



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Provision of Public Pay Telephones

Universal Service: Scope and designation

NON CONFIDENTIAL

Decision: D01/19
Reference: ComReg 19/06
Version: Final
Date: 25/02/2019

Content

Chapter	Page
Table of Contents	
1 Executive summary	4
1.1 ComReg's statutory mandate.....	4
1.2 Consultation process.....	5
1.3 ComReg's Final Decision.....	6
2 Introduction	9
2.1 Costing and financing of USOs.....	10
3 Requirement for a public payphone USO	12
3.1 Rationale for ComReg's Decision.....	12
3.2 Summary of Consultation 18/85.....	15
3.2.1 Requirement for a public payphone universal service obligation.....	15
3.2.2 Public payphone market in Ireland.....	16
3.2.3 Usage patterns.....	17
3.2.4 Availability and costs.....	18
3.2.5 Reasonable needs of end-users – usage threshold.....	18
3.3 Summary of respondents' submissions to Consultation 18/85 and ComReg's responses to these submissions.....	19
3.3.1 Summary of respondents' submissions - Q1.....	19
3.3.2 ComReg's response – Q1.....	20
3.3.3 Summary of respondents' submissions – Q2.....	22
3.3.4 ComReg's response – Q2.....	22
4 Designation of universal service provider for public pay telephones	24
4.1 Rationale for ComReg's Decision.....	24
4.2 Summary of Consultation 18/85 – USP designation and duration.....	25
4.2.1 Designation mechanism.....	25
4.2.2 Designation period.....	26
4.2.3 Designation for the entire State.....	26
4.2.4 Affordability for end-users.....	26

4.2.5	Universal Service Provider(s)	26
4.3	Summary of respondents' submissions to Consultation 18/85 and ComReg's responses to these submissions.	26
4.3.1	Summary of respondents' submissions – Q3.	26
4.3.2	Summary of ComReg's response – Q3.	27
4.3.3	Summary of respondents' submissions – Q4.	28
4.3.4	ComReg's response – Q4.	28
4.3.5	Summary of respondents' submissions – Q5.	28
4.3.6	ComReg's response – Q5.	29
5	Ancillary issues	30
6	Final Regulatory Impact Assessment ("RIA")	34
6.1	Introduction	34
6.2	Summary of draft RIA of impact of Consultation 18/85 proposals	35
6.2.1	Respondents' submissions.....	36
6.2.2	ComReg's response.....	37
6.3	Final RIA on most appropriate approach to provision of public payphones..	40
6.3.1	Step 1 – Describe the policy issue and identify the objectives	40
6.3.2	Step 2 – Identify and describe the potential regulatory options.....	41
6.3.3	Step 3 - Determine the impacts on stakeholders and competition	42
6.3.4	Step 4 - Assess the impacts and choose the best option.....	49
7	Decision Instrument	52

1 Executive summary

1.1 ComReg's statutory mandate

- 1 Universal service is an important measure to ensure end-user welfare providing a safety net that ensures certain basic 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.
- 2 Services provided under the universal service obligation ("USO") include access to voice telephony services from public pay telephones. The Commission for Communications Regulation ("ComReg") is cognisant of its statutory objectives, in particular as set out in Section 12 (1) (a) (iii) of the Communications Regulation Act, 2002 (as amended) ("the Act").
- 3 Regulation 5 of the European Communities (Electronic Networks and Services) (Universal Service and Users' Rights) Regulations ¹ ("the Regulations") provides that a designated undertaking, amongst other things, shall ensure:
 - that public pay telephones ("public payphone") 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 public payphones have access to a directory enquiry service.
- 4 Public payphones are telephones "*available to the general public for the use of which the means of payment may include coins, credit cards, debit cards or pre-payment cards, including cards for use with dialling codes*".
- 5 Regulation 7 of the Regulations allows ComReg to designate an undertaking to comply with the obligation to provide public payphones in Regulation 5.

¹S.I. 337 of 2011

1.2 Consultation process

- 6 In July 2014, ComReg in Decision D08/14² designated Eircom Limited (“eir”) as the Universal Service Provider (“USP”) for public payphones for a period of four years. In that decision ComReg decided that the number of public payphones in operation at that time should be maintained by eir. If however certain criteria were met (primarily that a payphone’s usage fell below a specified level (“the usage threshold”)), eir was permitted to remove that public payphone. This dynamic approach based on usage levels ensured that end-users who used public payphones could still have access to them, whilst permitting eir to remove public payphones for which there was no longer a reasonable need. ComReg undertook to complete a review of the usage threshold contained in Decision D08/14 by July 2016. In this respect, ComReg conducted a consultation and having considered respondents’ views decided that the usage threshold regime remained appropriate, and therefore maintained the status quo.
- 7 On 28 June 2018, ComReg published Consultation 18/57³ in which ComReg consulted on its proposal to designate eir as USP for public payphones for 3 months after June 2018 and, to impose on eir a USO to maintain the approach set out under Decision D08/14, pending the outcome of a further consultation on the future of the public payphone USO. ComReg in Decision 09/18⁴ decided to designate eir with the obligation to provide public payphones from 16 July for 3 months with the same obligations as previously in place for the 4 years to 30 June 2018 (“interim designation”). The interim designation remained in force until 15 October 2018.

²: “Provision of Public Pay Telephones- Universal Service: Scope and Designation”, ComReg Document No. 14/69 and ComReg Decision No. D08/14, July 7 2014 (“Decision D08/14”)

³“Provision of Public Pay Telephones Universal Service: Interim Designation”, ComReg Document no. 18/57, 28 June 2018 (“Consultation 18/57”).

⁴ “Provision of Public Pay Telephones Universal Service: Interim Designation” ComReg 18/67, July 2018 (“Decision D09/18”)

- 8 On 26 September 2018 ComReg published a further consultation (Consultation 18/85⁵) regarding the possible future scope of a public payphone USO beyond 15 October 2018 in order to ensure that the reasonable needs of end-users will continue to be met in accordance with the Regulations. In Consultation 18/85 ComReg sought the views of stakeholders on whether a public payphone USO should continue to apply, and what approach would be likely to provide the optimum safety net to meet the reasonable needs of end-users. It considered 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.⁶ ComReg analysed usage data (2014-2017) and identified end-user usage trends and the associated Freephone services being accessed. This analysis identified the reasonable needs of a cohort of vulnerable end-users.
- 9 ComReg received submissions from the following industry participants and interested parties:
- Alternative Operators in the Communications Market (“ALTO”)
 - eir
 - respondent (private individual)
- 10 The submissions ComReg received contained useful suggestions and observations, which have helped to guide and inform it in the making of its decision.
- 11 ComReg has now concluded its consultation process on the future scope and designation of the provision of a public payphone universal service.

1.3 ComReg’s Final Decision

- 12 Below is a summary of the main aspects of ComReg’s decision which is set out in the Decision Instrument at chapter 7 of this document and which is explained in more detail in this Response to Consultation and Decision document. ComReg has sought and obtained the consent of the Minister for the relevant aspects of its decision.
- 13 ComReg has decided that there is a continued need for a public payphone USO to meet the reasonable needs of end-users in the State. ComReg is designating eir as the USP for the public payphone USO for the period 25 February 2019 – 31 December 2020, for the entire State.

⁵Provision of Public Pay Telephones Universal Service :Scope and designation” (“Consultation 18/85”)

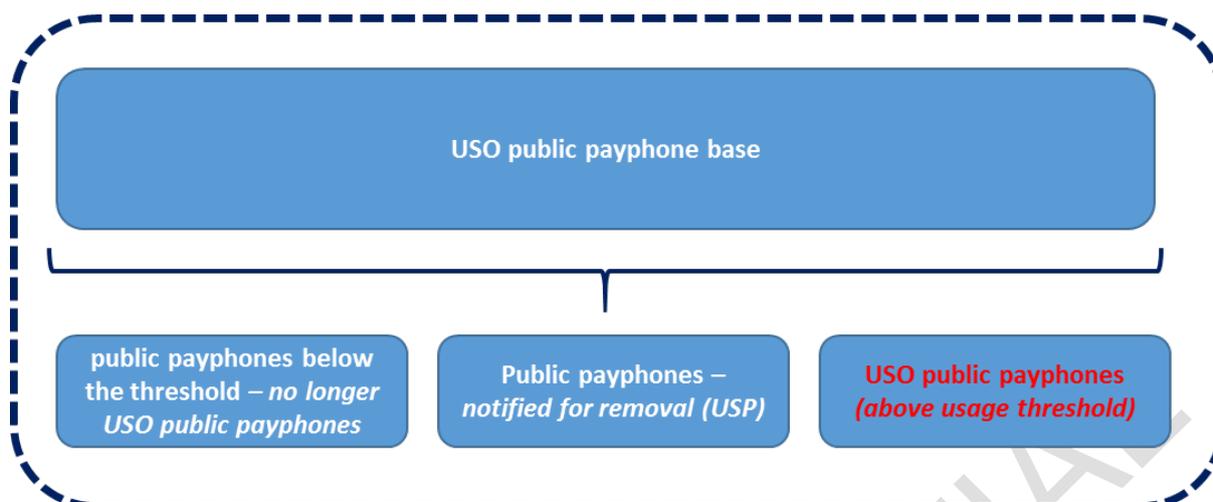
⁶ This information was provided to ComReg following a statutory information request, issued pursuant to Section 13D of the Act, dated 13 July 2018.

14 ComReg has decided to broadly maintain the status quo in relation to the provision of a public payphone USO (as previously set out in Decision D09/18). In this regard ComReg draws attention to the following:

- **“The reasonable needs of end-users”**. In this decision ComReg ensures that these are met by utilising a usage threshold set out in this Decision Instrument at Section 7.10.3). ComReg considers that a usage threshold continues to be the most appropriate method to ensure the reasonable needs of end-users are met. ComReg is not specifying the quantity or distribution of public payphones throughout the State, but rather mandating that public payphones that are sufficiently used (measured by the usage threshold) must be maintained.
- The universal service public payphone **usage threshold** will remain as previously set out in Decision D09/18. If usage of a specific public payphone falls below a specified level, the USP will be permitted to cease that payphone service. This dynamic approach will ensure that end-users who use public payphones may still have access to them, whilst permitting the USP to cease public payphones for which there is no longer a reasonable need.
- The USP’s obligation is in respect of the **“entire State”**. However, this does not mean that the USP is required to ensure nationwide access to a public payphone service. The obligation is limited in that the starting point is the number and geographic location of the existing universal service public payphones at the time of this decision. A further limitation is that only public payphones that are sufficiently used (measured by the usage threshold) must be maintained.
- The obligation to provide access to a **universal service public payphone service** and to notify both ComReg and the public of an impending service cessation, is separate and distinct from any subsequent **physical decommissioning and removal of non-universal public payphone street furniture and equipment** by the USP. The latter is exclusively a commercial decision, which is beyond the remit of ComReg⁷.
- **Affordability for end-users** – A Geographically averaged pricing (“GAP”) obligation is imposed for universal service public payphones. This will ensure affordability of tariffs for end-users.
- The USP’s universal service public payphone **quality of service and reporting obligations**⁸ are now consolidated with the USP designation within this Decision Instrument.

