



Commission for
Communications Regulation

Provision of Public Pay Telephones Universal Service: Scope and designation Submissions to Consultation 18/85

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eir

Response to ComReg Consultation:

Provision of Public Pay Telephones

Universal Service: Scope and Designation

ComReg Document 18/85





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INTRODUCTION

1. eir welcomes the opportunity to respond to this consultation from ComReg regarding the scope and designation of USO for the provision of public payphones. Having considered the consultation paper, our conclusion is that in recommending the continuation of the public payphone Universal Service Obligation (USO) on eir, ComReg has not reached any properly analysed position and this is a material flaw in its approach to this matter.
2. For example, ComReg has not used expert evidence or any sufficient or contemporary empirical evidence to justify its conclusions. Section 5 of the European Communities (Electronic Communications) Networks and Services) (Universal Service and Users Rights) Regulations 2011 requires:

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

No analysis of any such *"reasonable needs"* has been carried-out.
3. In addition ComReg makes no effort to quantify the extent of the effect that the potential removal of the payphones USO designation from eir might have on the overall market. For instance, ComReg repeatedly refers to a *"cohort of end-users"*¹ who may need to use public payphones. ComReg has failed to properly define or quantify this consumer grouping within society whose needs allegedly justify the continued provision of public payphones under universal service obligations throughout the State for the next two years. Nor does ComReg make any real effort to measure or estimate the other relevant attributes of such users, their geographical spread, the scale of their usage, the potential substitutes available to them, etc. In the absence of a clear definition of relevant consumer groupings ComReg seeks to rely on broad generalisations such as *"[these users] may have no other means of accessing these services other than via public payphones"*².
4. One indication of the geographical spread of the "cohort" that ComReg is apparently seeking to protect by maintaining the USO is the fact that, of all the calls to freephone numbers from public payphones, \times are directed to two Dublin-based helplines³. The fact that the overwhelming

¹ Ref. Paras. 18, 77, 111, 158 of 18/85

² Para 18 of 18/85

³ Ref. Para 76 of 18/85



majority of calls to helplines are Dublin City centric cannot be held to justify a national obligation.

5. ComReg has consistently acknowledged over the years that payphone usage has declined. This is undoubtedly the case, and the sheer scale of the drop is outlined in detail later in this response⁴. Public payphone usage is a miniscule fraction of what it used to be. However, ComReg continues to seek to justify intrusive regulation on the basis that some usage, no matter how small, demonstrates a clear societal need.
6. Against this backdrop, ComReg's proposal to simply reintroduce the nationwide USO designation on eir for a further two years, in such a haphazard manner, is devoid of any justification or logical basis.
7. We would also point out that what ComReg proposes in its Draft Decision 18/85 is not the maintenance or continuation of an existing obligation. Rather it proposes the reintroduction of an obligation which has lapsed since 15th Oct. 2018⁵. There is currently designated payphone USP in Ireland. Yet there has not been a widespread removal of public payphones by eir in that time. This fact alone should demonstrate to ComReg that any fears they have as regards a world without a payphone USO are totally unfounded. This is proof, if proof were needed, that the payphone USO is superfluous and unnecessary in the current and future regulatory environment.
8. Clearly, eir does not believe that there is any justification for the reinstatement of the nationwide payphone USO. However, in the event that ComReg fails to acknowledge and accept all the reasoned arguments put forward by eir in this response document, and instead allows a form of "regulatory inertia" to prevail, eir believes that this should be the last time that the provision of public payphones is mandated by USO. This particular USO designation must be terminated by ComReg by 2020 at the latest. Where ComReg believes that it has identified a real societal need, and in the absence of a targeted approach to address such issues, eir would be prepared to work with ComReg to see if the retention of a very limited number of public payphones in the short term might be part of the solution. However we do not believe it is fair or equitable for ComReg to continue to require eir to dedicate resources to an outdated legacy service nationally rather than redirecting these resources to investing in improving and rolling out its

⁴ See figures 2, 3 & 4 below

⁵ ComReg D09/18 – "This Decision and Decision Instrument is effective from 16 July 2018 to 15 October 2018"

network to the benefit of all consumers. The payphone USO has been made redundant by the mobile phone.

