS	4	0	0	4	4	0	0	4	0
LEITRIM		0	0			0	0		0
LIMERICK	8	0	0	8	4	0	0	4	0
LONGFORD	1	0	0	1	5	0	0	5	0
LOUTH	3	0	0	3	16	0	0	16	0
MAYO	2	0	0	2	10	0	0	10	0
MEATH		0	0		4	0	0	4	0
MONAGHAN	1	0	0	1		0	0		0
OFFALY	1	0	0	1		0	0		0
ROSCOMMON		0	0		4	0	0	4	0
SLIGO	2	0	0	2	2	0	0	2	0
TIPPERARY	5	0	0	5	12	1	0	11	0
WATERFORD	5	0	0	5	20	0	0	20	0
WESTMEATH	1	0	0	1	12	0	0	12	0
WEXFORD	7	0	0	7	10	0	0	10	0
WICKLOW	4	0	0	4	12	0	0	12	0
<b>Total</b>	<b>110</b>	<b>2</b>	<b>1</b>	<b>109</b>	<b>435</b>	<b>3</b>	<b>0</b>	<b>432</b>	<b>1</b>

**Important Note:**  
 Universal Service Obligation (USO) payphones cover those located on the street and in other public areas available to the public at all times (i.e unrestricted access). USO payphones do not cover payphones located in private areas that have restricted access or are typically covered by commercial arrangements where the access to a payphone is dependent on the pre-existence of a commercial relationship.

- 61 Of the single site public payphones, 37.61% (41) are located in Dublin; 7.34% (6) are located in Limerick; 6.42% (7) are located in Wexford; 5.5% (6) are located in Galway. Both Tipperary and Waterford have 4.59% (5) each. Kerry, Kildare, Laois and Wicklow each have 3.67% (4). Both Cork and Louth each have 2.75% (3), Carlow, Cavan, Mayo and Sligo each have 1.83% (2). Claire, Donegal, Kilkenny, Longford, Monaghan, Offaly and Westmeath each have 0.92% (1), while Leitrim, Meath and Roscommon have no single site public payphones. 6.42% (7) are located in Wexford; 5.5% (6) are located in Galway. Both Tipperary and Waterford have 4.59% (5) each. Kerry, Kildare, Laois and Wicklow each have 3.67% (4). Both Cork and Louth each have 2.75% (3), Carlow, Cavan, Mayo and Sligo each have 1.83% (2). Claire, Donegal, Kilkenny, Longford, Monaghan, Offaly and Westmeath each have 0.92% (1), while Leitrim, Meath and Roscommon have no single site public payphones.
- 62 Of the multi-site public payphones, 37.50% (161) are located in Dublin; 15.51% are located in Cork; 8.33% (36) are located in Galway; 4.63% (20) are located in Waterford; 4.17% (18) are located in Kerry; 3.70% are located in Louth. Kildare, Wicklow and Westmeath each have 2.78% (12). 2.51% (11) are located in Tipperary. Wexford and Mayo each have 2.31% (10). 1.62% (7) are located in Cavan. Clare and Kilkenny each have 1.39% (6) and 1.16% (5) are located in Longford. Limerick, Laois, Donegal, Meath each have 0.93% (4). 0.46% (2) are located in Roscommon, while Carlow, Leitrim, Monaghan and Offaly each have no multi-site payphones.

#### Public payphone market – by revenue;

- 63 ComReg issued an information request to eir in February 2018 seeing public payphone call details and revenues broken out by individual payphone for the period Q3 2014 to Q4 2017.
- 64 eir provided Freephone and ECAS call volumes for the period July 2014-December 2017. eir provided summarised details for the period July 2014-December 2017, stating that payphone data is retained at a summary data level. eir provided payphone access charge revenues in respect of freephone calls for the period July 2014-December 2017.
- 65 Accordingly, ComReg has analysed both the information provided by eir in April 2018 and the payphone revenue information, provided by eir as part of its USO funding applications, for the periods 2014-2015 and 2015-2016.
- 66 eir's 2014/15 USO payphone model states that payphones generated revenue<sup>23</sup> of [redacted] (based on call cards, coin collections and credit cards).

<sup>23</sup> Based on eir's regulatory account allocations

- 67 eir's 2015/16 USO payphone model states that public payphones generated more revenue<sup>23</sup> of [€ ██████████] (based on call cards, coin collections and credit cards).
- 68 The price of calls, from eir public payphones, of different call types is set out in Annex 1 (Figure 15 - Figure 17).
- 69 The price of calls from Universal Service public payphones is the same throughout the State (geographically averaged). ComReg is of the preliminary view that the requirement for geographically averaged pricing remains appropriate, where a USO is necessary.

### Public payphone market – usage patterns;

- 70 ComReg issued an information request to eir in February 2018 seeking public payphone call details and revenues broken out by individual payphone for the period Q3 2014 to Q4 2017.
- 71 eir provided summarised details for the period July 2014 – December 2017,<sup>24</sup> stating that payphone data is retained at a summary data level.
- 72 ComReg has estimated for the period 2015-2016 (July-June)<sup>25</sup> that the average number of call seconds per day per payphone (excluding ECAS and freephone) was just under 1 minute.
- 73 The average PAC<sup>26</sup> revenue was 6 times lower [€ ██████████] than the average advertising revenue per public payphone, which was 6 times higher [€ ██████████] than the PAC revenues.
- 74 ComReg has estimated for the period 2016-2017 and 2017/18 (July-June)<sup>25</sup> that the average number of call seconds per day per payphone (excluding ECAS and freephone) has halved since 2015-2016.
- 75 eir provided Freephone and ECAS payphone call volumes (including call date) for the period July 2014-December 2017.

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<sup>24</sup> eir's data excluded call date for voice call, as eir does not retain detailed payphone call records extending back to July 2014

<sup>25</sup> Based on the available information from eir –eir provided the aggregate number of seconds per call type for the period July 2014-December 2017.

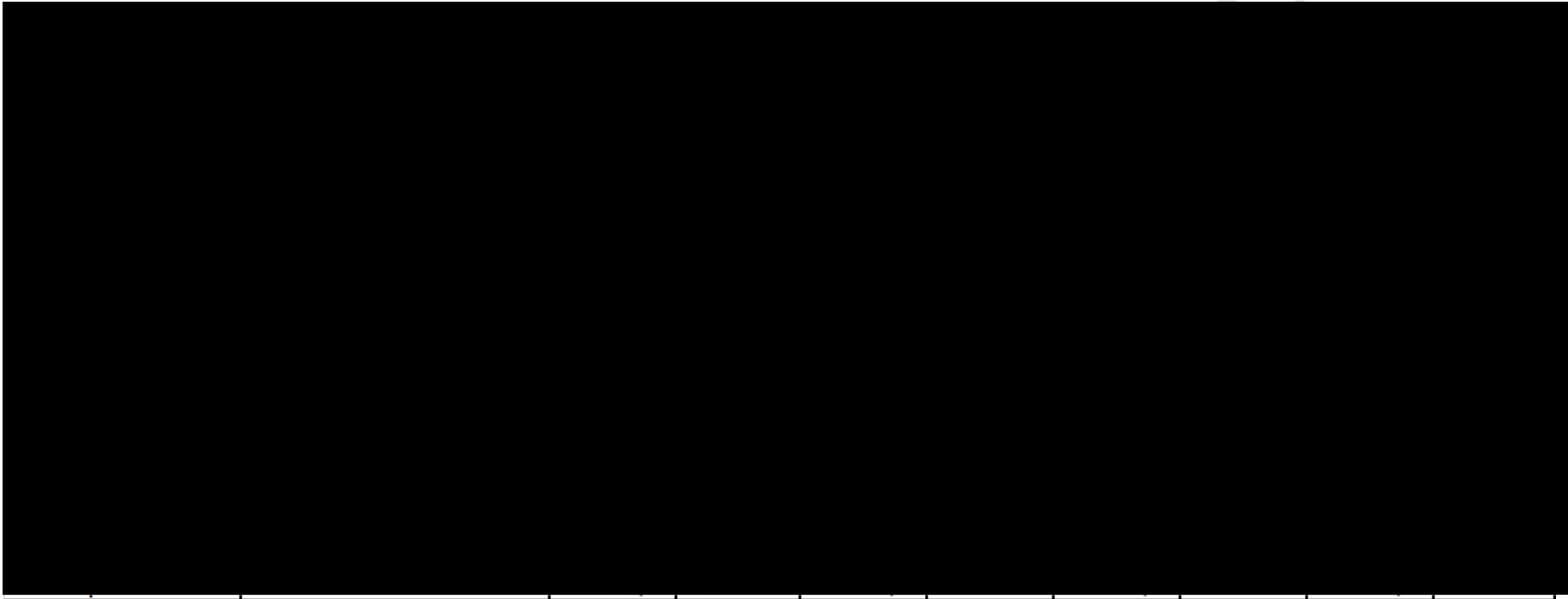
<sup>26</sup> Based on eir's 2014-2015 USO funding application Payphone Model



76 An analysis of the volume of calls generated by freephone numbers called from public payphones (2014-2017, Figure 6) shows that a high proportion [ ] % of calls are accounted for by three main service types: [ ] % of Free phone calls are made using international calling cards; [ ] % of calls are made to reverse charge call-back services; and [ ] % of calls are made to two help lines [ ]  
[ ] Further details are set out in Annex 1, Figure 21 and Figure 22.

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**Figure 6: Summary of freephone service type accessed via public payphones** [✂]



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77 Given that a high percentage, [3< [REDACTED] %, of public payphone freephone call volume is generated from calling help lines, ComReg is of the preliminary view that this cohort of end-users may appear to have no other means of accessing these services other than via public payphones.

78 Public payphones may also provide a level of anonymity to end-users who wish to contact other freephone numbers of a sensitive nature.

### Public payphones – availability and costs

79 US public payphones are required to be within reasonable working order. For the purposes of monitoring public payphone QoS, and in particular to identify the number of public payphones which are in working order in any given time period the calculation is set out in Annex 2.

80 eir has published the following 'proportion of payphones in full working order (%)' quality of service statistics for the period 2014-2017. This data illustrates that public payphone availability at a national level on average is 94.387%% (Q3 2014- Q4 2017).

**Figure 7: Proportion of payphones in full working order (%)**

Proportion of payphones in full working order (%)		
Period	Average number of payphones for the period	Proportion of payphones in full working order
Q3 2014	1296	99.19%
Q4 2014	1284	93.44%
Q1 2015	1242	91.90%
Q2 2015	1242	93.95%
Q3 2015	1061	93.35%
Q4 2015	946	94.96%
Q1 2016	862	99.77%
Q2 2016	834	91.96%
Q3 2016	806	91.57%
Q4 2016	797	93.55%
Q1 2017	797	95.70%
Q2 2017	650	94.83%
Q3 2017	610	94.05%
Q4 2017	578	89.18%

Source: eir <https://www.eir.ie/regulatoryinformation/quality-of-service/>

81 Based on the threshold set out in Decision D08/14, analysis for the period 2014-2015 (July-June) shows that the usage levels of a large number, [REDACTED], of public payphones were below the usage threshold, and were therefore no longer mandated to be provided under D04/14. The usage levels of a smaller number, [REDACTED], of public payphones either met or were above the usage threshold and were required to be maintained under D04/14.

82 eir may however make a commercial decision to retain a number of public payphones throughout the State. However, only those public payphones which are above the usage threshold are mandated under the universal service obligation.

83 All eir's payphones (public and private) are maintained under one outsourced maintenance contract. [REDACTED]

84 [REDACTED]

85 Accordingly, annual maintenance charge associated with US public payphones is decreasing over time.

86 Existing maintenance charges are off-set, in part, by additional advertising and payphone access charge (PAC) revenue from US and other public payphones. Both US and public payphones also contribute to overall market freephone revenues.

87 eir's payphone access charge (PAC) revenue was [REDACTED] per eir's 2014/15 USO funding application<sup>28</sup>; and [REDACTED] per eir's 2015/16 USO funding application.

88 eir earns additional revenue through the sale of advertising space on a sub-set of its payphone base. eir's 2014/15 and 2015/16 USO funding applications (Payphone Model) records payphone advertising revenues of [REDACTED]; and [REDACTED] respectively.

### Public payphone market – reasonable needs of end-users

- 89 ComReg previously defined the reasonable needs of end-users in terms of a usage threshold in Decision D08/14.
- 90 We consider that end-user usage levels continue to be the most appropriate measure of reasonable needs of end-users. The reasonable need is not determined by the quantity or distribution of payphones throughout the State, rather by the usage of currently provided public payphones. If a public payphone is sufficiently used, the payphone is deemed a universal service public payphone, and the USP must retain and maintain it. However the USP is not required to retain a public payphone where there is evidence of anti-social behaviour, or its removal is requested by a Local Authority.
- 91 The purpose of these usage levels is to ensure that end-users who use public payphones can still access them, whilst permitting eir to remove, if they so wish, public payphones for which there is no longer a reasonable need.
- 92 In 2016 ComReg consulted (16/43) on the thresholds below which eir is permitted to remove universal service payphones. ComReg Decision 16/62 decided that the existing regime remained appropriate in all circumstances. Under D08/14:

*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*

<sup>27</sup> [redacted] eir's total payphone base as notified to ComReg was [redacted] <sup>28</sup> [redacted]

*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.”*

93 The 2014-2015 public payphone data was analysed based on the criteria (i) (ii) and (iii), as per the decision (D08/14) above.