⁷ As reflected in the decision instrument.

⁸ As previously outlined in Decision Notice “The Future Framework for the Regulation of Universal Service in the Irish Telecommunications Market” D17/03 Direction 3.



- 15 ComReg considers that without a public payphone USO the reasonable needs of end-users may not be properly served, or served at all. It is unlikely that eir would have a commercial incentive to meet the reasonable needs of end-users using public payphones as this service is currently unprofitable.
- 16 In Consultation 18/85 ComReg asked for expressions of interest in providing public payphones going forward if a USO continued to apply. No expressions of interest were received. ComReg considers that eir, because of its high degree of ownership of payphones (including public payphones) is capable and best placed to meet the reasonable needs of end-users for public payphones.
- 17 ComReg is mindful of its duty to act proportionately in relation to the length of the designation period. Accordingly ComReg will conduct an analysis of the usage after year one of the designation period, and, based on this review, it will decide if it needs to commence a new consultation process in relation to the provision of public payphones in the State and will publish an information notice regarding this.
- 18 ComReg's reasons for this Decision are set out in Chapters 3, 4 and 6.

2 Introduction

- 19 This chapter provides a brief overview of the regulation of universal services in the State and discusses the costing and financing of USOs.
- 20 ComReg is responsible for the regulation of the Irish electronic communications sector, in accordance with national and EU legislation. One of ComReg's functions is to determine the need for, and scope of the USO for the Irish market and to decide which undertakings, if any, should be designated as the USP for particular USOs.
- 21 The concept of the universal service in the Universal Services Directive⁹ was designed to ensure that everyone irrespective of location, social standing or income can access basic telecommunications services. These are basic services that are considered essential for everyone.
- 22 The Universal Service Directive, transposed in Ireland by the Regulations, requires that Member States must ensure that national regulatory authorities such as ComReg may impose obligations to ensure that public payphones are 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 users and the quality of services.
- 23 As the European Commission is currently considering the scope of the universal service (which will include public payphones), the existing universal service requirements, may change.¹⁰ Any changes will likely include public payphones, but that would be after ComReg's review is completed under the current legislative requirements. There will also be a further period required to effect transposition of the Directive into national law.
- 24 A USP that is designated to provide the public payphone USO in Ireland must ensure:
- that public payphones 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

⁹ Directive 2002/22/EC of the [European Parliament](#) and of the [Council](#) of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (the Universal Services Directive”).

¹⁰<http://www.europarl.europa.eu/sides/getDoc.do?type=AMD&format=PDF&reference=A8-0318/2017&secondRef=002-002&language=EN>

- that it is possible to make emergency calls from a public payphone using the single European emergency call number “112”; and
- that users of public payphones have access to a directory enquiry service.

25 Regulation 7 of the Regulations allows ComReg to designate an undertaking to comply with the obligation to provide public payphones.

26 In Consultation 18/85 ComReg sought the views of stakeholders on whether a public payphone USO should continue to apply. ComReg wish to thank the 3 respondents to Consultation 18/85 for their submissions. Having considered the views of respondents this Response to Consultation and Decision ComReg sets out its final views in this document. In coming to its decision ComReg has taken into account information collected on foot of information requests¹¹, and other relevant materials¹² available to us at this time. The final Regulatory Impact Assessment (“RIA”) reflects this.

27 A copy of all non-confidential responses received will be made available on ComReg’s website and a high level discussion of general views is set out below. It is however not practical for ComReg to respond to every comment made. This Response to Consultation and Decision summarises the key elements of the comments provided, and ComReg’s views in relation to these. It should be noted that all views were considered and account has been taken of the merits of the views expressed.

2.1 Costing and financing of USOs

28 The provision of a universal service may result in the USP(s) providing designated services at a net cost. The Regulations¹³ allow a USP to seek funding for the net cost of meeting the USO, however funding will only be permitted if it is determined by ComReg that the net cost may represent an unfair burden on the USP. To the extent that it does represent an unfair burden, the net cost of the USO shall be apportioned amongst providers of electronic communications networks and services¹⁴.

¹¹ Statutory Information requests, pursuant to Section 13D of the Act, 28th February 2018, 28th June 2018, and 13 July 2018.

¹² ComReg’s analysis based on the available payphone data available from eir (2014-2017); eir’s USO funding applications (2014-2017) (Payphone Model); “Ireland Communicates “consumer survey 2017; BoR (14) 95 EC questionnaire on the implementation and application of universal service provisions, 2 July 2014; and ECAS and Freephone data.

¹³ Regulation 11 of the Regulations.

¹⁴ Regulation 12 of the Regulations.

- 29 The designation methods ComReg adopts must ensure that the obligations are provided in a cost effective manner and may be used as a means of determining the net cost of the universal service obligation¹⁵. In this regard, Decision D04/11¹⁶ illustrates how the net cost for all USOs, will be calculated and how the existence of an unfair burden will be determined. In the event a net cost is deemed to be an unfair burden, the requirement for a sharing mechanism is then triggered.
- 30 ComReg is currently assessing the funding applications received from eir for the financial years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015. Following a period of clarifications regarding the applications ComReg has formed its preliminary views on these applications and has consulted accordingly.
- 31 ComReg has completed its assessment of eir's application for funding for the 2009-2010 period¹⁷. ComReg's determination was that there was a positive net cost of €5.1m for the period 2009-2010 period and that this positive net cost did not represent an unfair burden on eir.
- 32 On 31st March 2017, ComReg received an application for funding from eir for the financial year 2015-2016 and ComReg has issued an information notice regarding this application¹⁸.
- 33 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 2016-2017¹⁹.
- 34 Respondents have made comments regarding funding in their submissions. However, the assessment of universal service funding applications is a matter that is separate from the designation of a public payphone USP and it is not considered here.

¹⁵ Regulation 7(3) of the Regulations.

¹⁶ ComReg Document 11/42 and S04/11 "Report on Consultation and Decision on the costing of universal service obligation: Principles and Methodologies", 31 May 2011.

¹⁷ ComReg Document 14/03 and D01/14 "Assessment of eircom's Universal Service Fund Application for 2009-2010 – Response to Consultation and Determination", 9 January 2014.

¹⁸ ComReg Document No. 17/32 "Universal Service Obligation Application for funding for Universal Service Provider of the period 2015-2016.

¹⁹ ComReg Information Notice 18/76R "eir's 2016-2017 Universal Service Funding Application".

3 Requirement for a public payphone USO

35 This chapter sets out ComReg's decision that there is a continued need for a public payphone USO in the State and the reasons for this decision.

36 The structure of this chapter is:

- Rationale for ComReg's Decision
- Summary of Consultation 18/85
- Summary of respondents' submissions to Consultation 18/85 and ComReg's responses to these submissions

3.1 Rationale for ComReg's Decision

37 ComReg has decided that there is a continued need for a public payphone USO to meet the reasonable needs of end-users in the State.

38 The public payphone USO ensures the provision of basic telecommunications services, contributing to social and economic inclusiveness and cohesiveness. ComReg's overall objective is to ensure that the reasonable needs of end-users are met, and to fulfil its statutory mandate under the Regulations and the Act.

39 In Consultation 18/85 ComReg analysed, amongst other things, the Irish public payphone market (paragraphs 52-69), including calls to the emergency call answering service ("ECAS") (paragraphs 49-51) and Freephone services from public payphones (paragraphs 70-76). This analysis identified that the majority of Freephone calls [REDACTED] % from public payphones are being made to two helplines [REDACTED]

[REDACTED] (Further details are set out in Consultation 18/85 Annex 1, Figure 21 and 22). eir has acknowledged this usage in its response to ComReg's information request²⁰ stating [REDACTED]

²⁰ A Statutory Information request, pursuant to Section 13D of the Act, dated 13 July 2018.

- 40 Based on the aforementioned reasonable needs of end-users (i.e. based on the usage threshold set out in Consultation 18/85, pages 18 to 38), ComReg considers that, while public payphone usage is declining, public payphones continue to provide a basic service to a cohort of end-users who have limited means of making a call and provide a level of anonymity to end-users who wish to contact Freephone numbers of a sensitive nature. The fact that the majority of Freephone calls from public payphones are being made to two helplines demonstrates that many of the end-users of public payphones are vulnerable. Without access to public payphones these end-users may have no other means of accessing these helplines.
- 41 ComReg examined the counterfactual scenario. ComReg asked eir what, in the absence of a designation, its likely future approach to the on-going provision of public and private payphones would be. eir's response stated that in the absence of a designation eir would likely seek to remove all public and private payphones. eir later caveated this statement stating that this removal would be managed over time and on a case by case basis taking into account a number of factors and commercial criteria that may extend beyond the revenue and costs specific to each payphone. eir stated that it would not immediately disconnect public payphones, and that it would intend to give County Councils notice of its intention to close the public payphone business.
- 42 ComReg has no visibility of any engagement eir has had to date with the relevant stakeholders. There is currently no assurance that, where an alternative agreement could not be reached, eir would not proceed to remove public payphones. ComReg is mindful of eir's response (see paragraph 39) [REDACTED].
- [REDACTED]. ComReg has therefore decided that there is a need to ensure that the reasonable needs of this specifically identified group are met through a public payphone USO.
- 43 ComReg is unpersuaded by eir's position as outlined in its response to Consultation 18/85 that there has not been "*any sudden increase in the rate of payphone removals by eir*" in what it terms the "*interregnum periods*" (for example since D09/18 lapsed²¹) there is no requirement for a public pay telephone USO.

²¹ Lapsed on 16 October 2018.

- 44 ComReg examined the effectiveness of maintaining the status quo in relation to the provision of a public payphone USO as previously set out in D09/18 (Option 2 in Consultation 18/85). ComReg's analysis (based on the available data obtained from eir) demonstrated the effectiveness of the usage threshold in addressing the changing public payphone market. It provides sufficient 'head-room' to facilitate the transition away from universal service public payphones, while ensuring that the reasonable needs of end-users are met. The usage threshold is effective in meeting reasonable needs of end-users. Based on this analysis, ComReg has decided that the current threshold level remains appropriate as 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 universal service public payphone. This is dynamic and reflects actual public payphone usage. 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.
- 45 ComReg also considered and discounted Option 3 a (outlined in Consultation 18/85) i.e. define a list of public payphones which must be retained and maintained based on the current public payphones [REDACTED]. ComReg discounted this option as it is static (i.e. a 'snap shot' at a point in time) and fixed for any designation period.
- 46 ComReg also considered and discounted Option 3 b (outlined in Consultation 18/85) i.e. change the usage threshold as previously defined in D09/18. ComReg noted that eir had not availed of the 'head-room' available within the usage threshold as previously defined in D09/18.
- 47 The obligations that ComReg is imposing in this decision go no further than ensuring that the reasonable needs of end-users are met and it facilitates a situation where the use of payphones declines. ComReg considers that without a public payphone USO the reasonable needs of end-users may not be properly served, or served at all. It is unlikely that eir would have an incentive to meet the reasonable needs of end-users using public payphones as this service is currently unprofitable.