9. In this regard, eir's sees no merit in the proposal by ComReg⁶ to review the usage threshold criteria a year from now. In the first instance, such a review (if it was to be done) should be done now as part of this review. Secondly, a further review of the threshold in the future (which would invariably slip beyond 1 year, if ComReg's previous record on timekeeping in this area is anything to go by) seems to suggest that ComReg seems to envisage this regulatory regime extending possibly beyond 2020. Such an eventuality is not something eir cares to contemplate.
10. We also note that ComReg proposes that eir should "*Ensure that all public pay telephones provide appropriate payment means*".⁷ We would contend that at this stage this should exclude payment by coin, as coin collection is very expensive especially given the few remaining payphones dotted sporadically around the country. Additionally, the holding of coins in the phone is an incentive to vandalism, for certain people seeking to extract the coins by force.
11. Good regulatory practice requires ComReg to make regulatory decisions which are limited and proportionate to the public interests they serve. For the reasons set-out in this paper, eir does not believe that this principle of good regulatory practice has been satisfied.
12. ComReg should review those aspects of economic regulation that are inconsistent with normal commercial practices and avoid decisions where the costs to the parties who are subject to the regulation outweigh any potential benefits that a particular subset of users might derive from the designation, particularly (as in the case of payphones in the modern age) when this subset is miniscule compared to the overall user base, and when no effort has been made to quantify the number or location of the users affected, or the benefit (if any) that these potential users may derive, or to identify alternatives that may be available to them. The costs to eir of the public payphone USO significantly outweigh any perceived or potential benefits of the designation. Alternative arrangements (such as mobiles) are available to meet the objectives and these are also consistent with fair competition. Any resources eir might save as a result not being designated with the payphone USO could be redirected into improving our network or potentially expanding our urban and rural footprint, either of which would result in far more value to the overall customer base and the competitive environment.
13. In this regard, ComReg's review of the need for a USO must focus on the effectiveness of any USO on public payphones and clearly demonstrate a need to maintain such a designation on

⁶ Para 26 of 18/85

⁷ Para 6.8.3

eir for the next two years. As mentioned above, ComReg has provided no evidence to justify such continued designation on eir.

14. ComReg must re-evaluate whether this USO has any prospective merit. There is evidence that, with the development of usage in Ireland and the overwhelming presence of a much more efficient and effective form of communication by way of mobile phones, public payphones are in decline and that there is no justification to re-impose a USO on eir. For many years now public payphones have become outdated as a means of communications.
15. It has long been accepted that mobile services provide a substitute for payphones. For example the following chart was produced by ComReg as far back as 2006⁸ and ComReg observed that *“As a consequence of the growth in mobile telephony, some further reductions in the number of payphones in both urban and rural areas may be unavoidable due to a possible further fall in demand for Payphones.”* [emphasis added].

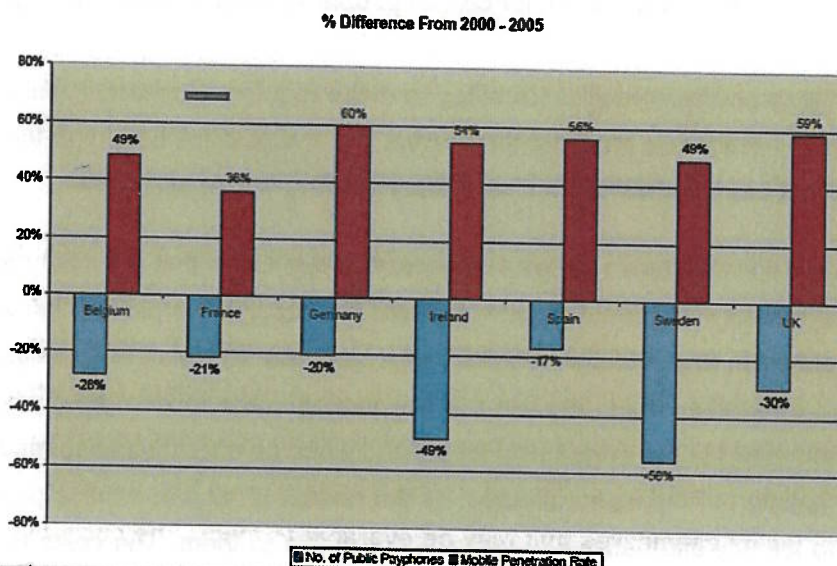


Figure 1 – Payphones and Mobile Penetration

16. The chart above demonstrates the substantial reduction in the number of payphones as mobile penetration increase in a representative sample of countries including Ireland over the period 2000-2005. Over the last decade the mobile market has continued to grow whilst the payphone market has contracted. (The Irish mobile penetration rate has gone from less than 50% at the turn of the millennium, to over 100% in 2005 and is now approaching 130%)⁹. We note that the

⁸ ComReg 06/16

⁹ Ref. ComReg's published "Quarterly Key Data" reports for the relevant periods



Dublin City centric helplines have seen a steady decline in freephone traffic to their service whilst mobile traffic has grown considerably.

17. ComReg has not established the level of mobile phone ownership among the homeless. The vast majority of freephone traffic relates to Dublin City Council (DCC) freephone. Looking in more detail at payphones making calls to DCC freephone, despite the removal of 386 payphones, the average number of calls per payphone to DCC has declined by between 2015 and 2017, which suggests very little migration of usage to the remaining payphones. Indeed this usage appears to be migrating to mobile phones as indicated by a comparison of available information relating to a month in late 2017 (29 Oct to 27 Nov) with the month of August 2018 where the percentage of calls from mobiles to the DCC placement service number grew from 20% to 30%. It is of particular note that the vast majority of calls to the service are from mobiles and that this percentage is growing rapidly suggesting that many homeless people possess mobile phones and those that have used payphones in the past have substituted payphones for mobile phones, suggesting that they had the option to use either in many cases.
18. In addition, there has been a proliferation in recent years of communication devices, with virtually every young person in the country owning at least one of an IPOD, IPAD, etc. (in addition to a mobile phone), and using any of these devices as a means of instant communication.
19. As a result, the need for a USO for public payphones in Ireland deserves careful re-examination. It is clear that other services have become widespread and are considered more than adequate to achieve universal service goals. 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.
20. There is no justification that there should be a further USO designation for public payphones.
21. It is our firm view that there is no justification for ComReg's preliminary conclusions in respect of the continuation of the public payphone USO. Seeking to maintain the obligation is unnecessary and excessive. eir does not believe that the continuation of a payphones USO would offer any meaningful solution to the terminal decline and increasing irrelevance to society of public payphones. ComReg should now remove the USO in relation to public payphones in its entirety.