- i. average usage is less to 1 min per day for a rolling 6-months period (i.e. Month 1 =July 2014
- ii. Average freephone calls usage is less than 30 seconds per day for a rolling 6-months period starting July 2014.
- iii. Payphone XY-co-ordinates were also used to determine whether a site is Single or Multiple. If the site is multiple, the payphone with the most usage is not removed as per criterion (iii).

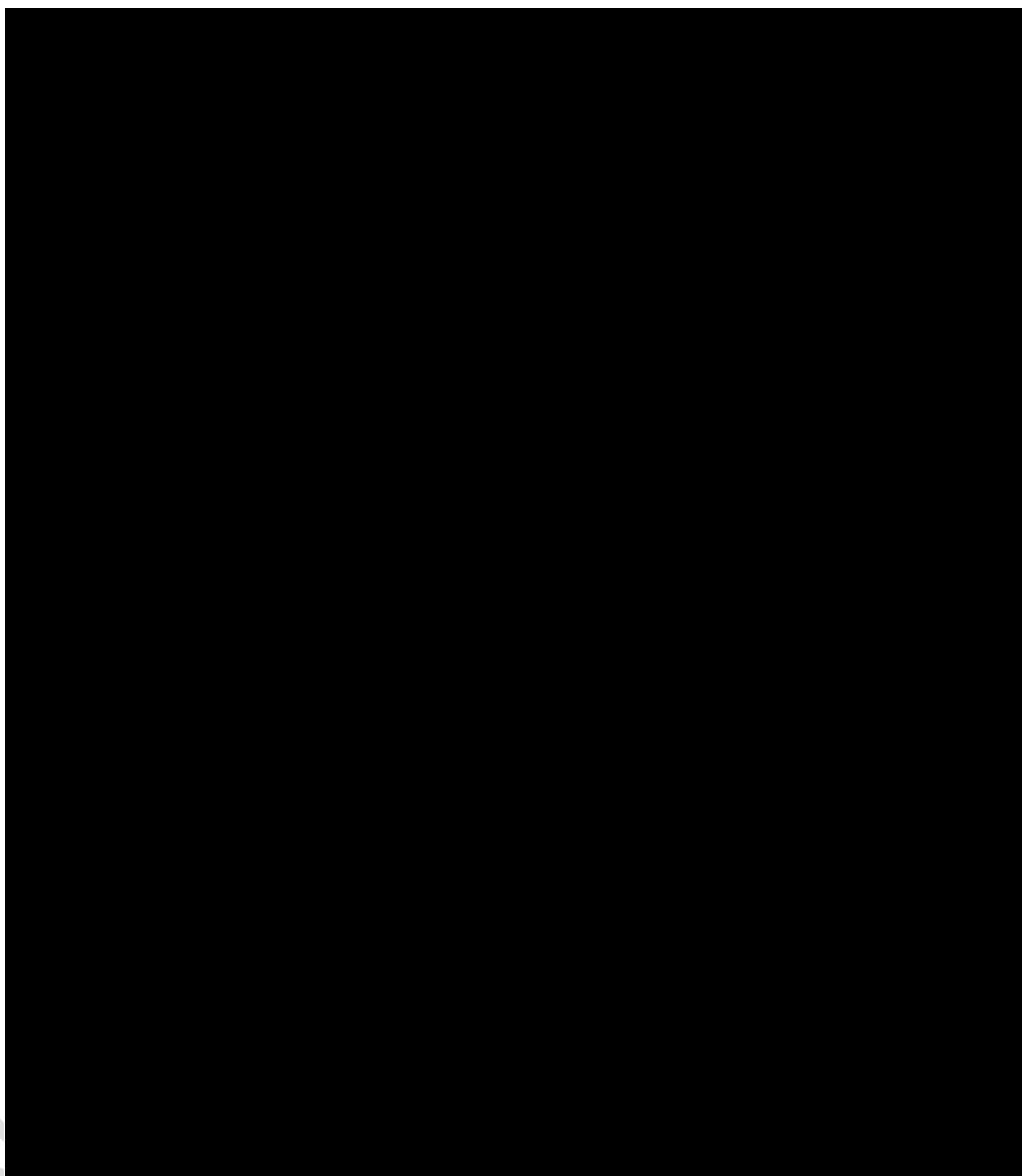
94 Prior to any public payphone removal, eir is required to adhere to the notification requirements as set out in D08/14, and in particular to post a removal notice for the public payphone at least 6 weeks before the removal. This Decision was published on July 7<sup>th</sup> 2014. Accordingly the earliest that eir could have removed any public payphone was 6 weeks after January 2015.

95 It is important to note that while ComReg has set out the permissible public payphone removal criteria, the decision on when not to supply and to physically remove a public payphone is solely a commercial decision of the USP.

96 Based on the threshold set out in Decision D08/14, our analysis shows that for 2014-2015 the usage levels of a large number, [ ■■■ ], of public payphones were below the usage threshold, and are no longer US public payphones. The usage levels of a smaller number, [ ■■■ ], of public payphones either met or were above the usage threshold and are therefore US public payphones (Figure 11. The total number of US public payphones is [ ■■■ ] in respect of 2014-2015.

97 Figure 8 provides a breakdown by county of the [ ■■■ ] public payphones which were identified to be below the threshold and the [ ■■■ ] that are above the usage threshold. Further details are set out in Annex 1

**Figure 8: Public payphone breakdown by county – Above and below threshold (2014/15)**



- 98 ComReg issued an information request to eir in February 2018 seeking information on public payphones (by call type, date and duration, separately identifying ECAS and Freephone) by individual payphone for the period Q3 2014 to Q4 2017.

- 99 eir provided freephone and ECAS call volumes for the period July 2014-December 2017. eir provided summarised details for the period July 2014-December 2017, stating that payphone data is retained at a summary data level. eir provided payphone access charge revenues in respect of freephone calls for the period July 2014-December 2017.
- 100 In order to assess US public payphone usage ComReg conducted its analysis (based on the available data obtained from eir) of public payphone information for the period July 2014-December 2017.
- 101 As outlined in paragraph 84, in 2014-2015 the usage levels of a large number [ ] public payphones were below the usage threshold, and were no longer eligible to be classified as US public payphones. The usage levels of a smaller number [ ] public payphones either met or were above the usage threshold and were US public payphones in respect of 2014-2015<sup>29</sup>. This is the basis of ComReg's analysis for all subsequent years (2015-2017).
- 102 Based on the data provided by eir and the information above, ComReg estimates that for 2015-2016 the usage levels of a further large number [ ] public payphones were below the usage threshold, and were no longer mandated by D08/14. This estimation also showed that the usage levels of a smaller number [ ] public payphones either met or were above the usage threshold and were US public payphones for 2015-2016.
- 103 Based on the data provided by eir, ComReg estimates that for 2016-2017 the usage levels of a further smaller number of [ ] public payphones were below the usage threshold, and were no longer mandated by D08/14. This estimation showed that the usage levels of the remaining [ ] public payphones either met or were above the usage threshold and were US public payphones respect of 2016-2017.
- 104 Based on the data provided by eir, ComReg estimates that for 2017-2018 (half year July – December 2017) the usage levels of small number of [ ] public payphones were to be below the usage threshold, and were no longer mandated by D08/14. This estimation showed that the usage levels of small number of [ ] public payphones either met or were above the usage threshold and were US public payphones respect of 2017-2018 (half year July – December 2017).
- 105 ComReg's analysis (based on the available data obtained from eir) illustrates the effectiveness of the usage threshold in addressing the changing public payphone market. It provides sufficient 'head-room' to facilitate the transition away from of US public payphones, while ensuring that the reasonable needs of end-users are met

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<sup>29</sup> ComReg analysis is based on a comprehensive set of payphone data taken from eir's 2014-2015 USO Funding Application (Payphone Model) and adjusted by TERA, taking into account D08/14.



- 106 It provides the USP with the relevant flexibility, based on the actual usage of currently provided public payphones. If a public payphone is sufficiently used, the USP must retain and maintain it. If usage drops below the threshold the USP's obligations cease in respect of the relevant US public payphone(s). This is dynamic and reflects actual public payphone usage.
- 107 Equally, the USP is not required to retain a public payphone where there is evidence of anti-social behaviour, or its removal is requested by a Local Authority.
- 108 It is important to note that the existence of other mechanisms for making calls does not preclude the existence end-users reasonable needs for US public payphones. Access to one service does not preclude an end-users reasonable needs to use an alternative service.
- 109 The usage threshold is effective in meeting reasonable needs of end-users. The public payphone usage above the threshold reflects these needs. Based on this analysis ComReg is of the preliminary view that the current threshold level remains appropriate.
- 110 ComReg is of the preliminary view that while public payphone usage is declining public payphones may continue to provide a basic service to a cohort of end-users (1) who appear to have limited means of making a call (including a freephone call) and (2) allows for the provision of a level of anonymity to end-users who may wish to contact other freephone numbers of a sensitive nature.
- 111 Accordingly, ComReg is of the preliminary view that there is a continued need for public payphones to meet the reasonable needs of end-users.
- 112 ComReg is also cognisant of eir's response to ComReg's information requests which, amongst other things, sought clarity from eir:

In the absence of a designation please provide details of eir's likely commercial future approach to the ongoing provision of (1) public payphones and (2) private payphones.

113 eir responded<sup>30</sup> stating

*“In the absence of a designation eir would likely seek to remove all public payphones and private payphones. This would be managed over time and on a case by case basis, taking account of a number of factors and commercial criteria that may extend beyond the revenue and costs specific to each payphone.”*

- In eir's response to consultation 18/57, paragraph 18 states *'eir will take into account economic and other reasons which may exist for retaining a payphone, which may include local authority concerns.'* and *"eir will act as a responsible commercial operator in approaching the provision of payphones now that the USO designation has passed."*

114 ComReg sought the following further clarifications<sup>31</sup> from eir:

- Provide detailed and accurate information on how eir would seek to remove all public and private payphones in the absence of a public pay telephone Universal Service designation. This should include, at a minimum, the following elements:
- eir's proposed milestones and operational plan for a "managed" removal in terms of actual numbers, locations and reference numbers and time frame/dates for removal for all public payphones.
- eir's comprehensive set of "commercial criteria" for retaining/removing public payphones
- Identification and detailed explanation of other 'factors' eir considers relevant (in addition to commercial criteria of revenue and cost) and that eir will use to inform its' decision making process for retaining/removing public payphones
- Details of the "economic and other reasons" that eir would use in considering whether it will retain a particular payphone(s) in a scenario where there is no designation.
- Details of how exactly eir would act 'as a responsible commercial operator' in respect of payphones in a scenario where there is no designation.

## 115 eir on 26 July 2018 responded stating:

- *“eir does not have an operational plan for the removal of all public payphones.*

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<sup>30</sup> eir's responses to Statutory Information requests, pursuant to Section 13D of the Act 12 March 2018, 28 June 2018, and 13 July 2018.

<sup>31</sup> Statutory Information request, pursuant to Section 13D of the Act 13 July 2018

- *As at end June 2018 there were 480 USO public payphones at 291 locations in the State. Of these, 331 USO public payphones at 200 locations meet the criteria for permissible removals. A project is ongoing to remove these USO public payphones. [REDACTED]*  
*[REDACTED] We envisage that the project will be completed this calendar year (subject to timely activity of third parties including granting of wayleaves and ESB power disconnections)]. Details of the 331 payphones were notified to ComReg on 15th December 2017.*
- *eir does not have an operational plan for the removal of the remaining base of 149 USO public payphones at 91 locations.*
- *eir does not have a comprehensive set of "commercial criteria" for retaining /removing public payphones.*
  - *The most important consideration would be the cost of maintaining the public and private payphone base (repairs, cash collection, cleaning etc.) [emphasis added]. The annual cost for this activity was approximately [REDACTED] in 2017/18. The maintenance services are provided by a contractor and the contract is currently subject to renegotiation. eir is not in a position to comment on the likely maintenance fees for the current or subsequent years. Other relevant costs include eir's internal resources, replacements and power supply.*
  - *Other commercial factors may include revenue generated by the payphones and revenue from the placement of advertisements on public payphone street furniture. The revenue is in the form of a revenue share from a third party that operates the advertising business. The attractiveness of this activity to the third party may diminish as the public payphone base declines. The revenue share eir receives is less than the cost of maintaining the USO payphone business. [REDACTED]*  
*[REDACTED]*
  - *The maintenance contract is subject to ongoing negotiation. [REDACTED]*  
*[REDACTED]*  
*If the cost of maintenance continues to exceed the revenues generated by the payphone business, which is the most likely outcome, then it would be commercially rational for eir to seek to remove all public payphones absent the USO designation".*

- Identification and detailed explanation of other 'factors' that eir considers relevant (in addition to commercial criteria of revenue and cost) and that eir will use to inform its' decision making process for retaining/removing public payphones

- *"eir considers the views of County Councils to be a relevant 'other factor'.*

[

[REDACTED]

- [REDACTED]

- How exactly eir would act 'as a responsible commercial operator' in respect of payphones in a scenario where there is no designation

- *"eir would not immediately disconnect public payphones if the USO designation expired as evidenced by its behaviour between 1st July 2018 to 15th July 2018. eir would intend to give County Councils notice of its intention to close the public payphone business which is currently an unfair burden on eir.*

- [

[REDACTED]

].