- 48 ComReg acknowledges the existence of other means of making calls, in particular mobile phones. Their existence does not negate end-users reasonable needs for universal service public payphones. However, because of the availability of alternative means of communications, it may well be that, in the future, some or all of the needs of end-users that are currently met by public payphones can and will be met on a commercial basis using alternative means of communications. In the meantime, there is no programme or mechanism which ensures that the reasonable needs of end-users of public payphones are met, other than a regulatory decision by ComReg. ComReg considers that while public payphone usage is declining, public payphones continue to provide a basic service to a cohort of end-users who have limited means of making a call and provide a level of anonymity to end-users who may wish to contact Freephone numbers of a sensitive nature.
- 49 ComReg, having regard to the analysis conducted and having compared the cost of the provision of universal service public payphones with the benefit to end-users of their continued provision, has decided that it is appropriate to maintain a public payphone universal service obligation at this time.
- 50 ComReg is mindful of its duty to act proportionately in relation to the length of the designation period. Accordingly ComReg will conduct an analysis of the usage threshold and payment methods after year one of the designation period, and, based on this review, it will decide if it needs to commence a new consultation process in relation to the provision of public payphones in the State and will publish an information notice regarding this.

3.2 Summary of Consultation 18/85

- 51 In Consultation 18/85 ComReg reviewed and carefully considered the current public payphone usage and overall trends that impact the need for a public payphone USO beyond 2018. ComReg invited interested parties to submit their views. ComReg has taken account of the submissions it has received.

3.2.1 Requirement for a public payphone universal service obligation

- 52 In Consultation 18/85 ComReg set out the options available to it.

- 53 ComReg examined the option of removing the USO (Option 1). As outlined in Consultation 18/85 at paragraphs 147-166 and 239-251 ComReg examined the effectiveness of maintaining the status quo (Option 2) in relation to the provision of a public payphone USO as previously set out in Decision D09/18. ComReg's analysis (based on the available data obtained from eir) demonstrated 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 universal service public payphones, while ensuring that the reasonable needs of end-users are met. The usage threshold is effective in meeting reasonable needs of end-users. This approach is dynamic and reflects actual public payphone usage. 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. ComReg was of the preliminary view that maintaining the status quo remained appropriate as it is flexible and addresses the reasonable needs of end-users while providing a dynamic control which addresses changes in end-user demand.
- 54 ComReg also considered Option 3a i.e. define public payphones which must be retained and maintained based on the current universal service public payphones [REDACTED]. ComReg was of the preliminary view that this option was not appropriate as it is static (i.e. a 'snap shot' at a point in time) and fixed for any proposed designation period.
- 55 ComReg also considered Option 3b i.e. change the usage threshold as previously defined in Decision D09/18. ComReg noted that eir had not availed of the 'head-room' available within the usage threshold as previously defined in Decision D09/18, and accordingly ComReg was of the preliminary view that maintaining the status quo of the current threshold level remained appropriate as there was sufficient 'head-room' within the usage thresholds specified in Decision D09/18.

3.2.2 Public payphone market in Ireland

- 56 In Consultation 18/85 ComReg reviewed the public payphones market in Ireland, outlining the number of payphone network providers in Ireland²², the sources of, and trends in, public payphones, and associated revenues (payphone access charge (PAC); and the sale of advertising space on the physical public payphone structure). ComReg established that eir is currently the only provider of public payphones in the State.

²² ComReg's Quarterly Key Data reports 2014-2017

- 57 In Decision D08/14 ComReg set out various situations where the USP is permitted to remove a public payphone, which included a usage threshold. In Consultation 18/85 ComReg outlined its preliminary view that end-user usage levels (thresholds) 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 the current number public payphones in the State. If a public payphone is sufficiently used, the USP must maintain it, however, the USP is not required to retain a public payphone service where it is not sufficiently used or there is evidence of anti-social behaviour, or its physical removal is requested by a Local Authority.
- 58 ComReg analysed the number and location of single and multi-site public payphones, and the public payphone call details and revenue of each for the period Q3 2014 to Q4 2017.

3.2.3 Usage patterns

- 59 In Consultation 18/85 ComReg, in reviewing the usage patterns first examined the use of public payphones to make voice calls (excluding ECAS and Freephone calls) (paragraphs 72-75). ComReg estimated for the period 2015-2016 (July-June)²³ that the average number of call seconds per day per public payphone (excluding ECAS and Freephone) was just under 1 minute. ComReg estimated for the period 2016-2017 and 2017/18 (July-June) that the average number of call seconds per day per public payphone (excluding ECAS and Freephone) has halved since 2015-2016. This indicated that the use of public payphones to make voice calls (excluding ECAS and Freephone calls) is declining over time.
- 60 ComReg examined the use of public payphones to make ECAS and Freephone calls (paragraphs 49-51 and 76-78 of Consultation 18/85 respectively). ComReg analysed the originating sources of payphones calls to the emergency call answering service (ECAS), and identified that [REDACTED]% of these call originate from public payphones.
- 61 An analysis of Freephone numbers called from public payphones (2014-2017) showed that a high proportion [REDACTED] % of calls are accounted for by three main service types: [REDACTED] % of Freephone calls are made to international calling card services ;[REDACTED] % of calls are made to reverse charge call-back services; and [REDACTED] % of calls are made to two help lines (paragraph 76) [REDACTED]

²³ Based on the available information from eir – eir provided aggregate number of second per call type for the period July 2014 – December 2017.

62 ComReg was of the preliminary view that a cohort of end-users may have no other means of accessing these services other than by public payphones. Furthermore public payphones may also provide a level of anonymity to end-users who wish to contact other Freephone numbers of a sensitive nature (e.g. Emergency calls or other helplines for children etc.; and for Harmonised Services of Social Value²⁴).

3.2.4 Availability and costs

63 In Consultation 18/85 ComReg analysed the availability and costs of eir's public payphones for the period Q3 2014 – Q4 2017 (paragraphs 79-88). Universal service public payphones are required to be within reasonable working order for the purposes of monitoring Quality of Service. ComReg reviewed the available data for the period 2014-2017 and established that public payphone availability on average at a national level is 94.387% (paragraph 80, Figure7).

64 In Consultation 18/85 ComReg identified that all eir's payphones (both public and private) are maintained under one outsourced maintenance contract and that the annual maintenance charge associated with universal service public payphones is decreasing over time (paragraphs 83 and 84).

3.2.5 Reasonable needs of end-users – usage threshold

65 ComReg considers that the most appropriate approach is to determine reasonable need by the usage of currently provided public payphones rather than by the quantity or distribution of public payphones throughout the State. If the public payphone is sufficiently used, the public 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 it is not sufficiently used or there is evidence of anti-social behaviour, or its removal is requested by a Local Authority.

66 In Consultation 18/85 ComReg commenced its reasonable needs assessment using eir's 2014-2015 USO funding application (Payphone Model). This demonstrated that under the prevailing '*permissible removal of public pay telephones policy*' there were a significant number of eir public payphones that were below the usage threshold and accordingly were no longer mandated as universal service public payphones (paragraphs 101 – 106). eir had full commercial freedom in respect of these non-universal service public payphones.

²⁴ <https://www.comreg.ie/industry/licensing/numbering/116-numbers/>.

- 67 This analysis established the opening base of universal service public payphones and ComReg then rolled forward this analysis to December 2017 (based on the available information from eir). This clearly demonstrated that eir had significant commercial freedom in respect of public payphones during this period. This demonstrated the flexibility of the prevailing regime.
- 68 ComReg noted that the rolling six month usage of an individual public payphone is a 'snapshot in time'. It does not necessarily follow that if an individual public payphone usage is below the threshold (i.e. in a particular rolling 6 month period), that its usage will continue to be below the usage threshold in any subsequent six month period.
- 69 ComReg's analysis (based on the available data from eir) illustrates the effectiveness of the usage threshold in addressing the changing public payphone market. It provides sufficient 'head-room' to facilitate a transition away from universal service public payphones, while ensuring that the reasonable needs of end-users are met.
- 70 In Consultation 18/85 ComReg outlined that while it may mandate a USP to provide a public payphone service (and set the permissible removal criteria conditions), it cannot mandate the physical removal of any public payphone. ComReg has no role in eir's commercial decision to physically remove a public payphone.

3.3 Summary of respondents' submissions to Consultation 18/85 and ComReg's responses to these submissions

- 71 Consultation 18/85 asked the following question regarding the continued need for a public payphone USO.

Q1. Do you agree with ComReg's preliminary view that there is a continued need for a public pay telephone USO to meet the reasonable needs of end-users?

3.3.1 Summary of respondents' submissions - Q1

- 72 Of the three respondents to Consultation 18/85, eir and respondent (private individual) responded directly to Q1. Both respondents disagree with ComReg's preliminary view. Alto indicated that it broadly supports ComReg's analysis, conclusions and trend assessments.
- 73 eir state that public payphones are almost exclusively loss making and accordingly that ComReg should welcome their removal and rationalisation, as this would improve efficiency and be in line with one of ComReg's high level goals and statutory objective to "promote competition" and encourage efficient investment in infrastructure and promote innovation (eir reference section 12 of the Act) .

- 74 eir is of the view that the mobile phone service is an effective substitute for payphones and accordingly there is no justification to maintain a public payphone USO.
- 75 Respondent (private individual), in disagreeing with ComReg's preliminary view relied upon, amongst other things, the current low²⁵ number of public payphones, the small percentage of the population using public payphones, their life cycle stage (i.e. serve no role in society), and the fact that several other EU countries do not have USO obligations on payphones.
- 76 Respondent (private individual) notes that public payphones are frequently in a state of disrepair and asks ComReg to take into consideration that payphones are often sites for anti-social activities. However respondent (private individual) is of the view that (1) the quarterly reporting obligation, and (2) the ability of local authorities to request the removal of a public payphone should remain.

3.3.2 ComReg's response – Q1

- 77 ComReg, in response to respondents' submissions on Q1 notes that the universal service is an important method of ensuring 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. Accordingly it is precisely where the market might not deliver these services that the universal service is critical.
- 78 ComReg's high level goals and statutory objective to "promote competition" and encourage efficient investment in infrastructure and promote innovation²⁶ must be read in the context of ComReg's other 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.
- 79 eir's public payphone infrastructure investment is now close to, if not already at, the end of its asset life (i.e. a fully recovered 'sunk' cost). Accordingly any associated costs relate primarily to the maintenance²⁷ of the public payphone infrastructure. As outlined in Consultation 18/85 the total maintenance cost (i.e. both public and private) is €< [REDACTED] ²⁸ and is decreasing over time.