GENERAL BACKGROUND

22. eir (then Telecom Éireann) was designated as the USO provider of access to public payphones in 1999¹⁰. The first review of this designation was completed in June 2003 and was followed by a second review in July 2006. At the time eir indicated its view that a payphone obligation was no longer necessary due to the fact that mobile penetration was even then over 100% and payphone usage was declining at more than 25% per annum. However ComReg was of the view that public payphones continued to be important for reasons of social and economic inclusion.
23. The USO designation was again renewed by ComReg in June 2010. eir argued at that time that *payphone call volumes were declining rapidly and usage was falling*. It goes without saying that these statistics would be considerably more stark now, as payphones are now nothing more than the relic of a bygone era. In its response to the 2010 Consultation, ComReg stated that it *"recognises that payphone usage is declining and that there are alternatives available to the majority of consumers. However, while there is continued usage of payphones, albeit decreasing, ComReg acknowledges the importance of this facility to certain consumer groupings within society"*, [emphasis added]. ComReg appears to maintain this approach up to the present time.
24. ComReg next reviewed the payphone obligation in 2012. In its response then eir re-iterated its view that *"sufficient justification has not been presented for the continuation of public payphone universal service provision"*. BT, Telefónica, Vodafone and UPC also expressed the view that there was no requirement to continue with this USO. Nonetheless ComReg re-imposed the payphone obligation on eir, stating that *"it is in the best interests of users of uneconomic payphones ... to retain the obligation"*. No justification for this conclusion was offered by ComReg.
25. The designation in D07/12 extended until 30 June 2014. Although the payphones USO lapsed on 1st July 2014 and was not reinstated until 8th July by ComReg, a further ComReg Decision (D08/14) extended the designation until 30th June 2018. While D08/14 did introduce a slightly more flexible removals policy, primarily based on usage, this policy is still excessively restrictive, and envisages the piecemeal removal of payphones as each one falls below a usage threshold. No account is taken of the inherent inefficiencies in such an approach, or the fact that the capital and once-off costs of removal of a single payphone would far outweigh any potential cost-saving that might accrue as a result of the removal, in circumstances where

¹⁰ Ref. ComReg (then ODTR) Decision D3/99

payphones maintenance continues to be required on a nationwide basis. Such inherent inefficiency ought to be actively discouraged by ComReg. Instead the opposite is happening, in that ComReg is forcing eir to incorporate such procedural inefficiencies into the process if it wishes to rationalise its payphone base down to economically optimum levels. Alternatively, if eir attempts to remove the payphones holistically in a planned and efficient manner, ComReg has made clear¹¹ that it will refuse USO funding for phones that are not removed in a piecemeal fashion.

26. The underlying problem is that there is no justification for the continuation of a USO in relation to payphones, and the immediate removal of the designation is long overdue.
27. Following 30th June 2018 there followed another "Interregnum" period, until 16th July 2018, during which no payphones USO existed, before ComReg reintroduced the designation on an interim basis until 15th October 2018. With the current consultation period running until 26th October 2018, and with ComReg presumably requiring a minimum of a number of weeks to consider the responses it receives to the consultation, it would appear inevitable that the current Interregnum period still has a number of weeks to run. Surely the existence of a succession of "Interregnum" periods in recent years, during which operations proceeded on an even keel with no protests from any representative groups, nor any sudden increase in the rate of payphone removals by eir, amply demonstrates the absolute folly on the part of ComReg of maintaining a nationwide USO on payphones in this modern era. It also suggests that ComReg does not consider the payphone USO to be a priority matter, or even a material concern, as ComReg appears to be quite content to allow the designation to lapse from time to time.
28. In contrast to when the payphone USO was first imposed, the vast majority of the country is well beyond the reach of the nearest public payphone. In spite of the draft Decision Notice referring to eir being obliged to "*Ensure that public pay telephones are provided to meet the reasonable needs of end-users in terms of the geographical coverage ...*", the days of public payphone ubiquity are long gone, and only a miniscule proportion of the geographical area of the country is within a reasonable distance from a public USO telephone.
29. It is obvious that ComReg has, in practice, long ago completely abandoned any notion that there should be widespread geographical coverage of public payphones but still appears adamant that they should maintain a nationwide USO in relation to payphones. The maintenance of this USO seems to hinge around the "*disadvantaged and vulnerable cohort of society, helping to facilitate their ability to access basic services, such as by making calls to*

¹¹ Ref. Para 37 of 18/85, where ComReg references the reduction in funding in 2014/15 from €320K to €122K

*public helplines (Freephone), and /or the emergency services*¹². It is reasonable to surmise that these users are exclusively urban-based. The irony of this situation is that these are precisely the areas that are best served in terms of alternative infrastructure (mobile phone coverage, broadband coverage, Wifi access, etc.), thus removing any possible justification for prolonging further the unreasonable regulatory burden currently being borne by eir in terms of a payphone USO.