- 116 eir's response states that it does not have a comprehensive set of commercial criteria for retaining/removing public payphones. eir's most important criteria is the cost of maintaining the public payphone base.
- 117 Other commercial factors include revenue generated by the payphones and revenue from the placement of advertisements on public payphone street furniture. The revenue share is less than the cost of maintaining the USO payphone business, and eir intends to review arrangements in the coming months. If the cost of maintenance continues to exceed the revenues generated by the payphone business, which is the most likely outcome, then eir stated that "*it would be commercially rational for eir to seek to remove all public payphones absent the USO designation.*"
- 118 ComReg notes that the maintenance cost (outlined by eir) is a shared cost (i.e. both public and private payphones), and not one borne exclusively by public payphones.
- 119 eir's response has specifically acknowledged the existence of vulnerable groups who may have no alternative to make calls other than via a public pay phone. [REDACTED]  
[REDACTED]  
[REDACTED]. eir's response as a '*responsible commercial operator*', absent of a USO public pay telephones designation, is that eir would not immediately disconnect public payphones. eir would intend to give County Councils notice of its intention to close the public payphone business.
- 120 eir has provided no indication as to what it would consider as an appropriate 'transition period' to be. There is currently no assurance that, where such an agreement could not be reached that eir would not proceed to remove public payphones.
- 121 ComReg therefore is of the preliminary view that there is a need for an abundance of caution to ensure that the reasonable needs of this specifically identified vulnerable group are met through a USO, absent of any alternative option/process being in place at this time.
- 122 Based on eir's aforementioned statements and ComReg's assessment of the reasonable needs of end-users, we are of the preliminary view that there is a continued need for a public payphones USO to meet those reasonable needs of end-users.

## Public payphone market research

- 123 The 2017 "Ireland Communicates" survey was conducted by ComReg and its survey partner Ipsos MRBI. Over 1,500 Irish consumers were interviewed about their use and experiences of telecommunications in Ireland. This was published in March 2018 (18/23a Consumer Survey) on ComReg website<sup>32</sup>.

124 This survey highlights (Figure 9) that 3% of those surveyed had used a public phone box within the last 6 months, with the highest usage being urban public phone boxes by those within the age group of 54-65.

**Figure 9: Extract from the Ireland Communicates consumer survey 2017**

### Service Use in the Last 6 Months

	Total	Age				Region		
		18-34	35-54	54-65	65+	Urban	Semi-Rural	Rural
	%	% (356)	% (606)	% (235)	% (322)	% (504)	% (511)	% (504)
Public Phone Box	3	4	3	6	2	4	2	2
Home Phone	45	27	43	51	69	45	47	42
Directory Enquiries	19	8	15	28	34	18	19	26
Printed Telephone Book	17	7	14	27	31	15	21	22
Teletext	13	11	13	16	12	12	16	14
Sent Letter/ Postcard	77	64	79	82	82	78	76	70
Received Letter/ Postcard	86	77	87	92	90	86	88	80
Sent/ Received Fax	15	16	19	12	6	16	12	15
Made/ received videocall	42	60	51	28	13	45	37	40

Q.90 In the last six months, have you personally used any of the following products, services or technologies in Ireland?  
 Base: 1,519  
 87



125 ComReg also asked eir whether it had conducted any payphones market research during the period Q3 2014 –Q4 2017. eir confirmed that it had not.

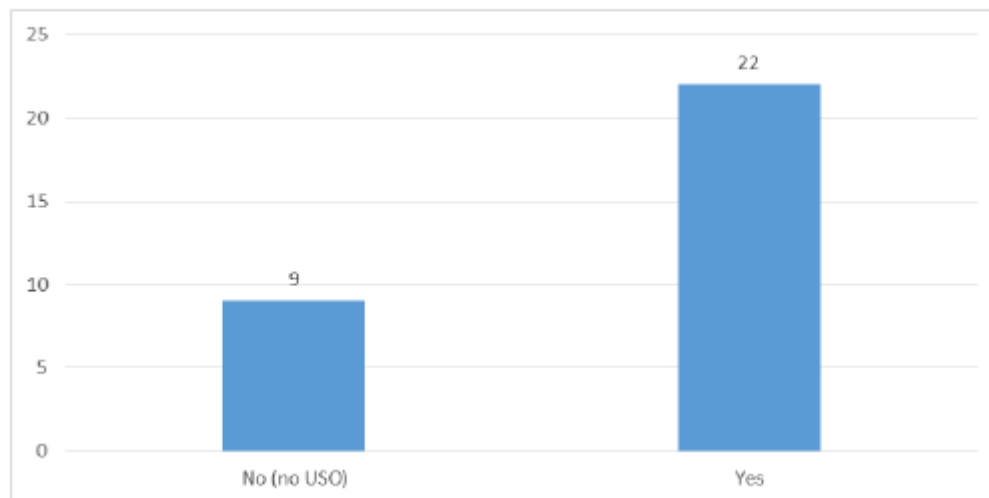
## Public payphone USO – EU

- 126 The existence of a USO for public payphones varies throughout the EU. The BEREC Report “BEREC update survey on the implementation and application of the universal service provisions – a synthesis of the results”<sup>33</sup> 24 February 2017 presents a synthesis of the main results of a survey on the implementation and application of Universal Service provisions within BEREC members. It provides an update to the 2014 internal report on the same issues<sup>33</sup>.
- 127 There are 22 countries where public payphones remain within the scope of the USO (see Figure 10).
- 128 The 9 countries where public payphones are outside the scope of the USO are: Cyprus (2014); Denmark; Finland (from the beginning); France (2014); Latvia (2014); Netherlands (2008), Iceland; Norway (January 2016).

**Figure 10: Are Public Payphones included within the scope of USO? –**

Source: BEREC Report 2017

**Figure 14 - Are Public Payphones in the scope of USO?**



- 129 Portugal has mandated additional public payphone obligations beyond the scope specified at EU level. Public payphones in sites of social interest (hospitals, prisons, schools, airports, railway and bus terminals, courts and citizen bureaux).

<sup>33</sup> The 2014 report synthesises the responses to a questionnaire launched at the request of the European Commission – BoR (14) 95 EC questionnaire on the implementation and application of the universal service provisions, 2 July 2014.

Q. 1 Do you agree with ComReg's preliminary view that there is a continued need for a public pay telephones USO to meet the reasonable needs of end-users?

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## Permissible removals criteria

- 130 Under the permissible removals criteria, the USP may, under certain conditions remove public payphones. The current criteria allows uneconomic payphones which satisfy usage threshold criteria to be removed if eir wishes, as they are no longer mandated under USO.
- 131 In Decision 08/14 ComReg amended the public payphone removal criteria as follows: The USP is permitted to remove a public payphone 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 the focus of 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:
  - iii. 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
  - iv. Average minutes for the previous six months to Freephone numbers and Emergency Services combined is not more than 30 seconds of these minutes;
- or
- v. 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
  - vi. it is requested by a local authority.

- 132 These elements are also reflected in D09/18.
- 133 It provides the flexibility to the USP to remove a public payphone where (1) it is the focus of anti-social behaviour and /or (2) where it is requested by a local authority.
- 134 On average less than 20 public payphones were removed per annum (2014-2017) on the basis of anti-social behaviour or at the request of a local authority.
- 135 eir has previously stated that the permissible removals criteria does not address the issue of inefficient public payphone removal, where the public payphone ceases to be a US public payphone.
- 136 ComReg notes that although it has the power to mandate the provision of public payphones and criteria in respect of their permissible physical removal, the decision on whether to remove a public payphone remains with the USP. This is a commercial decision which is taken by the USP, in which ComReg has no role.

### Notification requirements

- 137 The public payphone removal notification requirements are outlined in Decision D09/18 as follows:
- 138 The USP must notify ComReg eight (8) weeks in advance of any public pay telephone removal.
- 139 This notification to ComReg should contain at a minimum:
- i. Details of the proposed public pay telephone to be removed
  - ii. Proposed date of cessation of service and for removal of public pay telephone
  - iii. Details of which of the above criteria have been met and how
  - iv. 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.
  - v. Usage reports for the relevant six month period, in a format specified by ComReg.
- 140 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.
- 141 Notification should also be posted on the USP's website.

- 142 ComReg receives regular notifications from eir in respect of items (i) to (v). ComReg is of the preliminary view that there is no requirement to amend the current notification requirements to ComReg.
- 143 ComReg has not received any queries or complaints from consumers in respect of the public payphone removal notification procedures.

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## 4 Requirement for a public pay phone universal service obligation

144 Regulation 5 (1) of the Regulations provides that “a *designed undertaking shall ensure that public pay telephone 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.*”

145 ComReg has a number of options available

- Option 1 – Remove the USO
- Option 2 – Impose a USO to maintain obligations set by D09/18 (status quo)
- Option 3 – Impose a USO with an amended USO specification

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## Option 1 – Remove the USO

- 146 ComReg is of the preliminary view that if the public payphone USO designation was removed, eir is likely, over an unspecified transition period, to remove all payphones (both public and private) throughout the country, even if they are being used and may be economic.
- 147 ComReg's information requests of 2018, sought clarity from eir on the following question (amongst other things):
- "In the absence of a designation please provide details of eir's likely commercial future approach to the ongoing provision of (1) public payphones and (2) private payphones."*
- 148 ComReg corresponded with eir between March and July 2018.
- 149 As the specific details of eir's approach are not known, ComReg is of the view that vulnerable end-users and most disadvantaged in society may no longer have access, on the same terms, to service that they currently rely on and use, and may only have access to expensive alternatives.
- 150 ComReg requested eir to clarify and provide more information in respect of eir's approach to the provision of public and private payphones assist ComReg to better understand the counterfactual scenario.<sup>34</sup>
- 151 eir's response (26 July 2018) to the Statutory Information request states that eir does not have a comprehensive set of commercial criteria for retaining/removing public payphones. eir's most important criteria is the cost of maintaining the public payphone base.
- 152 Other commercial factors include revenue generated by the payphones and revenue from the placement of advertisements on public payphone street furniture. The revenue share is less than the cost of maintaining the USO payphone business, and eir intends to review arrangements in the coming months. If the cost of maintenance continues to exceed the revenues generated by the payphone business, which is the most likely outcome, then eir stated that *"it would be commercially rational for eir to seek to remove all public payphones absent the USO designation."*
- 153 ComReg notes that the maintenance cost (outlined by eir) is a shared cost (i.e. both public and private payphones), and not one borne exclusively by public payphones. eir stated in its response that eir's decision making process in respect of its private payphones is independent of whether there is a USO.

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<sup>34</sup> A Statutory Information request, pursuant to Section 13D of the Act, dated 13 July 2018.

- 154 eir's response has specifically acknowledged the existence of vulnerable groups who may have no alternative to make calls other than via a public pay phone. [REDACTED]  
[REDACTED]. eir's response as a *'responsible commercial operator'*, absent of a USO public pay telephones designation, is that eir would engage with the relevant stakeholder [REDACTED].
- 155 eir has provided no indication as to what it would consider as an appropriate 'transition period' to be. There is currently no assurance that, where such an agreement with stakeholders could not be reached [REDACTED]  
[REDACTED] that eir would not proceed to remove public payphones.
- 156 ComReg has no visibility of any engagement eir has had to date with the relevant stakeholders [REDACTED]. ComReg therefore is of the preliminary view that there is a need for an abundance of caution to ensure that the reasonable needs of this specifically identified vulnerable group are met through the USO, absent of any alternative option/process being in place at this time.
- 157 ComReg is of the preliminary view that there is an identified cohort of end-users that appear to have no other means of accessing these services other than via public payphones.
- 158 In any case, if vulnerable users move to using other means the criteria for removal will be met.



165 ComReg is of the preliminary view that, having regard to the analysis conducted and, in comparing the cost of provision of US public payphones with the benefit to end-users of their continued provision, there appears to be a case to maintain a USO, at this time.