²⁵ Compared to 2009.

²⁶ Section 12 of the Act.

²⁷ eir's current maintenance contract covers both private and public pay telephones.

²⁸ €< [REDACTED] eir's total payphone base as notified to ComReg was [REDACTED].

- 80 ComReg does not agree with eir's view that a mobile phone service is an effective substitute for payphones. Firstly, ComReg relies upon the fact that end-users (especially the type of end-users identified as users of public payphones) may not be able to afford to use a mobile service (in particular the cost of handsets and contracts). Secondly, ComReg relies upon the age profile of public telephone users (55-65+) who are less likely to be mobile phone users.
- 81 ComReg does not agree with respondent (private individual)'s view that the role of public payphones in society has become meaningless. In Consultation 18/85 ComReg identified a vulnerable cohort of end-users who may have no other means of accessing two helpline services (paragraphs 76 -78 - analysis of Freephone calls from public payphones).
- 82 ComReg notes that public payphones remain within the scope of the universal service in 22 countries, and outside the scope of universal service in 9 countries²⁹.
- 83 ComReg note respondent (private individual)'s concern regarding the condition of current public payphones. ComReg considers that its decision addresses this by allowing for the cessation of service from a public pay telephone (1) where it is a focus of anti-social activity and (2) where requested by the relevant local authority. Following the cessation of service the removal of the physical public payphone infrastructure will be possible. The physical removal of public payphone street furniture is a commercial matter for eir as the USP.
- 84 ComReg considers that without a public payphone USO the reasonable needs of end-users may not be properly served, or served at all. It is unlikely that eir would have an incentive to meet the reasonable needs of end-users using public payphones as this service is currently unprofitable. However, it may well be that in the future some or all of the reasonable needs of end-users can and will be met on a commercial basis using alternative means of communication. In the meantime, a regulatory decision by ComReg is required to ensure that the reasonable needs of end users are met.

²⁹ "BEREC update survey on the implementation and application of the universal service provisions – a synthesis of the results" BoR (17) 41, February 2017. The report incorporates the responses from all EU member states except Belgium, as well four non-EU members (Iceland, Montenegro, Norway and Switzerland).

3.3.3 Summary of respondents' submissions – Q2

85 Consultation 18/85 asked the following question regarding the continued need for a public payphone USO.

Q2. 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?

86 Of the three respondents to Consultation 18/85, eir and respondent (private individual) responded directly to Q2. Both respondents disagree with ComReg's preliminary view. Alto indicated that it broadly supports ComReg's analysis, conclusions and trend assessments. Alto also indicated that it supports ComReg's proposed Option 2.

87 eir is of the view that the current regime does not benefit eir in any way and states that *"the real and ongoing cost on eir, constitute an unfair burden on it"*. eir considers that the usage thresholds are *"far too low and take no account of the inherent inefficiency that would be involved in the piecemeal removal of the payphones"*. eir considers that ECAS calls should be removed from the usage threshold.

88 Respondent (private individual) is of the view that option 2 (status quo) does not represent the optimal option, as the *"usage threshold no longer has any value"*, and will result in inefficient approach to public payphone removals.

3.3.4 ComReg's response – Q2

89 The Regulations³⁰ allow a USP to seek funding for the net cost of meeting the USO, however funding will only be permitted if it is determined by ComReg that the net cost may represent an unfair burden on the USP. ComReg is currently assessing the funding applications received from eir for the financial years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015. ComReg has formed its preliminary views on these applications and has consulted accordingly.

³⁰ Regulation 11 of the Regulations.

- 90 ComReg does not agree that ECAS calls should be removed from the usage threshold. ComReg note that (1) it is unsafe to assume that short duration ECAS calls are malicious or spurious (2) all end-users do not have access to mobile phones (due to affordability and usage issues); (3) Advanced Mobile Location (AML) is only available on smartphones. While the number of public payphone calls to ECAS is low (relative to fixed and mobile), there remains a cohort of end-users who continue to access ECAS from public payphones.
- 91 ComReg does not agree with eir's view that the proposed usage threshold is too low, ComReg notes that eir did not avail of the 'head-room' previously available within the usage threshold as previously defined in D09/18. ComReg's analysis clearly demonstrates that the usage threshold allows eir significant commercial freedom in respect of public payphones. ComReg is of the view that there is sufficient '*headroom*' in the prevailing usage threshold. Accordingly no further amendment to the ECAS element of usage threshold is warranted at this time.
- 92 ComReg notes respondent (private individual) and eir's views that the current approach leads to inefficient payphones removals. ComReg clearly differentiates between the cessation of the public payphone service and the subsequent physical removal of the public payphone infrastructure in this decision. ComReg has a role in the cessation of the public payphone service only. The subsequent physical removal of the public payphone infrastructure is solely a commercial matter for eir.

4 Designation of universal service provider for public pay telephones

93 This chapter sets out ComReg's decision to designate eir as the USP for public payphones within the State for a period of two years and the reasons for this decision.

94 The structure of this chapter is:

- Rationale for ComReg's decision
- Summary of consultation 18/85 – USP designation, duration and GAP
- Summary of respondents' submissions to Consultation 18/85 and ComReg's responses to these submissions.

4.1 Rationale for ComReg's Decision

95 ComReg has decided that there is a continued need for a public payphone USO to meet the reasonable needs of end-users in the State. ComReg is designating eir as the USP for the public payphone USO for the period 25 February 2019 – 31 December 2020, for the entire State. ComReg has decided that geographically averaged pricing will apply throughout the State.

96 In Consultation 18/85 ComReg asked for expressions of interest in providing public payphones. No expressions of interest were received. ComReg consider that eir, because of its high degree of ownership of payphones (including public payphones) is capable and best placed to meet the reasonable needs of end-users for public payphones.

97 ComReg has decided to designate eir as the USP for the public payphone USO for the period 25 February 2019 –31 December 2020. ComReg has decided that this designation period is appropriate given the dynamic nature of the usage threshold. The obligation to provide universal service public payphones will cease when all public payphones fall below the usage threshold (or where service is ceased for one of the other reasons outlined in the Decision Instrument). This may occur prior to the expiry of the designation period.

- 98 The end-users who are dependent on a public payphone USO are dispersed throughout the State. Accordingly, the universal service designation is for the entire State. This does not mean that the USP is required to ensure nationwide access to a public payphone service. The obligation is limited in that the starting point is the number and geographic location of universal service public payphones at the time of this decision. A further limitation is that only public payphones that are sufficiently used (measured by the usage threshold) must be maintained.
- 99 Universal service is an important measure to ensure end-user welfare. It provides a safety net that ensures universal services are made available at an affordable and uniform price to all end-users throughout the State, where the market might not deliver these services. 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 does not consider that it would be appropriate for different prices to exist depending on where payphones are located. ComReg considers that prices for calls from payphones should be geographically averaged. Accordingly ComReg has decided that geographically averaged prices will apply throughout the State.

4.2 Summary of Consultation 18/85 – USP designation and duration

4.2.1 Designation mechanism

- 100 Regulation 7(1) provides that *“The Regulator may designate one or more undertakings, for such period as may be specified by the Regulator, to comply with an obligation or requirement referred to in Regulation 3.4. (1) (a) or (b), an obligation or term or condition referred to in Regulation 5 or 6 and, where applicable, a requirement under Regulation 8(2), so that the whole of the State may be covered.*
- 101 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”.*
- 102 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 obligation³¹. In principle, no undertaking should be excluded from being designated to provide the public payphone universal service, in all or part of the State. ComReg outlined that in the majority of Member States, the incumbent operator provides the public payphone universal service.

³¹ Regulation 7(3)

4.2.2 Designation period

103 In Consultation 18/85 ComReg outlined its preliminary view that a public payphones USO designation period of 2 years is appropriate.

4.2.3 Designation for the entire State

104 In Consultation 18/85 ComReg considered whether or not it is appropriate to continue to designate a public payphone universal service provider to cover the entire State.

105 End-users of public payphones are dispersed throughout the State. ComReg's preliminary view was that to ensure that the reasonable needs of end-users for public pay telephones are met, a USO designation (if any) must be for the whole of the State.

4.2.4 Affordability for end-users

106 In Consultation 18/85 ComReg was of the view 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 was of the preliminary view that geographically averaged prices should apply throughout the State.

4.2.5 Universal Service Provider(s)

107 ComReg invited potential providers to express an interest in being designated as USP for public payphones. ComReg went on to indicate that *"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 public payphones in accordance with the criteria specified by ComReg."*

4.3 Summary of respondents' submissions to Consultation 18/85 and ComReg's responses to these submissions.

108 Consultation 18/85 asked the following question regarding the proposed designation period.

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.

4.3.1 Summary of respondents' submissions – Q3.

109 Of the three respondents to Consultation 18/85, eir and respondent (private individual) responded directly to Q3.

- 110 Two respondents disagree with ComReg's preliminary view that the next designation period should be 2 years. Alto indicated that it broadly supports ComReg's analysis, conclusions and trend assessments. Respondent (private individual) caveats his agreement by stating that an eir quarterly reporting obligation should remain in place until the last universal service public payphone is removed.
- 111 eir is of the view that it has demonstrated an extremely high level of substitutability of payphones use with mobile phone use, and accordingly eir is of the view that the continuation of the public payphone USO obligation cannot be predicated on payphone usage.
- 112 eir state that ComReg is proposing that eir should continue as USP until late 2020, and based on current trends over the recent years and months eir is of the view that *"it is quite likely that there will be practically no usage of public payphones by 2020"*.

4.3.2 Summary of ComReg's response – Q3.

- 113 In response to respondents' submissions to Q3 and as outlined earlier ComReg does not agree with eir that a mobile phone service is an effective substitute for public payphones in the context of USO. The existence of other mechanisms for making calls does not negate end-users' reasonable needs for access to public payphones. ComReg notes the affordability aspects of mobile service (e.g. acquisition costs of handsets and contract types) and the age profile of public pay telephone users (55-65+) who are less likely to be mobile phone users.
- 114 ComReg considers that the usage threshold continues to be the most appropriate method to ensure the reasonable needs of end-users are met. ComReg is not specifying the quantity or distribution of public payphones throughout the State, but rather mandating that public payphones that are sufficiently used (measured by the usage threshold) must be maintained. Further, the USP can cease service from a public payphone where it is not sufficiently used or there is evidence of anti-social behaviour, or its removal is requested by a Local Authority.
- 115 Indeed if eir's view that it is quite likely that there will be practically no usage of public payphones by 2020 is correct, then no universal service public payphones will be required under this decision. This is because of the usage threshold within this decision and the dynamic nature of the obligation being imposed.