30. To emphasise the point about the lack of ubiquity further the following graph shows the drop in USO public payphones since 2003, around the time when eir was first designated as the payphones USO.

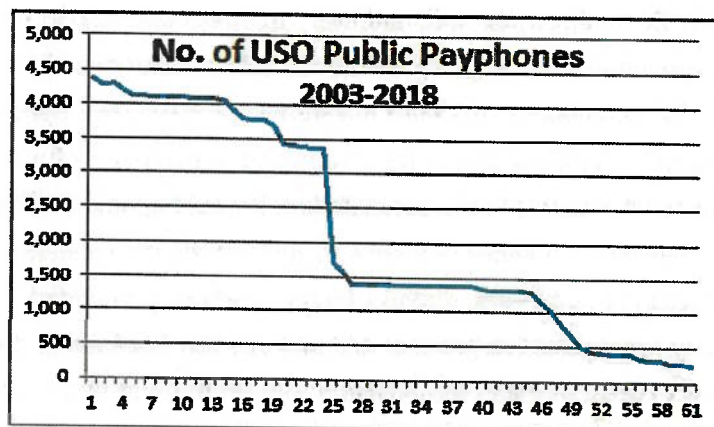


Figure 2 – No. of Payphones

31. An even more pronounced trend is evident when we examine the volume of payphone traffic by quarter over the same period (i.e. since 2003). The graph below shows how the volumes have nosedived, to the extent that the volumes in 2018 are 0.3% of what they were in 2003, and have fallen by over 50% in the past two years, (and they continue to fall steadily by the quarter). For ComReg to seek to justify such intrusive regulation of a payphones USO for the next two years, in the face of overwhelming evidence that it is excessive, costly and unjustified, simply beggars belief.

¹² Para 245 of 18/85

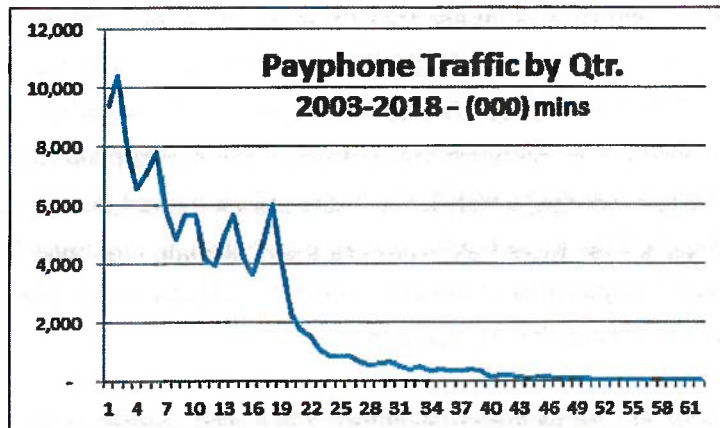


Figure 3 – Decline in Payphone Traffic

32. Even taking account of the fact that the number of payphones has dropped over the period, and allowing for the fact that the phones being removed are (by and large) the ones that are least busy, the “Average usage per phone” metric over the period shows a similar decline as shown in the graph below.

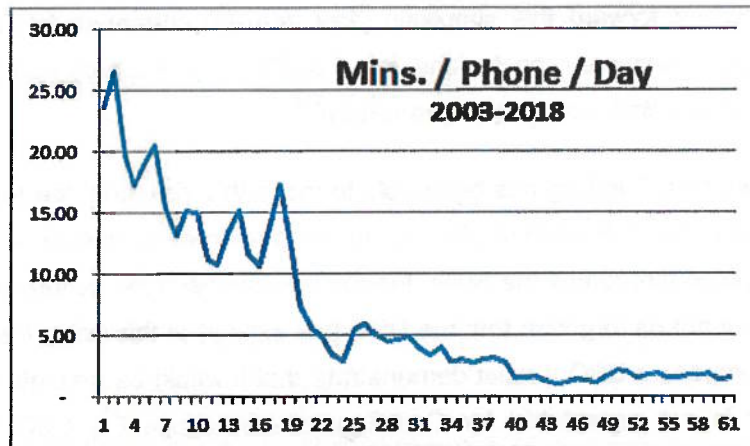


Figure 4 – Decline in Usage per Payphone

33. Clearly, the numbers are now in the “noise” zone and still falling every quarter. Yet, on a forward-looking basis for the next two years, ComReg proposes to maintain the nationwide payphones USO – just as it did way back in 2003. This flies directly in the face of all logic and runs counter to ComReg’s own claim that “ComReg is cognisant that any USO, if required, should not be more burdensome than necessary”¹³.