## **Option 2 – Impose a USO to maintain obligations set by D09/18 (status quo)**

- 166 Decision 08/14 ComReg decided that the number of USO public payphones in operation (at that time) should be maintained by eir, unless their usage fell below a certain level (usage threshold). Those public payphones whose usage falls below the threshold, are no longer to be identified as Universal Service public payphones, and eir has full commercial freedom in respect of these public payphones. These usage levels ensure that end-users who continue to frequently use public payphones can still have access to them, whilst eir has commercial freedom in respect of public payphones for which there was no longer a reasonable need (based on usage).
- 167 ComReg, conducted a further Consultation (16/43) of the usage threshold for public payphones. ComReg decided that the existing usage threshold regime remained appropriate in all cases, with no change to the threshold status quo<sup>36</sup>.
- 168 Under the current regime (D09/18), the reasonable need of end-users is not determined by the quantity or distribution of payphones throughout the State, but by usage of currently provided US public payphones. If a US public payphone is sufficiently used, the USP must maintain it. The US public payphones which remain continue to be sufficiently used (i.e. above the usage threshold level) and, hence, the reasonable needs of end-users are met.
- 169 The existing obligations protect end-users, and also benefits the USP. It allows the USP to reasonably respond to changes in the market. The USP has commercial freedom to manage public payphones (which fall below the usage threshold) and the associated profitability of its business.
- 170 As outlined earlier the dynamic nature of the existing regime addresses the reasonable needs of end-users while responding to changes in the market.
- 171 D09/18 specifies the public payphone removal criteria under which the USP is permitted to remove a public payphone on a single site where:

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<sup>36</sup> Universal Service – Provision of Public Payphones – Usage Threshold for Removals Decision 16/62, 26/07/16 in July 2016



- i. There is demonstrable evidence that the removal of the public pay telephone is necessary as the public pay telephone concerned is the focus of 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:
  - iii. 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
  - iv. Average minutes for the previous six months to Freephone numbers and Emergency Services combined is not more than 30 seconds of these minutes;
- or
- v. 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
  - vi. it is requested by a local authority.

172 This provides the flexibility to the USP to remove a public payphone where (1) it is the focus of anti-social behaviour and /or (2) where it is requested by a local authority.

173 ComReg notes that although it has the power to mandate the provision of public payphones and set the criteria for the permissible removal, the decision on whether to remove a non USO public payphone remains with the USP. This is a commercial decision which is taken by the USP, in which ComReg has no role.

174 Our analysis shows for 2014-2017 the usage levels of public payphones that were below the usage threshold specified in D09/18, and were no longer US public payphones; and the usage levels of public payphones which either met or were above the usage threshold and were US public payphones (see paragraphs 105 to 108).

175 This demonstrates the flexibility of the current regime in addressing the reasonable needs of end-users while providing a dynamic control which addresses changes in market demands, and enabling the USP to reduce the number of public payphones, if they are not being sufficiently used.

## Option 3 – Impose a USO with amended USO specification

176 ComReg has identified two possible variants surrounding a possible form of a USO, and which are different from the above status quo approach as follows.

### 4.1.1 Option 3a - Define public payphones which must be retained and maintained

177 Paragraph 79 outlines that the majority of public payphone freephone calls are accounted for by three main service types: [ ] % of calls are made using international calling cards; [ ] % of calls are made to reverse charge call-back services; and [ ] % of calls are made to council two help lines [ ]

178 ComReg has considered the merits of defining a designated list of public payphones (based on the aforementioned) as US public payphones. This could be based on a combination of the current US public payphones [ ]

[ ] This has the potential to address the reasonable needs of end-users at a point in time.

179 However, in ComRegs preliminary view, this would not necessarily address any potential changes in the market and would be static, and would not reflect any potential changes in usage over any proposed designation period.

180 To the extent that the current regime is already an effective solution to address the changing reasonable needs of end-users, yet allowing flexibility for the USP, any further modification may be unnecessary and unworkable.

### 4.1.2 Option 3b - Change the current usage threshold

181 Our analysis shows for 2014-2017 the usage levels of public payphones that were below the usage threshold under D09/18), and were no longer US public payphones; and the usage levels of public payphones which either met or were above the usage threshold and were US public payphones (see paragraphs 105 to109). ComReg has also analysed usage thresholds, where calls to the ECAS and Freephone numbers are excluded.

182 ComReg's analysis (based on the available data obtained from eir) illustrates the effectiveness of the usage threshold in addressing the reasonable needs of end-users in a changing public payphone market whilst allowing flexibility for the USP to respond to the market.

- 183 It provides the USP with the relevant flexibility, based on the *actual* usage of currently provided public payphones. If a public payphone is sufficiently used, the USP must retain and maintain it. If usage drops below the threshold the USP's obligations cease in respect of the relevant US public payphone(s). This is dynamic and reflects actual public payphone usage.
- 184 This demonstrates the flexibility of the current regime in addressing the reasonable needs of end-users while providing a dynamic control which addresses changes in market demands, and enabling the USP to reduce the number of public payphones, if it so wishes. Based on this analysis, ComReg is of the preliminary view that the current threshold level remains appropriate.

### ComReg's preliminary position

- 185 ComReg is of the preliminary view that Option 2 represents the optimal option.

Q. 2 The existing obligations protect end-users, and also benefits the USP. It allows the USP to reasonably respond to changes in the market. The USP has commercial freedom to manage public payphones (which fall below the usage threshold) and the associated profitability of its business. Do you agree with ComReg's preliminary view that Option 2 represents the optimal option?

## 5 Designation of Universal Service Provider(s)

### Designation mechanism

- 186 The Regulations require ComReg to designate one, or more, operators to guarantee the provision of the universal services to ensure, where applicable, the entire State is covered.<sup>37</sup>
- 187 Regulation 7 (2) states that: *“The Regulator may designate different undertakings or sets of undertakings to comply with one or more of the obligations, requirements or terms or conditions referred to in paragraph (1) or to cover different parts of the State”*.
- 188 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 the majority of Member States, the incumbent operator provides universal services. In theory, other operators in Ireland may be able and willing to provide this part of the universal service, in all or part of the State and may be able to do so at a lower cost.
- 189 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>38</sup> Other providers in the State may be in a position to provide this part of the universal service, but in order to decide if they are willing and able to do so, they will need specific information about the universal services to be delivered. For example, they may need to know which public payphones are uneconomic.
- 190 Such relevant information has been provided to ComReg in the course of eir’s applications for universal service funding for the period 2010-2015 and through information requests. ComReg’s assessment of eir’s 2010-2015 funding applications has come to the preliminary view that although there is a net cost to eir from the provision of the USO, an unfair burden does not exist for the period 2010-2015.
- 191 eir has also provided ComReg with information in response to information requests in 2018.

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<sup>37</sup> Regulation 7(1)

<sup>38</sup> Regulation 7(3)

## Designation period

### Future scope and designation (if required) of public payphone USO

- 192 ComReg is seeking preliminary views on the future scope (if any) of a public payphone USO after the interim designation period.
- 193 ComReg is seeking expressions of interest in being a public payphone USP in the period after the extension of the current designation period.
- 194 ComReg has considered whether or not it is appropriate to continue to designate a public payphone universal service obligation. ComReg issued a number of information requests to eir in February and July 2018 (See paragraphs 41 and 112)
- 195 ComReg is of the preliminary view that there may be a cohort of the population whose reasonable needs may not be met at this time, absent of a public pay telephones USO, and that a designation may be appropriate to meet the reasonable needs of end-users.
- 196 Accordingly ComReg is of the view that a public pay telephones universal service obligation designation period of 2 years is appropriate.
- 197 The designation period chosen will depend on the nature of the obligation imposed. ComReg is of the view that where the obligation is dynamic a longer designation period would be appropriate. Where the reasonable needs of end-users (in terms of usage) fall below the usage threshold the obligation ceases to be applicable. This may occur before the end of the proposed designation period.
- 198 ComReg is of the preliminary view that the next designation period should be for a period of 2 years, unless expressions of interest in providing the service are received or submissions are made which alter ComReg's view.
- 199 ComReg is proposing a designation period of 2 years, from xx October 2018 to xx October 2020.

Q. 3 Do you agree that, if there is a need for a new public pay telephones USP designation, the next designation period should be 2 years? Please provide reasons for your view.

## Designation for the entire State

- 200 ComReg has considered whether or not it is appropriate to continue to designate a public payphone universal service obligation to cover the entire State.

- 201 End-users are dispersed throughout the State. To ensure that the reasonable needs of end-users for public payphones are met, a USO designation (if any) must be for the whole of the State.
- 202 The obligation only arises where end-users' reasonable needs occur. If there is no need for a public payphone USO, then either (1) no end-users' reasonable needs exist; or (2) where they exist, they are below the usage threshold. The obligation to satisfy the reasonable needs of end-users only crystallises where public payphone usage is above the threshold. Accordingly while the designation is required for the whole of the State, it only crystallises when and where the reasonable needs of end-users occur (in line with the usage threshold).
- 203 In light of the aforementioned, eir's likely action (paragraph 197) and the current end-users' public payphone usage (i.e. reasonable need), ComReg is concerned that absent of a public payphone universal service designation that the reasonable needs of end-users would not be met.
- 204 Unless expressions of interest are received from undertakings for different geographic areas, ComReg is of the preliminary view that a public payphones designation for the entire State (whether or not it is delivered by different USP(s)), remains a requirement for the next designation period.
- 205 ComReg will consider whether separate designations for separate areas are necessary if expressions of interest are received for separate geographic areas.
- 206 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. ComReg is of the view that geographically averaged prices should apply throughout the State.

Q. 4 Do you agree or disagree with ComReg's preliminary view that a public payphone universal service designation, should be for the entire State? Please provide reasons for your view.

## Universal Service Provider(s)

207 In principle, no undertaking is excluded from being designated to provide the public pay telephones or other public voice telephony access points. This consultation invites potential providers to express an interest in being designated with respect to public payphones<sup>39</sup> for the proposed next two years from October 2018 to October 2020. Any expressions of interest should be accompanied by the following:

- i. An outline of technical competence and expertise in providing public payphone service.
- ii. An outline as to how an proposed obligation, will be fulfilled, including a full description as to how the service will be provided
- iii. Relevant retail prices
- iv. Indicative timelines to commence the provision of public payphones

208 If expressions of interest are received, ComReg will consider such proposals and possible further steps, which may include further consideration of the designation of USPs and any potential designation period and other aspects proposed in this consultation, and in the response to this consultation.

209 Once responses to the Consultation and draft Decision have been carefully considered ComReg then will issue a Response to Consultation and Decision

210 Absent any expressions of interest, ComReg is of the preliminary view, due to its current payphone market position, that eir should be designated to continue to provide universal service payphones in accordance with the criteria specified by ComReg.

Q. 5 Do you agree or disagree with ComReg's preliminary view that absent any expression of interest eir should be the USP for public payphones? Please provide reasons for your view

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<sup>39</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.

## 6 Draft Decision Instrument

### 6.1 STATUTORY FUNCTIONS AND POWERS GIVING RISE TO DECISION

6.1.1 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 ( as amended);
- 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 7(3) and Regulation 5(1) and Regulation 5(2) of the Universal Service Regulations;
- iv. Having regard to Regulation 8(1); Regulation 8(2) and Regulation 8(3) of the Universal Service Regulations;
- v. Having regard to the analysis and reasoning set out in ComReg document No. **xx/xx**.

### 6.2 DEFINITIONS:

6.2.1 The following words and phrases shall have the following meaning unless the context otherwise requires:

“**D09/18**” means ComReg Document 18/67 D09/18 which is made pursuant to, inter alia, Regulation 7(1) of the Universal Service Regulations.

“**Effective Date**” means the date this Decision Instrument becomes operative and fully effective as specified in Section 6.4 of this Decision Instrument;

“**eir**” means Eircom Limited and its subsidiaries and any related companies, and any undertaking which it owns or controls or any undertaking which owns or controls Eircom Limited, its successors and assigns and including agents, contractors or sub-contractors of any of the latter. For the purposes of this Decision Instrument the terms “**subsidiary**” and “**related company**” shall have the meanings ascribed to them in the Companies Act 2014;



**“Number of hours Out of Service”** means the number of Hours captured by the Eircom system indicating that the Public Pay Telephone is non-operational

**“Number of Hours with Limited Service”** means the number of Hours captured by the Eircom Remas system indicating that the Public Pay Telephone is not in full working order but it does provide a limited service, e.g., the Public Pay Telephone may accept call cards as a means of payment but it is unable to accept further coins or the coin entry slot is jammed;

**“Public Pay Telephone”** means a telephone available to the general public for use of which the means of payment may include coins credit cards, debit cards or prepayment cards, including cards for use with dialling codes;

**“Public Pay Telephone in Full Working Order”** means a public pay telephone in respect of which a Customer is able to make use of the services advertised as normally available;

**“Public Pay Telephone Working Order Calculation”** means the calculation set out in Schedule 1.

**“The Act”** means the Communications Regulation Act 2002 (as amended)

**“The Framework Regulations”** means the European Communities (Electronic Communications Networks and Services) (Framework) (Regulations), S.I. 333 of 2011.