4.3.3 Summary of respondents' submissions – Q4.

116 Consultation 18/85 asked the following question:

Q4 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.

117 Of the three respondents to Consultation 18/85 eir and respondent (private individual) responded directly to Q4. Alto indicated that it broadly supports ComReg's analysis, conclusions and trend assessments.

118 Respondent (private individual) is of the view that by December 2018 the remaining public payphones will be located "in urban centers by-in-large" and accordingly the question is "non- applicable".

119 eir is opposed to "the reintroduction of the payphone USO". eir is of the view that "at most, it should be limited to the small number of locations where ComReg believes that [public payphones] may fulfil a societal need".

4.3.4 ComReg's response – Q4.

120 End-users of public payphones 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. ComReg considers that usage threshold continues to be the most appropriate method to ensure that the reasonable needs of end-users are met. This does not mean that the USP is required to ensure nationwide access to a public payphone service. The obligation is limited in that the starting point is the number and geographic location of universal service public payphones at the time of this decision. A further limitation is that only public payphones that are sufficiently used (measured by the usage threshold) must be maintained. The dynamic nature means that it facilitates a situation where the use of payphones declines.

4.3.5 Summary of respondents' submissions – Q5.

121 Consultation 18/85 asked the following question:

Q5 Do you agree or disagree with ComReg's preliminary view that absent of any expression of interest eir should be the USP for public pay telephones? Please provide reasons for your view.

- 122 eir in its response to Q5 disagrees with ComReg. eir is of the view that eir does not have any unique advantage in respect of ubiquity, as public payphones are located in areas where there are one or more alternative network infrastructure operators present, and that other experienced and capable operators could provide public payphones.
- 123 Respondent (private individual) also disagrees with ComReg for the reasons he outlined in his response to Q1 (see paragraphs 75 to 76).
- 124 Alto indicated that it broadly supports ComReg's analysis conclusions and trend assessments.

4.3.6 ComReg's response – Q5.

- 125 In response to respondents' submissions to Q5, ComReg does not agree with eir's views. As outlined in Consultation 18/85 there are two payphone own network providers in Ireland. ComReg considers that no alternative network infrastructure operators could provide the public payphone service more efficiently (i.e. without incurring costs in excess of those currently incurred by eir). eir's public payphone infrastructure is already in place and fully depreciated. eir's designation will mean that the universal service obligation is provided in a cost effective manner. No operator has expressed an interest in becoming the USP. Therefore ComReg has designated eir as the USP.

5 Ancillary issues

- 126 In its submission eir made certain claims in relation to ComReg's consultation process with which ComReg does not agree. ComReg addresses these claims below.
- 127 eir stated that, in its view, ComReg's proposals in Consultation 18/85 are not compatible with Article 3(2) of the Universal Service Directive which requires that Member States *"determine the most efficient and appropriate approach for ensuring the implementation of the universal service whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality."*
- 128 ComReg considers that its approach to the public payphone universal service in this consultation process has been at all stages in accordance with the requirements of Article 3(2) of the Universal Service Directive and Regulation 7(3) of the Regulations. ComReg has consulted with interested parties for almost 4 months and eir has made submission. ComReg has gathered helpful information from eir (using its statutory information powers), the ECAS provider, and a number of County Councils³² which ComReg has taken into account in order to form our proposal and to arrive at a final decision.
- 129 eir has stated that in its view there is a material flaw in ComReg's approach as ComReg has failed to reach any *"properly analysed position"* and cites by way of example that ComReg has not used *"expert evidence or any sufficient or contemporary empirical evidence to justify its conclusions"*.
- 130 ComReg does not agree with eir. ComReg has used a combination of the following empirical and evidence in reaching its preliminary view and final decision:
- eir's own public payphone data for the period 2014-2017;
 - eir's USO funding application (Payphone Model);
 - eir's payphone maintenance agreement(s);
 - ComReg's key quarterly data report;
 - "Ireland Communicates" consumer survey 2017;
 - BEREC report;³³
 - information provided by County Councils.

³² County Councils who have approached ComReg directly in respect of public payphones.

³³ BEREC update survey on the implementation and application of the universal service provisions - a synthesis of the results" 24th February 2017

- 131 Furthermore, ComReg using its statutory information gathering powers requested that eir provide (1) market research it had undertaken and (2) eir's likely approach in the counterfactual scenario (i.e. no public payphone USO). eir confirmed that it had not undertaken any market research and that in the counterfactual scenario eir was likely to seek to remove all public and private payphones.
- 132 eir has stated that it does not believe that the "*principle of good regulatory practice*" has been satisfied as does not consider that ComReg's regulatory decision is "*limited and proportionate to the public interests they serve*".
- 133 ComReg does not agree with eir. ComReg considers that the dynamic approach (based on usage thresholds) which has been decided upon will continue to provide the optimum safety net to meet the reasonable needs of end-users. The continued reduction of public payphones based on a usage threshold protects end-users in an effective manner and, in a way that helps ensure that the possibly declining reasonable needs of end-users are met, without being unduly burdensome on the USP.
- 134 eir has stated that ComReg has failed to properly define or quantify the "*cohort of users*" who may need to use public payphones. eir state there are sufficient alternative substitutes (e.g. mobile phone coverage, broadband coverage, Wi-Fi access etc.) available to this cohort.
- 135 ComReg does not agree with eir. ComReg has identified through its analysis of the volume of calls to Freephone numbers from public payphones (2014-2017) the Freephone service types accessed via public payphones³⁴. While this cohort is predominantly those who contact two helplines there are a number of other services (e.g. Emergency calls or other helplines for children etc.; and for Harmonised Services of Social Value³⁵) where public payphones provide a level of anonymity to end-users who wish to make contact with services of a sensitive nature. This cohort have a clear societal need and represent some of the most vulnerable in society.
- 136 eir has stated that much more efficient and effective forms of communications such as mobile phones are available and that there no longer needs to be obligations imposed for the provision of public payphone services as the market ensures alternative and widely available, accessible and affordable services.

³⁴ Consultation 18/85 paragraphs 76-78.

³⁵ <https://www.comreg.ie/industry/licensing/numbering/116-numbers/>

- 137 However, it is ComReg's view, having analysed actual payphone usage data as provided to ComReg by eir, that the end-users accessing public payphones, and the reason for use, will vary depending on the circumstances. It is not relevant to compare public payphone usage with the general phone usage of other consumers of electronic communications services. What is relevant is the benefit to society (in meeting the reasonable needs of end-users) with regard to the actual use of a particular public payphone.
- 138 Public payphones are sometimes a key service, for those without a landline or mobile phone or, where using a mobile phone is not possible. Public payphones are particularly important for disadvantaged, in particular, where there are 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. This need is illustrated by the actual payphone usage data as provided to ComReg by eir.
- 139 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 an essential service. In addition, there are affordability concerns relating to the use of mobile phones. To use alternative forms of communication such as a mobile, the end-user must first have access to a mobile handset. The cost of a mobile handset may be prohibitive for this cohort. Accordingly any proposed restriction of the access method to mobiles only would result in detriment to those end-users who are currently using public payphones to access help lines. Furthermore, as outlined above public payphones provide a level of anonymity to end-users who wish to make contact with services of a sensitive nature (Emergency calls or other helplines for children etc.; and for Harmonised Services of Social Value³⁶) which anonymity is not automatically afforded to mobile users or fixed line users.
- 140 This demonstrates that mobile and other alternatives may not act as a substitute for public payphones in all cases. Therefore, the existence of other mechanisms for making calls does not negate end-users' reasonable needs for access to public payphones.

³⁶ <https://www.comreg.ie/industry/licensing/numbering/116-numbers/>

- 141 eir has stated that the permissible payphones removal policy is excessively restrictive, envisaging piecemeal removal of payphones as each one falls below a usage threshold. ComReg has considered eir's comments. The obligation to provide access to a universal service public payphone service and notify both ComReg and the public of the impending service cessation, is separate and distinct from any subsequent physical decommissioning and removal of non-universal public payphone street furniture and equipment by the USP. The latter is exclusively a commercial decision, which is beyond the remit of ComReg. The Decision Instrument in this document reflects this.
- 142 eir has stated that the payment means should now exclude coins as coin collection is expensive and an incentive to vandalism ComReg does not agree with eir. The removal of the ability to make public payphone calls using coins as a means of payment make exclude the most vulnerable in society, who may not have access to a debit or credit card. Following eir's response, ComReg amended the draft decision instrument to provide more specificity as to what constitutes an appropriate means of payment³⁷.
- 143 eir has requested that ECAS calls are removed from the threshold stating that payphones are not in any way central to the operation of legitimate emergency calls regime, citing the availability of Advance Mobile Location (AML). ComReg does not agree with eir. While the number of ECAS calls is low relative to mobile or fixed line access, nevertheless a small number of ECAS calls are made from public payphones. As outlined earlier end-users may purposely choose to use a public payphone to access services of a sensitive nature, such as ECAS. Furthermore it would be incorrect to automatically assume that short duration ECAS calls are nuisance calls. Furthermore ComReg note that advanced mobile location (AML) is only available on smart phones as opposed to all mobile phones.
- 144 Finally, ComReg has made some amendments to the language contained in a number of sections of the Decision Instrument for the purpose of clarifying the nature of certain obligations contained therein. However, these changes do not impact the substance of the overall obligations and the outcomes remain effectively the same.

³⁷ Section 7.10.1.1 of the Decision Instrument.

6 Final Regulatory Impact Assessment (“RIA”)

6.1 Introduction

- 145 With this decision ComReg seeks to ensure that “*public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users*” in addition to fulfilling its statutory objectives and functions under the Act³⁸.
- 146 In July 2018, ComReg by Decision D09/18 designated eir as the USP for public payphones from 16 July 2018 for 3 months under the same obligations as previously in place for the 4 years to 30 June 2018. The counterfactual analysis indicated that, absent a USO, there would be no guarantee that the reasonable needs of end-users would continue to be met in accordance with the Regulations.
- 147 In Consultation 18/85 ComReg signalled its proposal that there should be a universal service designation for public payphones in the medium term, and that the obligations previously in place should be continued. In Consultation 18/85 ComReg outlined the societal case for its proposals. ComReg has assessed the responses to Consultation 18/85 and the further clarification and information provided by eir in respect of its approach to the provision of payphones which has assisted ComReg to better understand the counterfactual scenario.
- 148 The analysis presented in this chapter represents ComReg’s final RIA. Having regard to all available evidence collated during the consultation process and the submissions, this final RIA sets out ComReg’s conclusions of the effect upon stakeholders and competition, of designating eir for the provision of universal service public pay telephones and, of imposing associated USO measures on eir, as the designated USP.³⁹
- 149 The structure of this chapter is:
- Introduction
 - Summary of draft RIA of impact of Consultation 18/85 proposals

³⁸ Sections 10 and 12 of the Act and regulation 16 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations, S.I. 333 of 2011.