¹³ Para. 21, ComReg 18/85



34. It is unreasonable for ComReg to suggest that the current payphone base provides anything resembling a nationwide service and in particular a meaningful service to rural or sparsely populated areas. Our most recent analysis showed that our USO payphone base was limited to 3,000 sites, and all of these are in large urban centres. Without exception, all of these locations enjoy widespread mobile coverage, which would alleviate the need for any payphone coverage. ComReg's own analysis is even more telling, where they calculate that only 3,000 of eir's payphone estate qualifies as USO payphones at the end of 2017¹⁴. Of these latter 3,000 phones, all but 3,000 are 3,000 numbers, with the remaining 3,000 being in 3,000.
35. ComReg should, in light of how payphone numbers are falling, address the issue of materiality. In other words, at what point would ComReg consider that it is no longer feasible or reasonable to enforce a payphone USO. Or does ComReg envisage that the nationwide USO will endure until the very last payphone falls below the usage threshold? Presumably even ComReg would find this latter scenario untenable.
36. The 2006 review was the last substantive review of the social need for public payphones undertaken by ComReg. Subsequent renewals of the public payphone USO have been predicated on ComReg assuming that if a public payphone is used, there is a social need. ComReg has carried forward this simplistic view into the current review and consequently reached erroneous preliminary conclusions. It is ComReg's *"preliminary view that, removing the USO altogether at this time would seem premature"*¹⁵.
37. It is difficult to see how ComReg has been able to reach this view from the evidence presented. It is eir's firm view that it is neither efficient nor proportionate to impose a Universal Service Payphone Obligation throughout the State. Indeed this has been the general view of industry for many years. Let it not be forgotten that the USO has expired at this point. Furthermore in order for ComReg to impose a USO it must demonstrate that it would be premature to decide not to impose one. It is not acceptable for ComReg to reintroduce the USO without adequate justification or a sound basis.
38. ComReg also seeks to maintain the fallacy that there are one or more potential other candidates out there who could conceivably be designated as the payphone USP in place of eir¹⁶. ComReg knows full well that this is not the case, and the consultation is highly misleading in this regard.

¹⁴ Para. 105, ComReg 18/85

¹⁵ Para. 18, ComReg 18/85

¹⁶ e.g. Ref Para. 24 of ComReg 18/85 – *"This Consultation extends an invitation to all undertakings to express an interest in providing public pay telephones universal service beyond 15 October 2018 ..."*.



39. The imposition of Universal Service Obligations (USO) on a Universal Service Provider (USP) is a significant regulatory intervention that must be objectively justified by ComReg. It is incumbent on the regulator to clearly define the social objectives under consideration and determine whether those objectives are already being met by the market. If the objectives are not being fully met by the communications market and are not expected to be met in the near future then, consistent with its statutory duties, ComReg must define and implement an efficient solution for the identified problem.
40. ComReg has maintained a position over the years that it would be premature to remove the USO because there are still some payphones in use above the very low usage thresholds set by ComReg. Taken to its logical conclusion ComReg will continue to consider it premature to remove the USO until such time as there are literally no payphones operating above these very low thresholds. This would inevitably lead to a situation where USO payphones might linger for years, numbering in single digits and representing colossal and steadily rising inefficiencies. If ComReg wants to re-impose the payphone USO designation it must do sufficient analysis and present sufficient evidence to meet its legislative obligations. Article 3(2)¹⁷ provides “*Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.*” [Emphasis added].
41. It is clear that any intervention should be specific and targeted. In our view ComReg's proposals in the consultation document are not compatible with the legislative framework.

¹⁷ Universal Service Directive (as amended), USD 2009



USAGE THRESHOLDS and EMERGENCY TRAFFIC

42. As noted above, ComReg has introduced a removals policy in D08/14. This is based in part on usage thresholds at each payphone, and emergency calls contribute to these thresholds. ✕ we would request that ComReg remove emergency calls from the make-up of this threshold. To put this another way, only about one phone in ✕ on average has any emergency call made from it in a particular day.
43. Add to this the fact that it is highly likely that a sizable proportion of these calls are of the malicious or spurious variety, as evidenced by the fact that close to half the calls last no longer than ✕ seconds, and that over 10% of all the calls originate from just ✕ phones, which suggests an abuse not only of the payphones in question but also of the emergency services.
44. In addition, eir would take issue with any view that payphones were in any way central to the operation of the legitimate emergency calls regime. In practical terms, it is difficult to envisage a situation where, faced with an emergency situation, a bystander would search for the nearest payphone in preference to a mobile phone. The latter will invariably in this day and age be more convenient and accessible. To put it in context, that same bystander would, in most parts of the county, be far closer to the nearest Garda station than to the nearest public payphone.
45. Furthermore, in the unlikely event that a bystander to an emergency opting for a payphone in place of a mobile phone, with the advent of the Advanced Mobile Location (AML) service, the use of a payphone would be at risk of frustrating the emergency services in getting to the scene of the emergency and confusion as to whether there is one or more emergencies being reported, as the quality of emergency location information from a mobile phone would be more precise.
46. It is also pertinent to note that there is coverage from multiple mobile networks at every public payphone location in the country. Even in the event of a mobile user having no credit, or any individual mobile network being unavailable for any reason, emergency calls to ECAS are still possible on other mobile networks.
47. In view of this, if ComReg insists on maintaining a nationwide USO for payphones for the next two years (as it proposes in 18/85, and in the face of the myriad of counter-arguments put forward in this response by eir) we believe that, at a minimum, ComReg should reduce slightly the burden of regulation on eir by removing emergency calls from the usage thresholds.
48. When setting the current usage thresholds, ComReg determined that all freephone usage should be included despite ComReg's own observation of the fact that freephone numbers are