**“The Universal Service Regulations”** means the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights regulations), S.I. 337 of 2011.

6.2.2 References to European Union legislation or to primary legislation or secondary legislation shall be construed as references to that legislation as amended from time to time.

6.2.3 Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.

6.2.4 Examples shall not be construed to limit, expressly or by implication, the matters they illustrate.

6.2.5 Other terms that are used in this Decision Instrument shall have the same meaning as when they are used in the Universal Service Regulations and the Framework Regulations, unless the context otherwise admits or requires.

### **6.3 SCOPE AND APPLICATION**

6.3.1 This Decision Instrument is binding upon eir [or a new USP following expressions of interest]

### **6.4 EFFECTIVE DATE AND DURATION**

6.4.1 This Decision and Decision Instrument is effective from xx October 2018 to xx October 2020 or until such a date as ComReg, having conducted a review of the current designation of eir [or a new USP following expressions of interest] as the USP for public pay telephones, decides to make a new designation or to make no designation.

### **6.5 MAINTENANCE OF OBLIGATIONS:**

6.5.1 Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements contained in decision notices and directions made by ComReg applying to eir [or a new USP following expressions of interest] and in force immediately prior to the Effective Date shall continue in force and eir [or a new USP following expressions of interest] shall comply with same.

### **6.6 SEVERANCE:**

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

### **6.7 CONFLICT:**

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

### **6.8 DESIGNATION OF UNIVERSAL SERVICE PROVIDER**

#### **6.8.1 Public Pay Telephones**

6.8.2 In accordance with Regulation 7 of the Regulations, eir [or a new USP following expressions of interest] 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.

6.8.3 The USP shall do the following:

- i. Ensure that public pay telephones are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other access points, accessibility to disabled end-users and the quality of services by retaining and maintaining the current USO public pay telephone except in accordance with the criteria for permissible removal specified in section 7.6 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;

#### **6.8.4 Geographically Averaged Pricing**

6.8.5 As provided for by Regulation 8 (3) of the Regulations, eir [or a new USP following expressions of interest], as the USP, shall apply geographically averaged prices throughout the State for the services referred to in this Decision.

## **6.9 PERMISSIBLE REMOVAL OF PUBLIC PAY TELEPHONES**

### **Criteria for permissible removals**

6.9.1 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 (Schedule 1) has been low, indicating an absence of “reasonable need” in that location, where “low” is considered to mean:
- iii. 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
- iv. Average minutes for the previous six months to Freephone numbers and Emergency Services combined is not more than 30 seconds of these minutes; or
- v. 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
- vi. it is requested by a local authority.

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

### **Notification requirements**

6.9.3 The USP must notify ComReg eight (8) weeks in advance of any public pay telephone removal

6.9.4 This notification to ComReg should contain at a minimum:

- i. Details of the proposed public pay telephone to be removed
- ii. Proposed date of cessation of service and for removal of public pay telephone
- iii. Details of which of the above criteria have been met and how
- iv. 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.
- v. Usage reports for the relevant six month period, in a format specified by ComReg.

6.9.5 The USP must post a notice on the public pay telephone for a minimum period of six (6) weeks in advance of the proposed removal, to clearly inform users of the intention to remove the public pay telephone and include the proposed date for removal of that public pay telephone.

6.9.6 Notification should also be posted on the USP's website.

**CHAIRPERSON**

**THE COMMISSION FOR COMMUNICATIONS REGULATION**

**THE xx<sup>th</sup> DAY OF xx 20xx**

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## Schedule 1: Public payphone working order calculation

For the purposes of monitoring QoS in respect of public payphones and in particular to identify the number of public payphones which are in working order in any given time period the following calculation is used:

### Public Pay Telephones in Full Working Order

This figure shall be collected by eir and calculated for each Data Collection Period as the portion of Public Pay Telephones in Full Working Order for whole Hours. The figure for each Data Collection Period shall be calculated as follows:

#### .Proportion of Public Pay Telephones in Full Working Order (%) =

$$\frac{100 - (\text{Number of Hours out of service} + \text{number of hours with limited service})}{(\text{Average no. of Public Pay Telephones for the Data Collection Period}) \times (\text{No. of days in the Data collection period}) \times 24 \times 100}$$

The average number of Public Pay Telephones for the Data Collection Period is also provided by eir to ComReg for publication.

# 7 Draft Regulatory Impact Assessment (“RIA”)

## 7.1 Introduction

211 The analysis presented in this section represents ComReg’s draft regulatory impact assessment (“RIA”). It sets out ComReg’s preliminary assessment of the likely effect upon stakeholders and competition, of ComReg exercising its discretion as to whether or not to designate a USP(s) for provision of public payphones and, of imposing any associated USO measures.<sup>40</sup>

212 This draft RIA forms part of ComReg’s overall analysis of the continued need (or absence of the need) for reasonable access to public payphones under a USO beyond October 2018 having regard to the evolution of the electronic communications market and the market with respect to payphones.

213 The purpose the draft RIA is to help identify whether ComReg’s proposed regulatory approach is likely to have the desired impact in terms of promotion of the interests of end-users and protecting end-user welfare by ensuring that citizens can benefit from reasonable access to public payphones.<sup>41</sup> In the event that a USO is considered necessary, the draft RIA helps to consider:

- I. An optimal approach in order to ensure the USO responds to end-users’ reasonable needs and;
- II. The various available options to ComReg concerning the potential form of any future obligation(s); and
- III. Which undertaking or undertakings could be designated and for how long.

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<sup>40</sup> Under Regulation 7(1) of the Universal Service Regulations, ComReg may designate one or more undertakings to comply with an obligation or requirement referred to in Regulation 5 (1) of those Regulations, which relates to public payphone services.

<sup>41</sup> Pursuant to the Communications Regulation Acts 2002 to 2011, as amended, ComReg’s key statutory objectives in relation to the provision of electronic communications services (“ECS”) are to (i) Promote competition, (ii) Contribute to the development of the internal market, and (iii) Promote the interests of users in Ireland, as well as within the European Union.

- 214 ComReg's aim in conducting this draft RIA is to ensure that its proposals are appropriate, proportionate and justified in light of the analysis conducted, having regard to its objective regarding reasonable access (currently based on usage)<sup>42</sup> to public payphones, whilst also mindful of the principle of proportionality. ComReg aims to establish an appropriate balance between delivering adequate provision of public payphones to meet the reasonable needs of end-users while enabling a USP to respond to changing market circumstances.
- 215 As part of the process of selecting an appropriate regulatory approach, ComReg sets out the key policy issues and objectives below, followed by an assessment of potential regulatory options and their respective probable impacts for different stakeholders and competition. Our approach is consistent with the RIA Guidelines<sup>43</sup> and, takes into account the "Better Regulation" programme<sup>44</sup> and international best practice (for example, considering developments about RIA published by the European Commission<sup>45</sup> and the OECD).
- 216 ComReg is now conducting its draft RIA having regard to the Regulations and its obligations under and Section 13(1) of the Act which requires us to comply with Ministerial Policy Directions.<sup>46</sup>

## 7.2 Step 1 – Describe the policy issue and identify the objectives

- 217 In accordance with Regulation 5(4) of the Regulations, and having regard to D08/14 and Decision 16/62<sup>47</sup> and D09/18, ComReg is assessing whether a USO should continue to apply to help ensure an adequate provision of public payphones to meet the reasonable needs of end-users in transition away from traditional services.
- 218 ComReg is cognisant of its statutory objectives, as set out in Section 12 (1) (a) (iii) of the Act, including the promotion of interests of end-users of services and protecting end-user welfare.

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<sup>42</sup> In accordance with Decision D09/18.

<sup>43</sup> ComReg, "Guidelines on ComReg's Approach to Regulatory Impact Assessment", [ComReg Document 07/56a](#), 10 August 2007 (the "RIA Guidelines").

<sup>44</sup> Department of the Taoiseach, "Regulating Better", January 2004. See also "Revised RIA Guidelines: How to conduct a Regulatory Impact Analysis", June 2009, [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).

<sup>45</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Second strategic review of Better Regulation in the European Union", COM(2008) 32 final 30.01.2008, p. 6.

<sup>46</sup> Ministerial Policy Direction made by the Minister of Communications, Marine and Natural Resources on 21 February 2003. It requires that, before deciding to impose regulatory obligations on undertakings, we must conduct a RIA in accordance with European and international best practice and otherwise in accordance with measures that may be adopted under the "Better Regulation" programme.

<sup>47</sup> See ComReg Decision as regards its review of the usage threshold level, ComReg document 16/62 Universal Service – Provision of Public Payphones – Usage Threshold for Removals, July 2016.



- 219 Universal service is an important measure of end-user welfare as it provides a safety net that ensures certain basic fixed line services are available at an affordable and uniform price to all citizens and consumers 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 in society.
- 220 Services provided under the USO include reasonable access to voice telephony services from public payphones. ComReg's research shows that circa 3% of all adults 18+ have reported recently using a public payphone (see Figure 12).<sup>48</sup> The role of the public payphone while diminished remains important, for a cohort of customers.
- 221 Public payphones are sometimes an essential service, for those without a landline or mobile phone or, where using a mobile phone is not possible. In particular, where there are disadvantaged and vulnerable end-users who still rely heavily on the public payphone as a gateway to public services, such as by using freephone number and making emergency calls.
- 222 As set out in Figure 8 eir currently has [ ] public payphones. Under the current regime eir has the commercial freedom to reduce the number of public payphones if it so wishes in line with the usage thresholds as set by D09/18.
- 223 ComReg's concern is that, if left to the operation of market forces alone, an adequate provision of public payphones to meet the reasonable needs of end-users may not be guaranteed. ComReg is cognisant of eir's responses to ComReg's information requests regarding its commercial approach to the provision of public and private payphones in the absence of USO, as set out at paragraphs 117 to 131; and eir's response to Consultation 18/57.<sup>49</sup>
- 224 In these circumstances, and where these services are valued and needed at this time, the requirements of the Regulations may not be met. As set out at Article 8 of Directive 2002/21/EC<sup>50</sup> and the Regulations, ComReg must ensure all reasonable, proportionate measures to promote the interests of citizens by ensuring that they have access to universal service at an affordable price.
- 225 ComReg's policy objectives for this review are threefold:

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<sup>48</sup> ComReg consumer ICT survey 2017, slide 87.

<sup>49</sup> See <https://www.comreg.ie/publication/provision-of-public-pay-telephones-universal-service-interim-designation-submissions-to-consultation-18-57/>

<sup>50</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as amended ('Framework Directive').

- I. To ensure that end-users have reasonable access to public payphones and that consumers are protected;
- II. To ensure that the requirements of the Regulations (transposing the Universal Service Directive) are met; and
- III. To ensure that any USO measure is implemented in an effective manner, minimising the potential costs and disruption to end-users and the USP.

226 In light of the general reduction in use of public payphones, ComReg is considering how to continue to strike an appropriate balance between the public payphones required to meet the reasonable needs of end-users, while enabling the USP to adapt to changing technological and market conditions.

227 ComReg's aim is to ensure that any USO requirement keeps pace with demands and technology changes such that the benefits of USO reach those who really need them.

228 Notwithstanding existing USOs, the draft ECS Directive is currently under review. ComReg will continue to closely monitor ongoing developments at European level and will revise and finalise its RIA in light of the status at the time of its Decision, as appropriate.

### **7.3 Step 2 – Identify and describe the potential regulatory options**

229 ComReg is considering the following options which may be adopted for the purpose of achieving the above stated objectives:

1. Remove the USO and rely on normal market conditions to meet the reasonable needs of end-users for public payphones (Option 1, no USO): or
2. Impose a USO to maintain same obligations set in D09/18 (Option 2, the status quo)
3. Impose a USO but amend USO specification (Option 3)

### Option 1: No Payphone USO

- 230 The delivery of basic universal services would be left to the operation of market forces alone. No undertaking would be designated for the purposes of ensuring reasonable access to public payphones. As a result, the current USO would no longer apply. Essentially, eir would no longer be required to ensure an adequate provision of public payphones to meet the reasonable needs of end-users. Existing USO public payphones within the State would be capable of being removed even if being used and without prior notification.
- 231 This counterfactual scenario should enable a better understanding of the importance of any future USO for public payphones. However, in the event that a USO is considered necessary, ComReg considers possible ways (options 2 and 3), in which a USO could be implemented.

### Option 2: the status quo

- 232 A USO would be imposed to ensure reasonable needs of end-users for access to public payphones, through the retention of the same obligations in place hitherto for the last 4 years and under D09/18, *inter alia*, that a USP would be required to ensure public payphones are provided to meet the reasonable needs of end-users based on usage, including the ability to access a DQ service and call emergency services. Essentially, the status quo would be maintained with no change in ComReg's approach to keeping a USO during any designation period. eir would continue to provide public payphones that remain used (according to the criteria set) and associated voice calls at prices that are uniform throughout the State.