³⁹ Under Regulation 7(1) of the Regulations, ComReg may designate one or more undertakings to comply with an obligation or requirement referred to in, inter alia, Regulation 4 of the Regulations, which relates to a subscriber directory or directory enquiry service.

- Summary of respondents' submissions and ComReg's response to submissions as regards draft RIA of impact of Consultation 18/85 proposals
- Final RIA

150 The RIA in conjunction with the rest of the analysis and reasoning in Consultation 18/85 and this document represents the RIA and should be read together.

6.2 Summary of draft RIA of impact of Consultation 18/85 proposals

151 In accordance with the Regulations, and having regard to Decision D09/18, ComReg has assessed whether a USO should continue to apply to help ensure an adequate provision of public pay telephones to meet the reasonable needs of end-users.

152 ComReg as part of its Consultation 18/85 set out its preliminary RIA of the various available options open to it to achieve the stated objectives as follows:

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

153 In so doing, ComReg noted that the 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 15 October 2018 (when the current designation expired) having regard to the evolution of the electronic communications market and the market with respect to payphones.

154 The purpose the RIA is to assess the likely impact upon stakeholders and competition of options as regards a public payphone USO. The RIA assists with assessing whether ComReg's preferred regulatory approach will have the desired impact in terms of promotion of the interests of end-users and protecting end-user welfare by ensuring that end users can continue to benefit from reasonable access to public payphones.

155 ComReg's aim in conducting the RIA is to ensure that any obligations regarding reasonable access to public payphones are appropriate, proportionate and justified in light of the analysis conducted, having regard to its objective that end-users are protected, while also taking into account the principle of proportionality. The purpose of the RIA is to establish whether regulation is actually necessary, to identify any possible negative effects that might result from imposing, amending or withdrawing a regulatory obligation and to consider any alternatives.

- 156 Consistent with the RIA Guidelines⁴⁰ and, section 13(1) of the Act⁴¹, ComReg's RIA considers the effect of proposed regulation along with a consideration of the scope of the various options open to ComReg in respect of a public payphone USO. ComReg in conducting this final RIA takes full account of its obligations under the Regulations.
- 157 On the basis of the counterfactual and other analysis, ComReg proposed to designate eir as the USP for public payphones. ComReg preliminary view was, on balance, that Option 2 represented the most justified, reasonable and proportionate of the approaches to public payphone USO.
- 158 Consultation 18/85 asked the following question in respect of ComReg's draft assessment of the impact of the proposed options.

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.

6.2.1 Respondents' submissions

- 159 Two of the three respondents (eir and respondent (private individual)) to Consultation 18/85 responded directly to question 6. Alto indicated that it broadly supports ComReg's analysis, conclusions and trend assessments.
- 160 Respondent (private individual) disagrees with ComReg's draft RIA for the reasons stated in his response to Q1. In summary, this is largely because respondent (private individual) believes that there does not continue to be a need for public payphones having regard to the remaining number of public payphones and apparent low usage of those payphones. In this context, and where in respondent (private individual)'s view payphones are at end-of-life stage regulatory oversight is no longer justified. According to Respondent (private individual), USO obligations on eir result in costs for eir and a diversion of their resources. However, respondent (private individual) suggested that eir continue to require to report payphone numbers and that the Local Authorities continue to have the right to request their removal.

⁴⁰ ComReg, "Guidelines on ComReg's Approach to Regulatory Impact Assessment", [ComReg Document 07/56a](#), 10 August 2007 (the "RIA Guidelines").

⁴¹ Which requires ComReg to comply with ministerial policy decisions. Ministerial Policy Direction made by the Minister of Communications, Marine and Natural Resources on 21 February 2003 requires that, before deciding to impose regulatory obligations on undertakings, ComReg 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.

161 eir did not agree with ComReg's draft RIA because in its view *"the assessment... is arbitrary and subjective"*. In this respect, eir considers that ComReg has not undertaken an objective and evidence-based analysis which has resulted in the wrong conclusion being reached. According to eir, ComReg has not established the level of mobile phone ownership amongst the homeless. eir submit that its own analysis would suggest an increase in calling essential services from mobile phones by this vulnerable cohort. It is eir's view that this indicates the mobile phone provides an alternative to the payphone which ComReg ignores. eir claim that the payphone is redundant. eir is of the view that ComReg must undertake a proper cost benefit analysis to inform decision making, and that ComReg has not offered a proper justification for a public payphone USO.

6.2.2 ComReg's response

162 ComReg does not agree with eir's view that its draft RIA is arbitrary and subjective. As outlined earlier, ComReg has undertaken an objective and evidence-based analysis. ComReg's RIA and final decision relies on empirical evidence as set out above including the actual payphone usage data as provided to ComReg by eir.

163 As clearly set out in section 7.4 of Consultation 18/85, ComReg has considered the impact on stakeholders and competition of the options (inter alia the costs and benefits which are updated in the table below) open to it to achieve the stated objectives.⁴² ComReg in assessing and quantifying the potential impact on stakeholders and on competition arising from its proposals has had regard to, amongst other things, the following:

- ComReg's statutory functions and objectives;
- Relevant market trends as regards the electronic communications market generally and the market with respect to payphones and;
- Public payphones – availability and costs;
- Vulnerable end-users who still rely on the public payphone;
- Calls from payphones to the Emergency Call Answering Service;
- The principle of proportionality;
- Responses to Consultation 18/85;
- Further clarifications obtained from eir post D09/18;⁴³ and

⁴² As set out in section 7.2 of Consultation 18/85.

⁴³ Statutory Information request, pursuant to Section 13D of the Act dated 13 July 2018.

- D09/18 which also included permissible removals criteria.

- 164 ComReg does not agree with eir's view that it has ignored the availability of the mobile phone or that it must establish the level of mobile phone ownership amongst the identified vulnerable cohort. For the reasons set out above, mobile and other alternatives may not act as a substitute for public payphones in all cases. Access to one service does not preclude an end-users reasonable needs to use public payphones. Therefore, the existence of other mechanisms for making calls does not negate end-users' reasonable needs for access to public payphones.
- 165 Furthermore, ComReg notes that using its statutory information powers, it further requested eir to provide (1) market research it had undertaken (2) eir's likely approach in the counterfactual scenario (i.e. no public payphone USO). eir confirmed that it had not undertaken any market research and that in the counterfactual scenario eir was likely to seek to remove all public and private payphones.
- 166 Contrary to what eir suggest, having analysed amongst other things the actual payphone usage data as provided to ComReg by eir, Consultation 18/85 and this Decision do incorporate a full and objective assessment of the potential advantages and disadvantages (costs and benefits) of the various regulatory options open to ComReg to meet the stated objectives.
- 167 ComReg's aim is to guarantee that universal service payphones continue to meet the reasonable needs of end users as envisaged by the Directive and the Regulations. Having specific regard to the counterfactual analysis, and having analysed actual the payphone usage data provided by eir and all available information, 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.
- 168 Having regard to the principle of proportionality, this is satisfied in that eir will have the commercial freedom to reduce the number of public payphones if it so wishes in line with the usage thresholds.

169 As regards costs, ComReg has considered the public payphone associated revenues earned and the associated costs incurred by eir. In Consultation 18/85 (paragraphs 83 to 85) ComReg outlined that all eir's payphones (both public and private) are maintained under one outsourced maintenance contract. [REDACTED]

171 As outlined in paragraph 169, annual maintenance charge associated with universal service public pay telephones is decreasing over time.

172 Existing maintenance charges are off-set, in part, by public pay telephone call revenue, additional advertising and payphone access charge (PAC) revenue from universal service and other public pay telephones. Both universal service and other public pay telephones also contribute to overall Freephone market revenues.

173 eir's 2014/15 USO payphone model states that payphones generated revenue⁴⁵ of [REDACTED] (based on call cards, coin collections and credit cards).

174 eir's 2015/16 USO payphone model states that public pay telephones generated more revenue⁴⁵ of [REDACTED] (based on call cards, coin collections and credit cards).

175 eir's payphone access charge (PAC) revenue was [REDACTED] per eir's 2014/15 USO funding application⁴⁶; and [REDACTED] per eir's 2015/16 USO funding application.

176 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.

⁴⁴ [REDACTED] eir's total payphone base as notified to ComReg was [REDACTED].

⁴⁵ Based on eir's regulatory account allocations.

⁴⁶ [REDACTED]

177 This provides a reasonable indication of eir's public pay telephone actual costs and revenues which were considered by ComReg as part of Consultation 18/85.

6.3 Final RIA on most appropriate approach to provision of public payphones

178 ComReg has carefully considered in chapters 4 and 5, and section 6.2.2 of this Decision document the specific issues raised in relation to its proposals including the draft RIA.

179 Having regard to all available evidence collated during the consultation process, including, the submissions received in response to Consultation 18/85, and ComReg's statutory objectives, the following sets out ComReg's final RIA in relation to the designation of eir as the USP until 31 December 2020. This final RIA updates the assessment of impacts on stakeholders and competition to assist ComReg making a decision on requirements regarding the optimal approach to public payphone provision, in order to help ensure that the USO responds to end-users' reasonable access needs and is proportionate. This final RIA sets out the 5 steps in the RIA Guidelines for conducting RIAs as follows.

6.3.1 Step 1 – Describe the policy issue and identify the objectives

180 The Regulations place primary responsibility on ComReg as the independent ECS regulator for Ireland, to safeguard and ensure the provision of a minimum set of telecommunications services in the state, including public payphones.

181 Universal service is an important measure to ensure end-user welfare. 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, where the market might not deliver these services. Ensuring reasonable access to voice telephony services from public pay telephones contributes to social and economic inclusiveness in society.

182 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.

- 183 ComReg's concern is that, if left to the operation of market forces alone, an adequate provision of public pay telephones 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 above; and eir's response to Consultation 18/57 and Consultation 18/85.⁴⁷
- 184 In these circumstances where these services are valued and needed at this time, the requirements of the Regulations may not be met. ComReg's research shows that circa 3% of all adults 18+ have reported recently using a public payphone.⁴⁸ Public payphones for some users an essential service i.e., for those without a landline or mobile phone or, where using a mobile phone is not possible. In particular, for disadvantaged and vulnerable end-users who still rely heavily on the public payphone as a gateway to public services, such as Freephone numbers and making emergency calls. The role of the public payphone while diminished remains important for this cohort of end-users.
- 185 Therefore, ComReg's objectives are to help ensure that end-users have access to public payphones such that their reasonable needs are met and that consumers are protected; and therefore that the objectives of the Regulations (transposing the Universal Service Directive) are met.
- 186 In pursuing these objectives and to protect end-users, ComReg was also mindful of the principle of proportionality. Having regard to any potential for a disproportionate burden of regulation on the USP(s) or undertaking(s), ComReg's objective was to ensure that any USO measure is implemented in a cost effective manner, minimising the potential costs and disruption to end-users and the USP.