used to access competing call origination services including international calling card services. ComReg's rationale for including all freephone numbers was based on its assumption that there would be an administration overhead for the USP in analysing freephone usage at a more granular level. eir could accommodate such granular analysis and considers that the efficiency mandated within the framework for USO would be better served by providing for a more precise usage threshold which does not include such freephone numbers.

49. Therefore if ComReg insists upon reintroducing a payphone USO in its upcoming Decision, it should at least amend the freephone usage threshold criteria in line with the greater granularity described above.

SUMMARY

50. In summary, a proper and complete analysis of the current situation by ComReg can arrive at only one justifiable conclusion – the complete removal of the USO from public payphones in Ireland.



RESPONSE TO CONSULTATION QUESTIONS

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

51. For the reasons outlined above, eir does not agree that there is a continued requirement to impose a Universal Service Obligation in respect of the provision of public payphones in order to meet the needs of end-users. The obligation is an anachronism that no longer serves any useful purpose and should now be discontinued by ComReg.
52. As noted above, the Universal Service Directive requires that Member States ensure that their NRAs are empowered to *"decide not to impose obligations under paragraph 1 in all or part of its territory, if [the NRA] is satisfied that these facilities or comparable services are widely available."*¹⁸ The purpose of this obligation is to ensure that universal service obligations are not imposed where they are not required and where there is evidence that facilities are widely available or, as in the case of public payphones, comparable services are available. This means that where a universal service obligation is no longer justified, a Member State is not entitled to intervene so as to require its continuation and prevent the NRA to remove the obligation, as it ought to do, having regard to the purpose and justification for the universal service.
53. Clearly, mobile phone service is an effective substitute for payphones. Payphones have for many years now been of negligible practical value in the world of telecommunications, having long ago been effectively replaced by more modern infrastructure such as mobile. On that basis, there is no justification for ComReg to maintain the payphones USO.
54. In addition, public payphones are almost exclusively loss-making. Therefore, rather than attempting to impede or delay the removal of uneconomic payphones, ComReg should welcome and encourage the removals and rationalisation process, since this would obviously improve efficiency, both for eir and for the market in general. Clearly, this would be in keeping with one of ComReg's high level goals and statutory objective to "promote competition" and encourage efficient investment in infrastructure and promote innovation.¹⁹
55. The evidence in the preceding sections of this response is conclusive that there is no continued justification for the public payphone USO. This has been the case for some time now and it is

¹⁸ Article 6(2), USD (as amended)

¹⁹ Section 12 of the Communications Regulations Act, 2002 to 2010



disappointing that ComReg appears to be unwilling to accept this. Over the years ComReg has failed to offer any reasonable justification for the continued regulation of public payphones. In the absence of any need to continue the public payphone USO in Ireland and given the very changed circumstances in Ireland in relation to phone services as described in this response, there is a clear and compelling case for removal of the USO designation on eir.

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

56. eir does not agree that the current obligations imposed on eir regarding being designated as the USP for payphones benefits it in any way. On the contrary, ComReg is well aware that the designation imposes a real and ongoing cost on eir, which constitutes an unfair burden on it. This situation is compounded by the fact that ComReg continues to resist any effort to set up a USO funding mechanism, whereby eir might hope to get partially compensated for some of the USO expenditure which it is forced to incur.
57. While ComReg refers to the usage thresholds, these are far too low, and take no account of the inherent inefficiency that would be involved in the piecemeal removal of the payphones.
58. Even within the confines of the usage thresholds, if ComReg insists on maintaining the threshold regime, emergency calls should be removed from the traffic that makes up the threshold.

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

59. It is worth noting that this review of the USO on payphones is a forward-looking review and that ComReg is proposing that eir should continue as USP up to late 2020. Based on the current



position, and trends over recent years and months, (which will, no doubt, continue apace into the future²⁰) it is quite likely that there will be practically no usage of payphones by 2020.

60. As highlighted elsewhere in this response, the continuation of the USO obligation cannot be predicated on payphone usage as eir has demonstrated an extremely high level of substitutability of payphone use with mobile phone use.
61. Therefore there can be no justifiable basis for ComReg doing anything other than lifting completely the USO on public payphones in Ireland.