### Option 3: Amend USO specification

- 233 Under this option a USO would be imposed, but the specification would change from the obligations in place hitherto (the status quo approach). In this respect, there are a number of potential variants surrounding this option:
- a. Define the public payphones which would be retained and maintained;  
or
  - b. Change the usage threshold specified under D09/18.
- 234 ComReg could consider replacing the status quo approach with a more specific regulation (sub option 3a). For example, ComReg could seek to define a number of public payphones (e.g., at social need locations /Freephone etc.), which must be retained and maintained.

- 235 Alternatively, ComReg could consider amending the more general requirement of a usage threshold (sub-option 3b). ComReg has been monitoring the impact of the current usage threshold levels. On this basis, ComReg could increase/decrease the current usage threshold level should it consider it appropriate to meet the reasonable needs of end-users of public payphones at this time.
- 236 The potential effect on stakeholders of imposing these different regulatory options are considered below.

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## 7.4 Step 3 – Determine the impacts on stakeholders and competition

237 In order to determine the impact on stakeholders and competition, each of the potential options are assessed by comparing their impact against what would happen if the option was not implemented. This is set out below.

### Option 1: Remove the USO

238 Removing the USO may in appear to be an efficient response to the technological and social changes in the electronic communications market. As set out in paragraphs 44 to 47, the payphone business is in relative decline. This trend of low demand or usage of payphones (urban and rural) is mainly due to the wide availability of mobile phones, and non-USO payphones (many shopping centres now open longer). Additionally, SOS phones are also available throughout the country. Even where an end-user may have otherwise chosen to use a payphone, the end-user may not necessarily be near a public payphone and therefore may choose an alternative means to communicate.

239 A benefit accrues to eir where, absent the USO, it would have complete freedom to respond to changing commercial circumstances, could cease providing payphone and, achieve possible cost savings (as set out at paragraphs 164 and 165), eir has claimed a USO net cost in respect of public payphones USO). As technically these public payphones would no longer be a USO cost, any potential for a net cost claim is removed. There would be no impact in respect of sharing of any potential unfair burden, if established, which would ultimately be to the benefit of industry.

240 In light of the trends set out above, competition for USO public payphones is an unlikely future prospect. eir is the only USP of payphones since the introduction of the USO. The potential effect of implementing this option is therefore likely to be largely competition neutral.

241 With respect to potential wider benefits to society, consumers living in areas where public payphones have become the location for anti-social behaviour may benefit from their removal.

242 However, the cost of withdrawing the public payphone USO at this time is that, if left to the market alone, based on eir's statements, there is a risk that existing USO public payphones (in addition to private payphones) would be ceased and removed depending on eir's commercial incentives. As set out above, eir does not have an operational plan for removal of payphones and, hence, the specific details of eir's approach is yet unknown.

- 243 Where the universal service available to end-users is not guaranteed, yet the services are valued and needed at this time, removing USO could result in a risk of detriment to certain end-users who may no longer have reasonable access to public payphones that they currently rely on and use and, may only have access to expensive alternatives.
- 244 Public payphones can often provide a valuable service to the disadvantaged and vulnerable cohort of society, helping to facilitate their ability to access basic services, such as by making calls to public helplines (Freephone), and /or the emergency services.
- 245 Although the trends set out in section 4 highlight a general decline in the payphone business, the public payphone can be a useful means to communicate in certain circumstances. Mobile and other alternatives may not act as a substitute for public payphones in all cases. For some people, who don't have any kind of phone of their own (e.g. the most vulnerable in society, such as, the homeless), public payphones can often be perceived to be a lifeline.
- 246 Having regard to the latest data which eir has provided to ComReg, calls continue to be made from payphones (primarily freephone calls), many of which are to helplines. The nature of calls to freephone numbers means that the calls may be of a sensitive nature and the calling party may have no other available method, or not want anyone to know the call has been made. Some end-users may still prefer the privacy of using a public payphone. Additionally, public payphones, in certain locations, appear to be a necessary resource for end-users in need of emergency assistance. [REDACTED].
- 247 Another potential impact of withdrawing the public payphone, is that, eir may lose revenue (calls, PAC, freephone and advertising) and the brand benefit of having its logo displayed on phone boxes throughout the country associated with the provision of payphones.
- 248 Having regard to the importance of USO as a measure of end-user welfare and, having regard to the counterfactual scenario, ComReg, is of the preliminary view that, on balance, the overall net impact of a complete withdrawal of USO at this time would likely be negative on end-user welfare. This approach would not ensure end-users are protected *inter alia* that the reasonable needs of end-users are met with respect to public payphones. There would likely be detriment to the most vulnerable in society who most likely continue to benefit from a safety net in the transition away from traditional services. Hence, absent a USO, there is a risk that the requirements of the Regulations would not be met.

249 ComReg recognises that the payphone business would appear in general decline, nonetheless, public payphones have an important societal benefit. In these circumstances, and where the possible cost to a USP is unlikely to be unduly burdensome, there appears to be a case to keep in place a USO safety net to help maintain end-user welfare in the medium term (which is consistent with European benchmarks) demonstrates that at end of 2017 there are 22 countries where public payphones remain within the scope of USO in 2017).

250 The following sections set out, in the event a USO is considered necessary, the advantages and disadvantages of different options in relation to the potential nature of any USO requirement, as compared to the counterfactual (Option 1 above).

### Option 2: Maintain Existing Obligations

251 This option considers that an adequate provision of public payphones to meet the reasonable needs of end-users is not guaranteed under normal commercial circumstances. As a result, at least for some end-users, there may be an ongoing reasonable need for access to public payphones under a USO.

252 Where the services are valued and needed at this time, the status quo approach would be expected to maintain end-user welfare because:

- As noted previously, public payphones continue to provide a universal service to end-users throughout the State and, therefore, are of benefit to society.
- Primarily disadvantaged and vulnerable end-users have a reasonable need to use public payphones and will continue to have access to public payphones and access to voice services from public payphones when necessary for calling ECAS, and other valued services.
- It protects end-users from a blanket removal of public payphones and based on a usage threshold provides a reasonable number of working public payphones where they're most used and needed. Under the current regime, the public payphones which would remain continue to be sufficiently used (i.e. above the usage threshold level) and, hence, the reasonable needs of end-users are met.

253 The USP also benefits under the current regime, for example:

- The current usage threshold level provides a dynamic approach. This provides a USP with the flexibility to adapt to the evolving end-users needs.

- Under the dynamic approach, eir has commercial freedom to manage public payphones which fall below the usage threshold and the profitability of its business. Based on the threshold level, paragraphs 103 to 107 sets out the USO public payphones that were permitted to be removed.
- Where usage falls below the threshold level, and where the USP commercially decides to rationalise the number of public payphones, it may do so through a clear removals process (without the need for a complex engagement process).<sup>51</sup>
- A reducing base of public payphones may result in cost savings, such as, decreased maintenance costs set out above.
- The USP may also benefit from retaining any revenue associated with the provision of public payphones (voice calls, freephone; PAC and advertising)<sup>52</sup> and, having its brand on those public payphones which remain, off-setting costs. As regards eir's 2014 – 2015 USO funding application, it was estimated that revenue of [€██████████] was gained by eir's ability to advertise on public payphones (see paragraph 71 to 80).

254 In light of evolving payphone trends set out above, competition for USO public payphones is an unlikely future prospect. The potential effect of implementing this option is therefore likely to be largely competition neutral.

255 Where a public payphone is the focus of anti-social behaviour, or where a Local Authority requests its removal, D09/18 allows the USP to remove these public payphones which may result in a benefit the Local Authorities and to society.

256 As regards potential costs of the status quo approach, it may be considered that some end-users may be negatively affected by the removal of certain public payphones, in the event that the specified usage thresholds are not at this time most appropriate. In those circumstances, the specification would change from the obligations in place hitherto in light of evolving technological and social developments.

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<sup>51</sup> D08/14 provided a clear removals regime, having removed the need for a public consultation requirement.

<sup>52</sup> According to eir response to ComReg Information Request of 13 July 2018, among other things, commercial factors eir considers may include revenue generated by the payphones and revenue from the placement of advertisements on public payphone street furniture.



- 257 As compared to the counterfactual, a USP would incur costs associated with the provision of the USO public payphones that are uneconomic. In the event that ComReg determined an unfair burden of the USO on the USP, there would be a potential cost impact in respect of sharing of any unfair burden associated with USO services on industry.
- 258 Based on the assessment set out above ComReg is of the preliminary view that, on balance, maintaining a USO broadly consisting of the same approach that has been in place for the previous 4 years, would result in an overall net welfare benefit. The reasonable needs of end-users will likely continue to be met, which helps ensure end-user welfare. The cost of this solution is unlikely to result in a disproportionate cost burden on the USP where under the dynamic approach a USP may choose not to retain certain current payphones if it so wished, while being required to retain certain others.
- 259 Overall, the dynamic approach under D09/18 is a workable and cost effective solution. It likely strikes an appropriate balance between the USP's obligation to retain a number of public payphones in accordance with the usage threshold to meet the reasonable needs of end-users and, any potential cost burden imposed in the USP.

### **Option 3: Impose a USO but amend USO specification**

- 260 ComReg has identified two possible variants surrounding a possible form of a USO, and which are different from the above status quo approach as follows:

#### **Option 3a: Define public payphones which must be retained and maintained**

- 261 As usage varies substantially by public payphone (some have significant usage; others have little or no usage), this approach may represent a more targeted and potentially efficient solution to the extent that it seeks to address both the reasonable needs of end-users, while mindful of any regulatory burden on the USP.

- 262 Possibly a USP may consider such an approach as a less workable or a less cost effective solution compared to alternatives. For example, this approach would be static (i.e. defined at a point in time) and would not therefore reflect any changes in usage over the designation period. Accordingly, it may restrict a USP's flexibility to adapt to evolving end-users needs within a designation period. Moreover, a set of rules would need to be established to define which public payphones would be retained and maintained.<sup>53</sup> To the extent that current obligations are an effective solution, any modification may be unnecessary and potentially impose additional costs and administrative burdens on a USP.
- 263 Even if an individual public payphone has usage above the current threshold level, these would still be classified as commercial payphones. This would arise, where the amended USO consists of a requirement to only retain and maintain specified public payphones possibly, in particular areas. Where public payphones would then be removed, end-users with a reasonable need to make calls from those public payphones and in those locations, would then need to find alternative means of making calls which may be more expensive.

### **Option 3b: Change the usage threshold levels set under D09/18**

- 264 The current provision of public payphones throughout the State may not meet the reasonable needs of end-users. This may require modifying the current specified usage thresholds (D09/18). This may assist in ensuring that any applicable threshold level is set most appropriately for future years, as relevant. It may be considered as a more efficient potential solution compared to the current approach.
- 265 There is a risk that if current usage threshold level is not amended, and public payphone usage declines below that levels, public payphones may become more uneconomic and lead to an increase in the direct net cost claimed as part of the USP's USO funding application. eir appear to have made a commercial decision to retain the majority of public payphones so far, notwithstanding that a significant number of the existing public payphones have usage below the threshold level specified. Accordingly, increasing the threshold level would seem unnecessary at this time.
- 266 Increasing the threshold to a level which does not take sufficient account of actual (low) use of public payphones would have a similar effect to removing the USO, and as set out above, to the detriment of the vulnerable and the reasonable needs of those particular end-users. Therefore, ComReg's above stated objectives would not be met.

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<sup>53</sup> In this respect, the following factors (amongst others) could be considered: call volumes and call types made from the relevant public payphones; the presence of other payphones in the vicinity Incidences of vandalism.

- 267 A reduction in the current usage threshold level may benefit end-users where it would provide an increase in reasonable access to public payphones. However, such an approach may not be an effective implementation of a USO where public payphones usage continue to decline, and where the dynamic approach has proved to date to provide a sufficient safety net.
- 268 The USP may benefit from any associated net cost reducing more rapidly over time, than if the current usage threshold was maintained.
- 269 To the extent that the current regime is an effective solution, change in the specification away from the status quo approach may be unnecessary and may impose an additional cost and administrative burden.
- 270 In summary, imposing a USO consisting of a form under Option 3 variants (a - b), may result in an overall net welfare benefit.
- 271 Changing the form of USO away from arrangements in place hitherto would likely bring a range of benefits to end-users and industry. Broadly, it can help ensure that:
- End-user welfare is maintained where it helps mitigate the identified end-user protection concerns, as set out above;
  - It would protect end-users from a blanket removal of public payphone, thus helping to ensure that the USO meets the reasonable needs of end-users, if they are not already being met by the market;
  - the USO evolves and responds to the reasonable needs of end-users. The continued decline in public payphone usage, together with the availability of other means to make calls (e.g., mobile phones, SOS phones and non-USO payphones) may be indicative that an amendment of the existing permissible removal criteria may be warranted;
- 272 A USP would incur some costs for the provision of a payphones USO. However, for the reasons set out above, changing the specification would likely to result in a solution that is not more burdensome on a USP(s) than is necessary and, any regulatory burden may be lightened where it allows for a lower removal threshold for public payphones. As any net cost associated with USO would likely reduce over time, a modified USO specification is unlikely to result in a disproportionate cost burden for the USP or industry.