6.3.2 Step 2 – Identify and describe the potential regulatory options

- 187 As set out in Consultation 18/85,⁴⁹ ComReg considered a range of regulatory options open to it to achieve the above stated objectives:
- Option 1 – Remove the USO and rely on normal market conditions to meet the reasonable needs of end-users for public payphones (no USO)
 - Option 2 – Impose a USO to maintain same obligations set in D09/18 (the status quo)
 - Option 3 – Impose a USO but amend USO specification

⁴⁷ See <https://www.comreg.ie/publication/provision-of-public-pay-telephones-universal-service-interim-designation-submissions-to-consultation-18-57/>

⁴⁸ ComReg consumer ICT survey 2017, slide 87.

⁴⁹ As set out in section 7.3 of Consultation 18/85.

6.3.3 Step 3 - Determine the impacts on stakeholders and competition

188 In order to determine the impact on stakeholders and competition, ComReg has considered respondents' views including on the draft RIA and has taken into account the factors set out above.

189 Having regard to the submissions, this final RIA updates the assessment of the impact of each option set out above by comparing their impact with what would happen if the option was not implemented.⁵⁰ This is set out below and in the table.

Option 1 - No Payphone USO

190 In section 7.4 of Consultation 18/85 ComReg acknowledged that removing the USO may appear to be an efficient response to the technological and social changes in the electronic communications market. ComReg noted in paragraphs 44 to 47 of Consultation 18/85 that the payphone business was in relative decline, mainly due to the wide availability of mobile phones, non-USO payphones (many shopping centres now open longer) and SOS phones.

191 However, it is ComReg's view, having analysed actual payphone usage data as provided to ComReg by eir, that the end-users accessing public payphones, and the reason for use, will vary depending on the circumstances. It is not appropriate to compare public payphone usage with the general phone usage of other consumers of electronic communications services. The relevance in this context is the benefit to society (in meeting the reasonable needs of end-users) and the actual use of a particular public payphone.

192 Public payphones are sometimes essential for those without a landline or mobile phone or, where using a mobile phone is not possible. In particular, they are 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. This need is illustrated by the actual payphone usage data as provided to ComReg by eir. Although the trends set out in Consultation 18/85 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. Therefore, the existence of other mechanisms for making calls does not negate end-users' reasonable needs for access to public payphones.

⁵⁰ For ComReg's preliminary impact assessment of options, see section 7.4 and 7.5 of Consultation 18/85.

193 Having regard to the importance of USO to ensure end-user welfare and, having regard to the counterfactual scenario, ComReg, remains of the 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. Removing the USO will not ensure end-users are protected, and in particular will not ensure that the reasonable needs of end-users are met with respect to public payphones. In these circumstances, there would be detriment to the most vulnerable in society who continue to benefit from the safety net in the transition away from traditional services. Hence, absent a USO, there is a risk that the requirements of the Regulations and the Act would not be met. ComReg believes the cost burden for the USP and industry as regards public payphone provision is not disproportionate.

Option 2: Impose a USO maintaining existing obligations

194 The status quo approach would be expected to ensure end-user welfare because public payphones continue to be valued and needed at this time and, therefore, are of benefit to society. Having analysed eir's actual usage data, primarily disadvantaged and vulnerable end-users have a reasonable need to use public payphones. Option 2 would ensure that these end users will continue to have access to public payphones and access to voice services from public payphones at prices that are uniform throughout the State (geographically averaged prices or GAP) when necessary for calling ECAS, and other valued services. It could not be excluded that the USP may wish to increase prices in specific areas with the result that this could preclude some consumers from receiving an affordable AFL USO service, public payphones. ComReg considered that maintaining the GAP obligation will protect end-user welfare. Option 2 would protect end-users from a blanket removal of public payphones and as it is based on a usage threshold would provide a reasonable number of working public payphones where they're most used and needed. Under Option 2 the public payphones which would remain would be sufficiently used (i.e. above the usage threshold level) and, hence, the reasonable needs of end-users would be met.

195 The USP also benefits under Option 2 as set out in Consultation 18/85. In response to the submissions received ComReg notes that under the dynamic approach, eir has commercial freedom to manage public payphones which fall below the usage threshold and the profitability of its business. Under the dynamic approach the cost of this solution is not unduly disproportionate on the USP.

196 Based on the assessment set out above ComReg is of the preliminary view that, on balance, Option 2 (i.e. 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.

Option 3: Impose a USO but amend USO specification

197 In Consultation 18/85, ComReg identified two possible variants on the status quo approach as follows:

- Option 3a: Define public payphones which must be retained and maintained
- Option 3b: Change the usage threshold levels set under D09/18

198 Having assessed the potential costs and benefits of these variants as regards the nature of a USO, and having taken into account the respondents views, ComReg considers that imposing a USO consisting of one of the Option 3 variants (a - b) would also result in an overall net welfare benefit.

199 Changing the form of USO would likely bring a range of benefits to end-users and industry. Broadly, it would help ensure that:

- End-user welfare is maintained where it helps mitigate the identified end-user protection concerns, as set out above;
- end-users are protected 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 indicate that an amendment of the existing permissible removal criteria may be warranted.

200 As set out in Consultation 18/85, any regulatory burden would be lightened where a lower removal threshold for public payphones is allowed for. It is envisaged that any USO net cost associated with a public payphone USO would reduce over time, such that a modified USO specification would not result in a disproportionate cost burden for the USP or industry. In this light, changing the specification would not be more burdensome on a USP(s) than is necessary.

Updated Options	Impact on Industry		Impact on End-user		Impact on Competition
	Costs	Benefits	Costs	Benefits	
<p>Option 1</p> <p>Remove the USO (No USO)</p>	<p>eir may lose revenue (calls, Payphone Access Charge (“PAC”), Freephone and advertising) and the brand benefit of having its logo displayed on phone boxes throughout the country associated with the provision of USO public payphones.</p>	<p>eir has complete freedom to respond to changing commercial circumstances.</p> <p>eir can cease to provide public payphones which should result in cost savings, though non USO payphones could be continued on a commercial basis if so decided by eir.</p> <p>Public payphones would no longer be a USO cost such that a net cost claim is removed with no impact in respect of sharing of any unfair burden.</p>	<p>Public payphones may cease to be provided.</p> <p>Existing USO public payphones within the State would be capable of being removed immediately even if being used and without prior notification to the detriment of some end users.</p> <p>As the specific details of eir’s approach is not known, vulnerable end-users and most disadvantaged in society may no longer have access, on the same terms, to s service that they currently rely on and use, and may only have access to expensive alternatives. This would be detrimental to end users and the requirements of</p>	<p>Consumers living in areas where public payphones have become the location for anti-social behaviour may benefit from their removal.</p>	<p>The potential effect of implementing this option is likely to be largely competition neutral.</p>

Updated Options	Impact on Industry		Impact on End-user		Impact on Competition
	Costs	Benefits	Costs	Benefits	
			the Regulations would not be met.		
<p>Option 2</p> <p>Maintain existing obligations (status quo)</p>	<p>eir incurs the costs associated with the provision of public payphones that are uneconomic.</p> <p>Potential USO net cost claim and possible impact if an unfair burden is found (i.e. sharing mechanism would be triggered).</p>	<p>Under the dynamic approach eir may choose not to retain certain current public payphones, while being required to retain certain others. This gives flexibility to eir to adapt to evolving market conditions and end-user needs</p> <p>eir can retain revenue associated with the provision of public payphones (voice calls, Freephone; PAC and advertising) and, having its brand on those public payphones which remain, off-setting some costs.</p> <p>A dynamic payphone USO would likely</p>		<p>End-users who use and rely on public payphones continue to have reasonable access to public payphones and access to voice telephony services from public payphones at prices that are uniform throughout the State when necessary, for calling ECAS, DQ and other valued services, in accordance with the approach previously in place.</p> <p>In general, the public payphones which would remain would be those that are sufficiently used (i.e. above the usage</p>	<p>The potential effect is likely to be largely competition neutral.</p>

Updated Options	Impact on Industry		Impact on End-user		Impact on Competition
	Costs	Benefits	Costs	Benefits	
		reduce any associated USO net cost over time such that a cost burden for the USP or industry as regards public payphone provision is not disproportionate.		threshold level) and, hence, the reasonable needs of end-users would be met, and therefore the requirements of the Regulations would be met.	
<p>Option 3 Impose USO with an amended specification</p> <p>Option 3a (Define the public payphones which would be retained and maintained); or</p> <p>Option 3b (Change the usage threshold specified under D09/18)</p>	<p>eir incurs the costs associated with the provision of the USO public payphones that are uneconomic.</p> <p>Potential net cost claim and possible impact if an unfair burden is found (i.e. if sharing mechanism were to be triggered).</p> <p>Defining public payphones which would be retained and maintained at a point in time would not reflect change in</p>	<p>Retention by USP of any revenue associated with the provision of public payphones (voice calls, Freephone; PAC and advertising) and, having its brand on those public payphones which remain, off-setting costs.</p> <p>Any net cost associated with a narrower scope for any payphone USO would likely reduce over time such that a</p>		<p>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 as a result the reasonable needs of end-users will likely continue to be met, which helps ensure end-user welfare. Therefore, the requirements of the</p>	The potential effect is likely to be largely competition neutral.

Updated Options	Impact on Industry		Impact on End-user		Impact on Competition
	Costs	Benefits	Costs	Benefits	
	<p>usage over the designation period, with the result that it may reduce a USP's flexibility to adapt to evolving end-users needs.</p> <p>Defining public payphones which would be retained and maintained requires a set of rules would need to be established, which may potentially impose additional costs and administrative burdens on a USP.</p>	<p>cost burden for the USP or industry as regards public payphone provision is not disproportionate.</p>		<p>Regulations would be met.</p> <p>As usage varies substantially by public payphone (some have significant usage) defining the public payphones which would be retained and maintained may represent a more targeted solution to the benefit of certain end users.</p>	

NON CONFIDENTIAL

6.3.4 Step 4 - Assess the impacts and choose the best option

- 201 ComReg's objective is to find the right balance between the public payphone universal service required to meet the reasonable needs of end-users and providing sufficient flexibility to a USP to adapt to technological and social changes.
- 202 Having specific regard to the counterfactual analysis, having analysed actual payphone usage data as provided to ComReg by eir, and taking in to account the submissions, ComReg considers that the continuation of a public payphone 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.
- 203 Public payphones provide a valuable service to vulnerable users in society. For the reasons set out in this Decision, it remains ComReg's view that there is a societal case for a public payphone USO. This need is illustrated by the actual payphone usage data as provided to ComReg by eir.
- 204 Having regard to the identified consumer protection concerns, in light of possible commercial incentives for undertakings, and the impact on end-users absent a USO, ComReg is of the view that no USO (Option 1) at this time is not appropriate. Removal of the USO would likely mean that the reasonable needs of end-users with respect to public payphones would not be met. There would likely be detriment suffered by the most vulnerable in society who continue to benefit from public payphones. Hence, absent a USO, there is a risk that the requirements of the Regulations would not be met.
- 205 In these circumstances, and where the cost to a USP is not unduly burdensome, to keep in place a USO to ensure end-user welfare in the immediate term (which is consistent with European benchmarks)⁵¹ is appropriate and justified.
- 206 Each of the Options, Option 2 (the status quo approach) and Option 3 (a varied USO specification) would, to different extents, address end-user protection concerns for the 'at risk' end-user.
- 207 In order to help identify the optimal regulatory approach, ComReg considered the advantages and disadvantages (cost and benefits) of different options in relation to the potential nature of any USO measure, as compared to the counterfactual scenario, as set out in the table above.