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

62. eir does not agree for the reasons presented in this response document.
63. Clearly eir is absolutely opposed to the reintroduction of the payphone USO. Furthermore, we believe that if ComReg insists on reintroducing the USO, it should not be done to cover the entire country. At most, it should be limited to the small number of locations where ComReg believes that they may fulfil a societal need. These locations would almost certainly be limited to Dublin city centre where there is a view that some homeless people may use payphones to access services. We would note in this context that the maintenance of a payphone USO by ComReg is hardly the appropriate means to address what is really a symptom of the current homeless crisis in Dublin.

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

64. Article 8(2)²¹ requires "*When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori*

²⁰ For example, overall payphone minutes decreased by over 3x in Q3, 2018 (compared to Q2, 2018), and by over 3x annually.

²¹ USD 2009

excluded from being designated. Such designation methods shall ensure that universal service is provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Article 12."

65. ComReg's proposed designation process is that eir will be the de facto USP unless another entity expresses an interest in fulfilling universal service objectives associated with public payphones. We do not consider this to be a fair and non-discriminatory mechanism. The proposed mechanism is fundamentally flawed because it does not provide any indication to interested parties as to how they would be compensated in the event that a positive net cost is incurred by the USP for the provision of public payphones.
66. In this regard, ComReg's Decision and Draft Decisions in recent years in respect of eir's various applications for universal service funding for the years since 2009/10 call into serious question the ability of a USP to be compensated in the event that a net positive cost (including of a substantial amount) is incurred. It is also clear from the Decision and Draft Decisions that a net positive cost that is materially more than €300,000 to €400,000 would have to be incurred before compensation might even be considered²² - and granted only if a series of very difficult cumulative hurdles have to be passed. What rational entity would express an interest in providing a loss-making service without compensation?
67. In fact, the point could be validly made that ComReg's Decisions and Draft Decisions in relation to USO funding are, in effect, constructively excluding potential candidates for designation.
68. ComReg states, absent expressions of interest, eir should continue as the USP. This ignores the fact that the communications market has been liberalised for well over a decade. There are a number of well-established operators that have the experience and capability to provide communications services. eir does not have any unique advantage in respect of ubiquity given that public payphones are located in areas with one or more alternative network infrastructure operators present. It is therefore entirely plausible that other experienced and capable operators could provide public payphones and as such a proper designation process could be established.
69. Even if ComReg's draft decision was not fatally flawed, which eir believes it is, given the absence of any objective justification for the reintroduction by ComReg of mandating public payphones as a universal service, the basis on which it proposes to impose the USO obligation on eir is itself fatally flawed.

²² See the "administrative test" in section 9.3 of ComReg 14/03



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

70. eir does not agree with ComReg's draft impact assessment. The assessment in section 7 of the consultation is arbitrary and subjective. ComReg has failed to undertake an objective and evidence-based analysis and as a result has reached the wrong conclusion.

71. ComReg must substantiate its assertions. For example, the following generalisations (all taken from Section 7, and by no means exhaustive) should not be part of a fit-for-purpose impact assessment -.

"...removing USO could result in a risk of detriment to certain end-users who may no longer have reasonable access to public payphones that they currently rely on and use ..." – no effort is made to establish whether or not such users rely solely on public payphones, or to quantify the numbers of users affected (if any), nor is any reference made to the fact that only a miniscule percentage of the area of the country is within reach of a payphone.

"Public payphones can often provide a valuable service to the disadvantaged and vulnerable cohort of society ..." – "often" is hardly the appropriate word, considering the tiny volumes of calls made from the overall payphone population, and absent any analysis of the level of usage per user.

"For some people, who don't have any kind of phone of their own (e.g. the most vulnerable in society, such as, the homeless), public payphones can often be perceived to be a lifeline". This summarises the only fig leaf of justification ComReg presents for the maintenance of the USO, and it is far from convincing, being nothing more than a speculative expression of a questionable opinion, and lacking as it does any quantitative supporting evidence.

72. ComReg has not established the level of mobile phone ownership among the homeless. The vast majority (97.5%) of freephone traffic relates to Dublin City Council (DCC) freephone. Looking in more detail at payphones making calls to DCC freephone, despite the removal of 386 payphones, the average number of calls per payphone to DCC has declined by 36% between 2015 and 2017, which suggests little or no migration of usage to remaining payphones. Indeed this usage appears to be migrating to mobile phones as indicated by a



comparison of available information relating to a month in late 2017 (29th Oct to 27th Nov) with the month of August 2018 where the percentage of calls from mobiles to the DCC placement service number grew from 82% to 86%,. It is of particular note that the vast majority of calls to the service are from mobiles, and that this percentage is growing rapidly, suggesting that many homeless people possess mobile phones and those that have used payphones in the past have substituted mobile phones for payphones, suggesting that they had the option to use either in many cases.