## 7.5 Step 4 – Assess the impacts and choose the best option

- 273 Having specific regard to the counterfactual scenario (Option 1) and preliminary reasoning to designate a USP for provision of a public payphone USO, a complete removal of USO at this time would likely result in end-user detriment, the reasonable needs of end-users may not be met.
- 274 Vulnerable end-users and most disadvantaged in society may no longer have access, on the same terms, to service that they currently rely on and use, and may only have access to expensive alternatives. Obligations in place hitherto over the last 4 years and subsequently under D09/18 (previously up to June 2018 D08/14) have accrued benefits to those who valued and used the universal service. ComReg considers that under the USO, the adequate provision of public payphones to meet the reasonable needs of end-users provides a valuable service to vulnerable users in society in transition away from traditional services. On balance, having regard to evolving technological and social developments and, because of the impact on end-users absent a USO, removing the USO (Option 1) at this time would seem premature.
- 275 For the reasons set out above, the continued application of a USO at this time is objectively justified and proportionate as this safety net helps ensure the reasonable needs of end-users regarding access to public payphones are protected.
- 276 There are, in the event of a USO designation, a number of possible ways (as set out under Options 2 and 3) to implement such a USO. In order to help identify the most optimal regulatory approach, the advantages and disadvantages of different options in relation to the potential nature of any USO measure follows, as compared to the counterfactual scenario.
- 277 Each of the Options 2 and 3, as compared to the counterfactual, will likely result in an overall net welfare benefit in the immediate term. Each may continue to provide reasonable access to public payphones. Accordingly, each of these approaches would, to a different extent, address end-user protection concerns for the ‘at risk’ end-user. Any cost burden incurred by the USP in respect of each of these options would, on balance, be out weighted by the benefits to end-users and society.
- 278 The advantage of status quo approach, Option 2, is that, it is dynamic and can evolve with changing national circumstances. Overall, ComReg is of the preliminary view that keeping in place the same obligations in place hitherto for the last four years would likely strike an appropriate balance between the number of public payphones that meet the reasonable needs of end-users and, the USP’s commercial freedom. As set out above, under the dynamic approach, a USP may choose not to retain certain current payphones if it so wished, while being required to retain certain others.

- 279 An advantage of Option 3 is that, an amended USO specification may help ensure that any USO evolves with technological and social developments in a more targeted way. For example, Option 3a would potentially allow for defining which public payphones would remain and be maintained for the duration of any designation. Such an approach could establish an appropriate balance between delivering adequate *local* provision (i.e. meeting the reasonable needs of particular end-users) while enabling the USP to respond to changing commercial circumstances. However, the main disadvantage ComReg sees with Option 3a is that it would be static and would not take into account any changes in public payphone usage within a designation period. In this light, when compared with Option 2, it may be perceived as a less flexible solution, possibly imposing more complexity or cost to operate over time.
- 280 Option 3b may be appropriate in the interest of end-users of public payphones where any applicable threshold level would be set more appropriately for the immediate future. However, given the effectiveness of the current regime, Option 3b may impose an additional cost and administrative burden on a USP. Importantly, the dynamic nature of the current regime which is based on usage, helps ensure that the USO can adjust to reflect the reasonable needs of end-users. Therefore, any proposal to modify the USO specification by way of a decrease in the usage threshold for public payphones would not appear necessary at this time.
- 281 The choice between implementing Options 2 and 3 therefore depends on which of these ComReg considers as the most appropriate and proportionate option to achieve the above stated policy objectives. As set out above, ComReg's objective for this review, amongst others, is to ensure that any USO measure is implemented in an effective manner, minimising the potential costs and disruption to end-users and to the USP(s). ComReg is cognisant that any USO solution, if required, is not more burdensome than necessary.
- 282 Having regard to the analysis conducted and, in the event that a USO should continue to apply, ComReg, considers on a preliminary basis that, on balance, Option 2 is likely to provide the most optimum safety net for end-users of payphones at this time. The continued gradual decline of public payphones based on a usage threshold protects end-users in an effective manner and, in a way that helps ensure that the reasonable needs of end-users are met, without being unduly burdensome on the USP. Option 3 would appear not to provide additional welfare benefits over Option 2. Accordingly, Option 2 is the most optimal approach to this matter at this time and should be implemented.
- 283 ComReg will review and fully take into account all responses it receives from stakeholders in relation to the options and proposals in this consultation before coming to a final RIA and decision.

Q. 6 Do you agree or disagree with ComReg's draft assessment of the impact of the proposed options? Please set out reasons for your answer.

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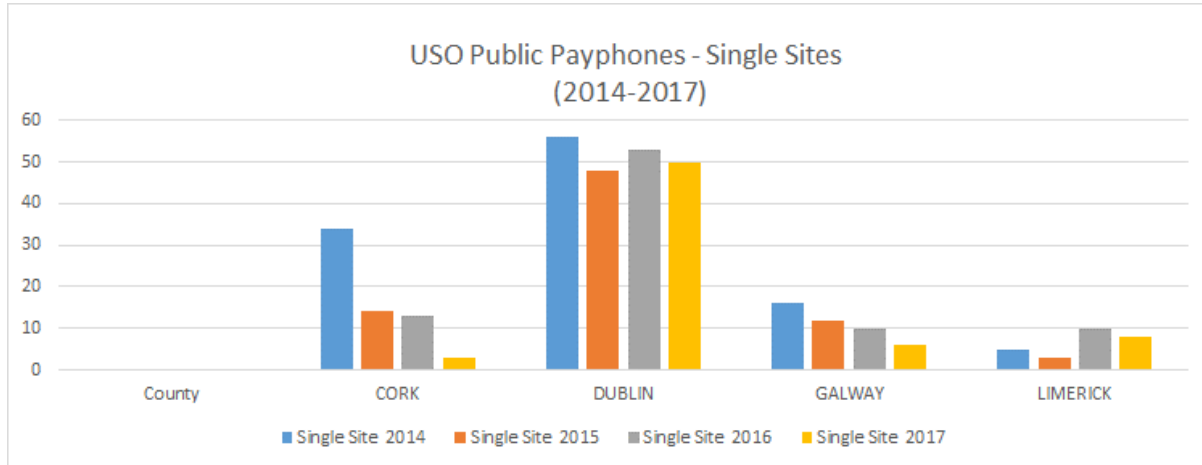
## 9 Next Steps

- 284 The timeframe for receipt of submissions to this consultation paper is 19 October 2018 during which time ComReg welcomes written responses on any of the issues raised in this consultation document. It is requested that comments within submissions make reference to the relevant question numbers from this consultation document.
- 285 In order to promote further openness and transparency, ComReg will publish all respondents' submissions to this consultation, subject to the provisions of ComReg's Guidelines on the Treatment of Confidential Information – ComReg 05/24 and its obligation under Regulation 15 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.
- 286 Respondents are requested to clearly identify confidential material and place such material in a separate annex to responses.
- 287 Respondents are also requested to provide any electronic submissions in an unprotected format so that they can be appended into ComReg's submissions document for electronic publication.

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# Annex: 1

**Figure 11: Public payphones – Single-sites – Dublin Cork Galway and Limerick**



288 Figure 11 shows the trend in the number of single site public payphones by location<sup>54</sup> for Dublin, Cork, Limerick and Galway for the period 2014-2017.

289 Figure 12 shows the trend in the number of multi-site public payphones by location<sup>55</sup> (excluding Dublin, Cork, Limerick and Galway) for the period 2014-2017. Public payphone distribution by geography

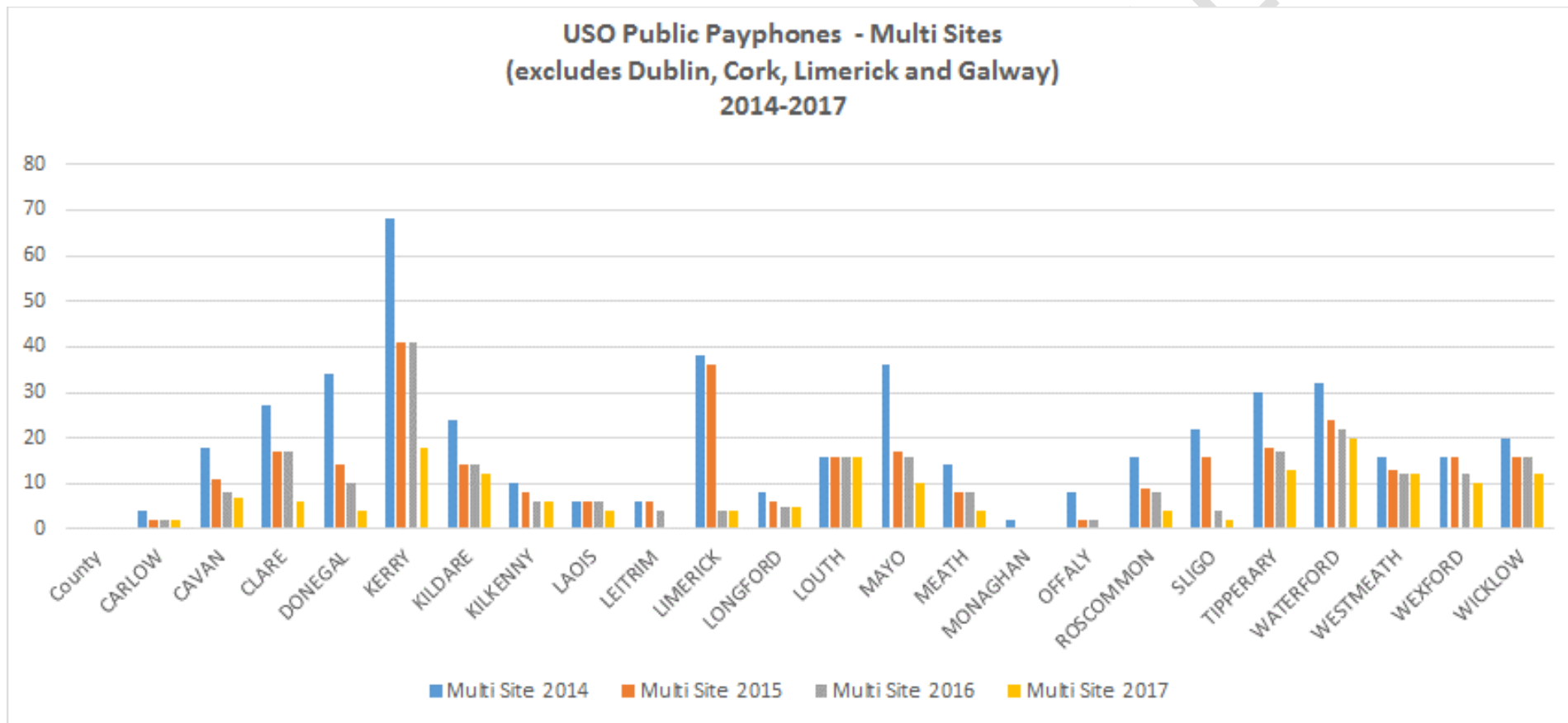
290 Figure 13 shows the trend in the number of multi-site public payphones by location for Dublin, Cork, Limerick and Galway for the period 2014-2017. Public payphone distribution by geography

<sup>54</sup> <https://www.eir.ie/regulatoryinformation/public-payphones/> (as at 1 May 2018)