⁵¹ According to BEREC, at the end of 2017 there are 22 countries where public pay telephones remain within the scope of USO in 2017. The report incorporates the responses from all EU member states except Belgium, as well four non-EU members (Iceland, Montenegro, Norway and Switzerland).

- 208 Based on the analysis and having taken into account respondents views, ComReg's view is that, on balance, maintaining a USO broadly consisting of the same approach that has been in place (which amongst other conditions, encompasses usage thresholds for the permissible removal by eir of public payphones) would result in an overall net welfare benefit. The status quo approach helps ensure that end-users who use public payphones could still have access to them at prices that are uniform throughout the State when necessary for calling ECAS, and other valued services, whilst still permitting the USP to remove public payphones for which there was no longer a reasonable need. Under this regime eir has the commercial freedom to reduce the number of public payphones if it so wishes in line with the usage thresholds so that the cost of this solution would not result in a disproportionate cost burden on the USP, and will not result in any additional costs or administrative burden to the USP.
- 209 As set out in Consultation 18/85, an amended USO specification would help ensure that the USO evolves with technological and social developments in a more targeted way. It 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 defining which public payphones should remain is that it would be static and would not take into account any changes in public payphone usage within the designation period. Compared to Option 2 (which is primarily based on usage), defining which specific payphones to keep would be a less flexible solution, possibly involving more complexity or cost to operate over time.
- 210 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 Option 2, Option 3b would likely impose an additional cost and administrative burden on a USP. Importantly, the dynamic nature of Option 2 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 pay telephones would not appear necessary at this time.

The optimal regulatory approach to the public payphone USO

- 211 As set out above, ComReg's objective for this final 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).
- 212 Overall, the dynamic approach under Decision D09/18 is a workable and cost effective solution. It achieves an appropriate balance between the USP's obligation to retain a number of public pay telephones in accordance with the usage threshold to meet the reasonable needs of end-users and, any potential cost burden imposed in the USP.

- 213 ComReg is aiming to promote and protect the interests of end-users by adopting the measures in this Decision, as they are intended to ensure that end-users will have access to the universal service at prices that are uniform throughout the State (when necessary for calling ECAS, and other valued services. ComReg considers that maintaining the GAP obligation will protect end-user welfare. Obligations in place hitherto and under Decision D09/18 have accrued benefits to those who have valued and used the universal service.
- 214 Any cost burden incurred by the USP in respect of each of the options 2 and 3 would, on balance, be outweighed by the benefits to end-users and society. However, Option 3 would appear not to provide additional welfare benefits over Option 2 at this time. Accordingly, ComReg has decided that Option 2 is the optimal approach to this matter at this time. It achieves ComReg's objectives that end-users are protected and ensures that the requirements of the Regulations are met. Under Option 2 eir, as the USP, may chose not to retain certain current public payphones if it so wishes, while being required to retain certain others, meaning that the obligation is not more burdensome than necessary. Option 2 continues be proportionate and achieves the stated objectives.

NON CONFIDENTIAL

7 Decision Instrument

7.1 STATUTORY FUNCTIONS AND POWERS GIVING RISE TO DECISION

7.1.1 This Decision and Decision Instrument, made by 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 Act and regulation 16 of the Framework Regulations;
- ii. pursuant to powers conferred upon ComReg under and by virtue of regulation 5(2), regulation 7(1) and regulation 8(3) of the Universal Service Regulations;
- iii. having regard to regulation 7(3), 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; and
- v. having regard to the analysis and reasoning set out in ComReg document No. 18/85 and ComReg document no. 19/06.

7.2 DEFINITIONS

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

“**ComReg**” means the Commission for Communications Regulation;

“**Data Collection Period**” means the quarterly period in respect of which ComReg collects Data from eir. There are four Data Collection Periods in each year;

“**Data**” means any information, data, calculations, figures or metrics relevant to eir’s performance;

“**Effective Date**” means the date this Decision Instrument becomes operative and fully effective as specified in Section 7.4 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;

“**Minister**” means the Minister for Communications, Climate Action and the Environment;

“**Number of hours out of service**” means the number of hours captured by the eir system indicating that a Public Pay Telephone is non-operational;

“**Number of hours with limited service**” means the number of hours captured by the eir Remas system indicating that the Public Pay Telephone is not in Full working order but is providing 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;

“**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;

“**Full Working Order**” means that an end-user of a Public Pay Telephone is able to make use of the services normally available;

“**Public Pay Telephone Working Order Calculation**” means the calculation set out in Schedule 1 to this Decision Instrument;

“**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.

- 7.2.2 References to European Union legislation or to primary national legislation or secondary national legislation shall be construed as references to that legislation as amended from time to time.
- 7.2.3 Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.
- 7.2.4 Examples shall not be construed to limit, expressly or by implication, the matters they illustrate.

- 7.2.5 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.

7.3 SCOPE AND APPLICATION

- 7.3.1 This Decision Instrument is binding upon eir

7.4 EFFECTIVE DATE AND DURATION

- 7.4.1 This Decision and Decision Instrument is effective from 25 February 2019 (“the Effective Date”) to 31 December 2020 or until such earlier date as decided by ComReg.

7.5 MAINTENANCE OF OBLIGATIONS

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

7.6 SEVERANCE

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

7.7 CONFLICT

- 7.7.1 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.

7.8 DESIGNATION OF UNIVERSAL SERVICE PROVIDER FOR PUBLIC PAY TELEPHONES

- 7.8.1 Pursuant to Regulation 7 of the Universal Service Regulations, eir is hereby designated as the Universal Service Provider (“USP”) for the purpose of complying with regulation 5 and regulation 8(3) of the Universal Service Regulations.

- 7.8.2 The USP shall do the following:

- i. pursuant to regulation 5(1) of the Universal Service Regulations 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;
- ii. pursuant to regulation 5(5) of the Universal Service Regulations 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 other 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; and
- iii. pursuant to regulation 5(6) of the Universal Service Regulations ensure that users of its Public Pay Telephones have access to a directory enquiry service referred to in regulation 4 of the Universal Service Regulations.

7.9 GEOGRAPHICALLY AVERAGED PRICING

- 7.9.1 Pursuant to regulation 8(3) of the Universal Service Regulations, ComReg requires eir, as the designated USP, to apply common tariffs including geographically averaged prices throughout the State for Public Pay Telephone services.

7.10 TERMS AND CONDITIONS APPLICABLE TO THE PROVISION OF PUBLIC PAY TELEPHONES

- 7.10.1 Pursuant to regulation 5(2) of the Universal Service Regulations, ComReg specifies the following terms and conditions applicable to the provision of Public Pay Telephones for the purpose of ensuring that the requirements specified in regulation 5(1) of the Universal Service Regulations are met. eir, as the designated USP, must comply with the following terms and conditions:

- 7.10.1.1 The USP must ensure that all Public Pay Telephones facilitate a number of appropriate payment means including coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes.

Criteria for permissible cessation of service

- 7.10.1.2 The USP is permitted to cease to provide service from a Public Pay Telephone where:

- i. there is demonstrable evidence that the physical 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 6 months of the Public Pay Telephone (while in Full Working Order) has been low, indicating an absence of “reasonable need” in that location. For the purpose of this provision, “low” means that average usage (including local, national, international, emergency calls, directory enquiry calls, Freephone calls and reverse charge minutes) for the previous six months was less than 1 minute per day and the average minutes for the previous 6 months to Freephone numbers and emergency services numbers combined was not more than 30 seconds of these minutes;
- iii. there is more than 1 Public Pay Telephone on a single site (i.e. within 100 meters of each other or within a line of sight of each other, which includes either side of a road or on any adjacent road), and the average usage (including local, national, international, emergency calls directory enquiry calls, Freephone calls and reverse charge minutes) across all of the Public Pay Telephones on the single site for the previous 6 months has been low (“low” has the same meaning as in the preceding sub-section). In such instances the USP shall ensure 1 Public Pay Telephone remains on the single site; or
- iv. the physical removal of a Public Pay Telephone is requested by a local authority.

Notification requirements

7.10.1.3 The USP must notify ComReg at least 8 weeks in advance of the proposed cessation of service from any Public Pay Telephone.

7.10.1.4 This notification to ComReg should contain at a minimum:

- i. Details of the proposed Public Pay Telephone service to be ceased;
- ii. Proposed date of cessation of service and of removal of Public Pay Telephone;
- iii. Details of which of the criteria in section 7.10.1.2 have been met and how;
- iv. Evidence to demonstrate that the Public Pay Telephone was in Full Working Order, i.e. within reasonable repair standards, for the 6 months prior to its proposed cessation except in cases where it has been repeatedly vandalised; and.
- v. Usage reports for the Public Pay Telephone during the six month period prior to the proposed cessation of service, in a format specified by ComReg.

- 7.10.1.5 The USP must post a notice on the Public Pay Telephone for a minimum period of 6 weeks in advance of the proposed cessation of service from that Public Pay Telephone. This notice should clearly inform users of the intention to remove the Public Pay Telephone and include the proposed date for cessation of service from that Public Pay Telephone.
- 7.10.1.6 The USP shall publish the following information on the USP's website in an easily identifiable location on a quarterly basis:
- I. The total number of Public Pay Telephones by county and further disaggregated according to whether they are single or multiple Public Pay Telephone sites; and
 - II. The total number of Public Pay Telephones removed/re-sited and/or installed in the period. Such information shall be disaggregated according to whether the Public Pay Telephones are located at single or multi-sites and by county.
- 7.10.1.7 The USP shall provide the following information to ComReg:
- I. The number indicating the proportion of Public Pay Telephones in Full Working Order, which shall be calculated on the basis of the Public Pay Telephone Working Order Calculation (to be calculated and provided to ComReg for each Data Collection Period); and
 - II. The average number of Public Pay Telephones for the Data Collection Period. ComReg may publish this information.

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE 25th DAY OF February 2019

Schedule 1: Public Pay Telephone Working Order Calculation

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

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

NON CONFIDENTIAL