73. As mentioned previously, it is a fact that the USO for public payphones is redundant, having been effectively replaced long ago by far more effective and efficient substitutes. However this is ignored in ComReg's "assessment". ComReg must undertake a proper cost benefit analysis to inform its decision making. There is no proper justification offered by ComReg for proposing to maintain the current USO on eir in relation to the supply of public payphones.

Clifton House
Fitzwilliam Street
Dublin 2

19 October 2018

**Retail Division
Commission for Communications Regulation
One Dockland Central,
Guild Street,
Dublin 1,
Ireland,
D01 E4X0**

Dear Retail Consult

Re. Submission – Provision of public pay telephones Universal Service: Scope and designation consultation – ComReg Reference: 18/85.

ALTO would be obliged if this letter could be treated as a non-confidential submission in response to Consultation 18/85.

ALTO broadly supports ComReg's analysis, conclusions and trend assessments as set out in the Consultation paper. ALTO also supports ComReg's Option 2 seeking to maintain the *status quo*.

ALTO's previous submissions and positions concerning the broader subject of USO funding and burden analysis remain unchanged. This submission should be considered without prejudice to those previous positions and considering the special legislative and social dynamics of public pay telephones in Ireland.

ALTO is available to discuss this position further should the need arise.

Yours sincerely,



**Ronan Lupton
Chairman – ALTO**

Hi,

I wish to respond to ComReg 18/85.

Please see below my response. Feel free to publish my comments.

Thank you for the opportunity to comment. My comments are in a personal capacity.

Q1 response:

I do not agree with Comreg's preliminary view that there is a need for a public payphone USO for the following reasons:

- (1.1) When Eir have completed their current Payphone removals, there will be just 91 payphone locations with 149 payphones. There were 3,500 payphones in 2009. Eir has removed about 95% of payphones. The remaining number is such a tiny number of payphones, it is not at a level to justify USO obligations.
- (1.2) Based on research as detailed in the Comreg paper, 97% of people had not used a payphone over an entire year. Only a tiny percentage of the population are using payphones, not enough to justify USO obligations.
- (1.3) Comreg should stay adoptive to the technology landscape. This should include letting legacy outdated technologies, like payphones, reach end-of-life when usage has reached such low levels that regulatory oversight can no longer be justified.
- (1.4) If Comreg continue to force USO obligations on Eir, then this distracts Eir and Comreg from far more important telecommunication topics such as broadband. For example, Comreg published a 91 page report into payphones, this must have been a resource hog that would have been better spent on other topics.
- (1.5) As detailed in the Comreg study, several other EU countries no longer have USO obligations on payphones. Comreg should follow suit. This article (<https://www.thelocal.dk/20171220/denmark-scrap-last-coin-operated-payphones>) describes how Denmark removed the last payphones in 2017, there was no backlash in Denmark and there is unlikely to be here too.
- (1.6) As detailed in the Comreg study, if Eir is forced to maintain the 91 payphone sites, because the number is so low, Eir will have issued with maintenance and advertising contracts. Payphones are frequently in a state of disrepair with gratify and rundown sites which blight the landscape, we cannot allow a situation for this to get worse with remaining sites.
- (1.7) It is widely known the payphone sites are often used for anti-social activities and drug related activities. For the sake of the greater good, Comreg should take this into consideration too.
- (1.8) When Smart telecom provided payphones, and then Smart went into liquidation, it took years for the remaining payphones to be removed blighting the landscape. This time around, please let Eir have a controlled and managed closure of remaining sites rather than the remaining sites falling into dilapidation like with Smart. If a USO obligation is placed on Eir, there is a greater likelihood that remaining sites will fall into dilapidation.
- (1.9) There are 2 times that industries need low/no regulation, in infancy and at end-of-life. Payphones are at the end-of-life stage. The role of payphones in society has become so meaningless and the future is certain end-of-life that USO obligations have no place.
- (1.10) Comreg must be adoptive with USO obligations, adding a removing items at time change. Times have changed with payphones. Now is the time to drop USO obligations.

Exception: I still believe that (1) Eir should be mandated with reporting payphone numbers quarterly as per existing obligations and (2) Comreg should continue to clearly state that local authorities have the right to request payphone removals.

Q2 response:

Option 2 does not represent the optimal response. In an era when there were 3,000 payphones, and usage was still widespread, then the threshold implied had logic. There will soon be under 150 payphones, across the state, and the threshold therefore, in the context of 150 payphones has no value anymore. It is not commercially viable to be taking a drib-drab approach to payphone removals that the treshold will force.

Q3 response:

N/A given my response in Q1 and Q2. However, as stated, in Q1, a quarterly reporting obligation should remain until the last payphone is removed.

Q4 response:

When Eir, by 31 December 2018, reduce the number of payphones to under 150, the remaining payphones will, as the report accepts, just be in urban centres by-in-large. There will be no payphone service left "for the entire state". Therefore, the question itself, is non applicable.

Q5 response:

Disagree for the reasons stated in Q1 response.

Q6 response:

Disagree for the reasons stated in Q1 response

Thanks and regards.