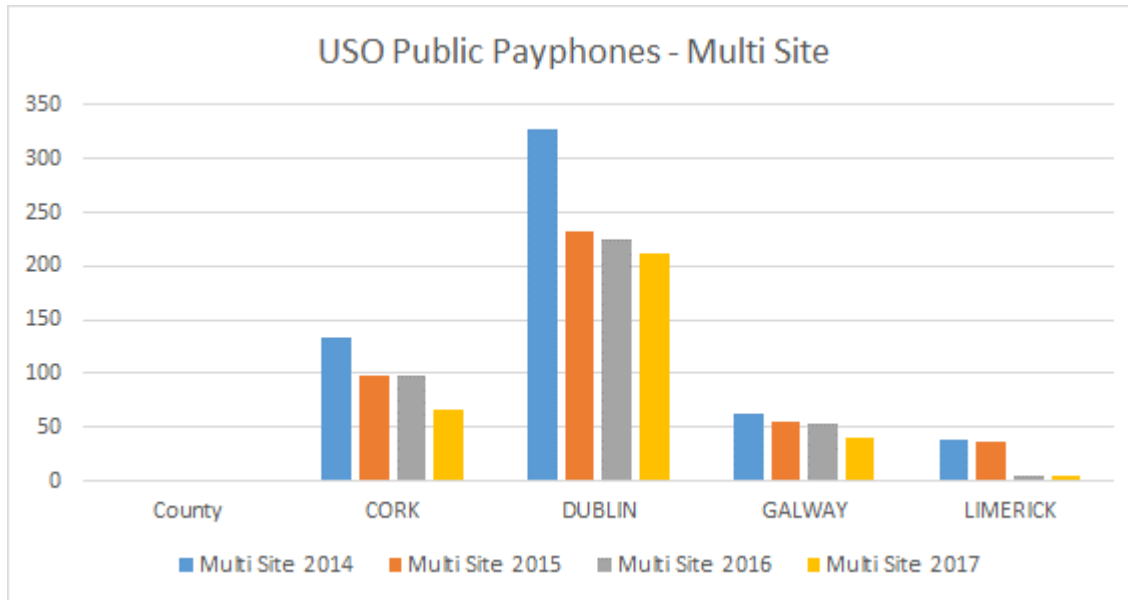
<sup>55</sup> <https://www.eir.ie/regulatoryinformation/public-payphones/> (as at 1 May 2018)



**Figure 12: USO public payphones - Multi-site (excludes Dublin, Cork, Limerick and Galway)**



**Figure 13: USO public payphones - Multi-site - Dublin, Cork, Limerick and Galway)**



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**Figure 14: eir published pricing - Public payphones**

eir Price List

Part 10.3

**Customer Dialed Calls from Public Telephones**

**Charges from public telephones other than Cardphone public telephones**

UNIT FEE	€2 (All day, every day)	
all day every day	Seconds Per Unit Fee	Approximate Price Per Minute Including VAT at 23%
<b>Local Calls</b>	240	50c
<b>National</b>	240	50c
<b>Calls to NCRTN <sup>(1)</sup></b>	120	€1
<b>Calls to VOIP (076)</b>	240	50c
<b>Calls to Premium Rate Services</b>		
1520	120	€1 per call
1530	160	75c
1540 <sup>(3)</sup>	160	75c
1550	100	€1.20
1560	63	€1.90
1570	63	€1.90
1580	36	€3.35
<b>International <sup>(2)</sup></b>		
Band 1:	184	65c
Band 2:	150	80c
Band 3:	80	€1.50
Band 4:	44	€2.75
Band 5:	8	€15.00
<b>Calls to UK Mobiles</b>	150	80c
<b>Calls to 1850</b>	240	50c
<b>Calls to 1890</b>	240	50c

**Notes:**

1. NCRTN means national cellular radio telecommunications networks.
2. Public telephone customer dialed international call bands are as specified on page 3.
3. Calls are charged per call subject to a maximum call duration of 180 seconds.

**Figure 15 : eir public payphone pricing Source:**  
[https://www.eir.ie/opencms/export/sites/default/.content/pdf/pricing/Pt\\_10\\_3.pdf](https://www.eir.ie/opencms/export/sites/default/.content/pdf/pricing/Pt_10_3.pdf)

**International Call Bands for Public Telephones**

- Band 1:** Great Britain, Isle of Man & Channel Islands.
- Band 2:** Albania, Algeria, Andorra, Armenia, Austria, Azerbaijan, Belgium, Belarus, Bosnia-Herzegovina, Bulgaria, Cyprus, Czech Republic, Denmark (including Faroe Islands), Egypt, Estonia, Finland, France, Germany, Greece, Gibraltar, Greenland, Hungary, Iceland, Italy, Israel, Kazakhstan, Kyrgyzstan, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Malta, Morocco, Macedonia (former Yugoslav Republic of), Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Palestine, Portugal, (including Azores & Madeira), Slovenia, Romania, Russia, San Marino, Serbia, Slovak, Spain (including Balearic Islands), Sweden, Switzerland, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine, Uzbekistan, Canary Islands, Ceuta & Melilla, Vatican City, (Includes Mobile telephones in the U.K and Northern Ireland).
- Band 3:** Alaska, Anguilla, Antigua & Barbuda, Australia, (including Tasmania ), Bahamas, Barbados, Bermuda, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Hawaii, Hong Kong, Indonesia, Jamaica, Japan (inc Ryukyu Is.), (Rep. Of) Korea, Malaysia, Mexico, Montserrat, New Zealand, Nevis, Philippines, Puerto Rico, Singapore, St Kitts, St Lucia, St Vincent & the Grenadines, Taiwan, Thailand, Trinidad and Tobago, Turks and Caicos, U.S.A., Virgin Islands (British), Virgin Islands (U.S.).
- Band 4:** Brazil, Congo, China, Croatia, Georgia, India, Kenya, Nigeria, Peru, South Africa, United Arab Emirates, Zimbabwe.
- Band 5:** All other States, Thuraya satellite service, Inmarsat, EMSAT, Iridium, and Skyphone mobile telephony system.

**Figure 16: Call charges from card phone public payphones and National directory enquiry charges from public payphones**

**Call Charges from Cardphone public telephones**

Price Per Card	Units	Price Per Unit <sup>(1)</sup>
€4.00	5	80c
€7.00	10	70c
€15.00	25	60c

**Notes:**

1. The number of seconds per unit fee are the same as specified on previous page.
2. Two units are used as the Initial Fee for all Calls
3. These charges include VAT.

**National Directory Enquiry charges from public telephones**

Initial Fee €2 including VAT	
Seconds per initial fee	Approximate price per minute including VAT
158	76c
Seconds per subsequent fee	
Seconds per subsequent fee	Approximate price per minute including VAT
60	100c

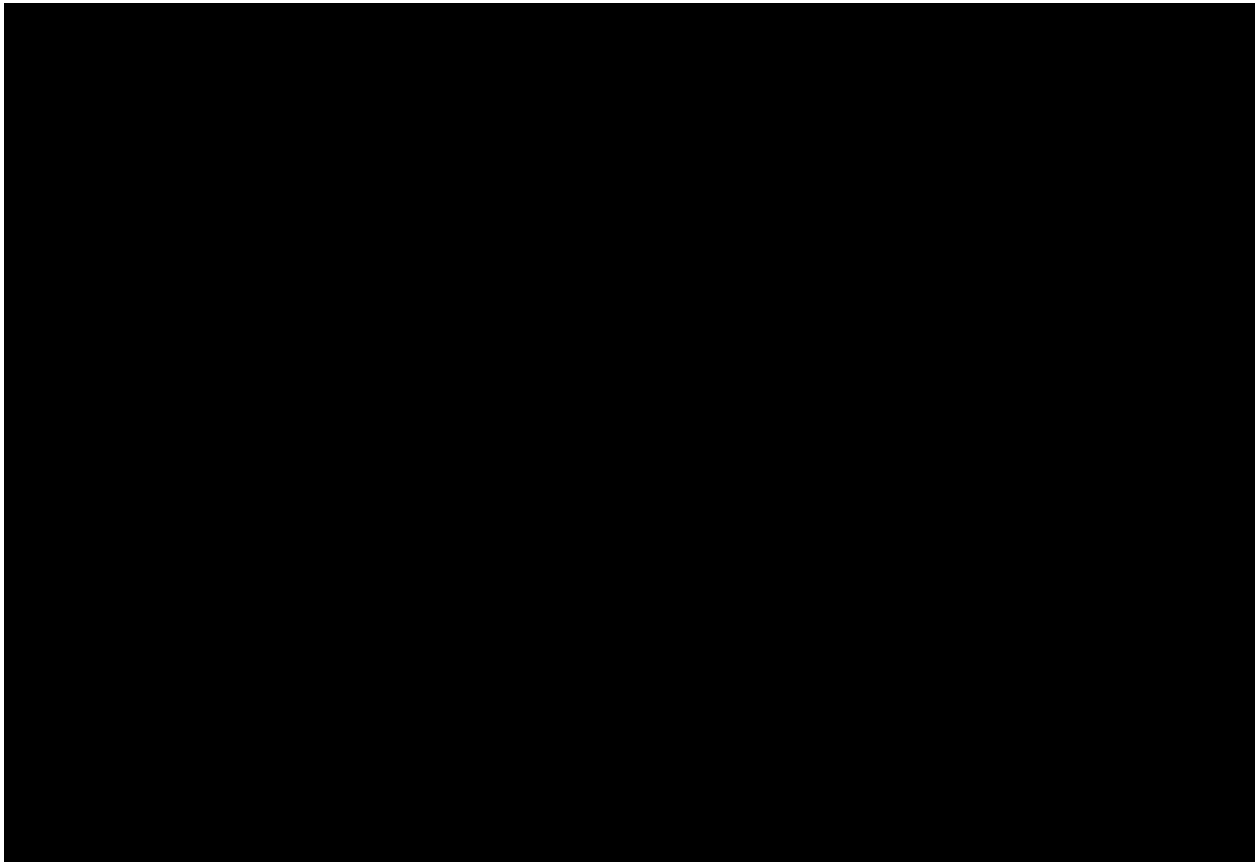
Figure 17: eir - reverse call charges

**Reverse Corp Call Charges**

Calls Type	Connection (incl. first 30 seconds)		next 30 seconds (31 - 60 seconds)		per minute thereafter	
	ex. vat	inc. vat	ex. vat	inc. vat	ex. vat	inc. vat
Fixed Line	€2.471	€3.04	0.2479	€0.30	0.4958	€0.61
Payphone	€2.471	€3.04	0.3306	€0.41	0.6612	€0.81
Mobile	€2.471	€3.04	0.4132	€0.51	0.8264	€1.02
Message	€2.471	€3.04				

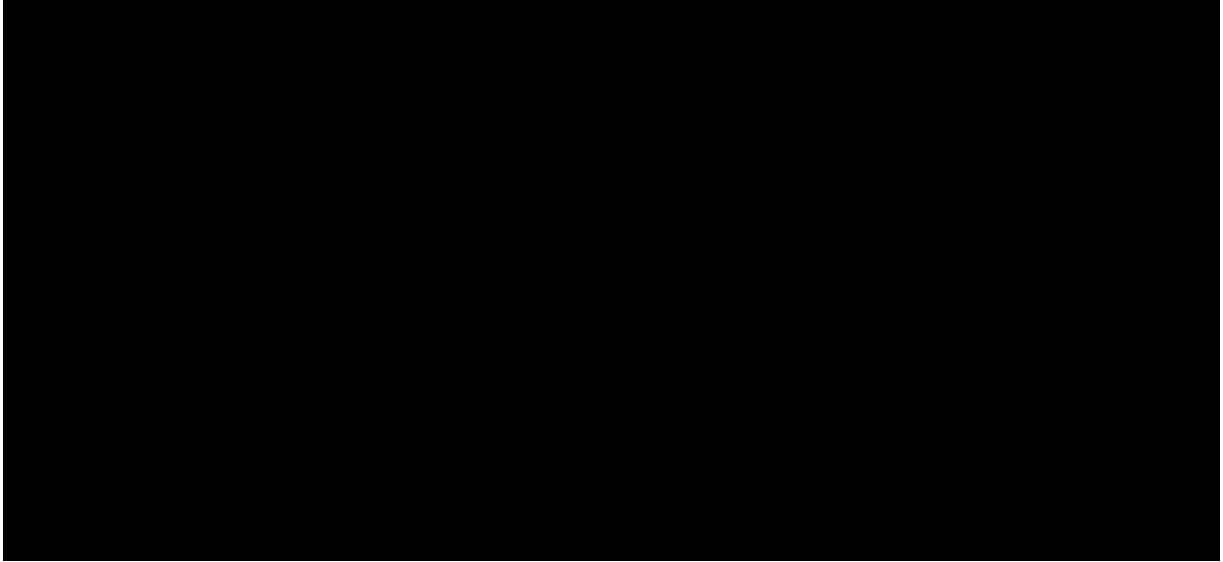
Figure 21 shows a further breakdown of freephone calls to these two help lines, by county.

**Figure 18: Freephone calls by county – Public service help lines** [8<]



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**Figure 19: Public payphones above/below the usage threshold** 



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## 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.*

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## Annex: 3 List of Questions

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Q. 1 Do you agree with ComReg’s preliminary view that that there is a continued need for a public pay telephones USO to meet the reasonable needs of end-users? 40	
Q. 2 The existing obligations protect end-users, and also benefits the USP. It allows the USP to reasonably respond to changes in the market. The USP has commercial freedom to manage public payphones (which fall below the usage threshold) and the associated profitability of its business. Do you agree with ComReg’s preliminary view that Option 2 represents the optimal option? .....	51
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Q. 5 Do you agree or disagree with ComReg’s preliminary view that absent any expression of interest eir should be the USP for public payphones? Please provide reasons for your view .....	55
Q. 6 Do you agree or disagree with ComReg’s draft assessment of the impact of the proposed options? Please set out reasons for your answer.....	78

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