



Gigaclear
Ultrafast Fibre Broadband

Consultation Response: Delivering the Broadband Universal Service

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Consultation Response: Delivering the Broadband Universal Service

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Executive Summary

Gigaclear welcomes the opportunity to respond to Ofcom's consultation concerning the delivery of the Broadband Universal Service.

As the UK's largest rural point-to-point Fibre to the Premises (FTTP) network operator, our engagement in the delivery of the Broadband Universal Service Obligation (USO) is wholly focused on maximising the opportunity for the USO to work efficiently and effectively alongside publicly funded network rollout programmes delivering 'future proofed' full fibre connectivity in the hardest to reach rural areas.

We believe this goal is shared by Government, particularly in light of the publication of the Department for Digital Culture Media and Sport's (DCMS) Future Telecoms Infrastructure Review¹ (FTIR) and its explicit commitment to aligning the USO to work alongside other policy interventions designed to facilitate a full fibre and 5G future.

Further, whilst we are fully aware that the legislative function of the USO is to provide a 'safety net' minimum standard and not to support the widespread expansion of gigabit capable full fibre connectivity, we believe that full fibre networks can still play a critical role in delivering the USO, particularly in geography where USO eligible premises are within close proximity of pre-existing full fibre infrastructure. In such scenarios (and previously evidenced to Ofcom), such an outcome is likely to be the most effective long-term remedy.

The USO will come into force as large broadband state aid programmes move into delivery phase; most notably those in Northern Ireland, Scotland and Wales. The FTIR has also signalled that a further '£3billion to £5billion' will be made available to support full fibre delivery in commercially unviable areas. Further thought must then be given to how the USO interacts with these and other market interventions, such as the regulatory forbearance associated with the European Electronic Communication Code's 'digital exclusion' areas.²

If these programmes are not considered as part of the USO's design, the delivery of the USO could radically undermine the rollout of publicly funded network rollout programmes and DCMS's 'outside in'³ delivery goal; ultimately reducing the number of premises that could be served with full fibre connectivity. This problem is most prominent where the USP for a given geography is a wholly separate entity to the network operator that has secured a publicly funded network rollout contract across the same location.

Many of these larger programmes come with delivery timetables significantly beyond 12 months.⁴ This is often due to fibre delivery in rural areas requiring substantial works activity with an often-finite labour supply, an absence of viable backhaul and a limited delivery speed due to highways access restrictions.

¹ <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>

² https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=comnat:COM_2016_0590_FIN

³ 'gigabit-capable connectivity across all areas of the UK is achieved at the same time, and no areas are systematically left behind' <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>

⁴ For example – see R100 Scotland tender <https://www.gov.scot/Publications/2017/12/2810/1>

It is then likely that premises included within large state aid intervention areas will still be eligible for connectivity under the USO.⁵ If a premises is then served by the USO as opposed to the full fibre state aid programme, it may receive an inferior connection and/or risks reducing the pool of premises eligible for delivery under the state aid intervention, making aggregation harder and likely increasing the required level of state aid and/or result in further descoping due to higher costs per premises past.

To mitigate this problem, the cleanest solution would be to exempt all premises included within a publicly funded network rollout⁶ from being eligible for connectivity under the USO.

Alternatively, we propose that USPs are obliged to first explore using the network infrastructure that has secured the state aid contract, when serving premises included within an intervention area. In this manner, the entity that has secured the state aid contract is given the opportunity to prioritise the USO request in order to serve it within 12 months.

Failing this, at the very least, end-users requesting a service under the USO but who are covered as part of a future publicly funded rollout programme should be informed that their request for a USO connection may make them ineligible for a superior connection through the publicly funded programme. Failing to adequately inform customers of this trade off would undermine Ofcom's core commitment to empower consumer choice and the FTIR's commitment to accelerating the delivery of full fibre infrastructure.

Further, Ofcom must consider the incentives the USP faces when it is obliged to inform an end-user of their ineligibility under the USO due to the presence of alternative networks. We believe that the USP may seek to mitigate against the risk of the end-user churning to such alternative networks through leveraging the position of incumbency and deploying 'reactive save' techniques. This would result in consumers not securing adequate broadband coverage. We then ask that Ofcom consider further regulating this interaction.

Our response focuses on the questions that are most relevant to these concerns.

⁵ Due to the 12-month exemption within The Electronic Communications (Universal Service) (Broadband) Order 2018

⁶ Where the service delivered by the publicly funded network rollout will meet the technical parameters set out within the Order.

Background

Based in rural Oxfordshire, Gigaclear was established in 2012 to address the problems that rural homes and businesses had in getting access to fast, reliable internet connections. These issues originated from the very long lengths of copper cables being used to deliver broadband in rural areas and other network operators prioritising network investment in cities and urban towns with higher population densities.

This environment created the opportunity to use new FTTP network technology, where distance has effectively no impact on performance, to deliver a gigabit speed, future proofed service to customers who were willing to pay for superior connectivity. Whilst our initial network builds were purely commercial, Gigaclear subsequently secured and delivered BDUK contracts in Essex, Berkshire and Gloucestershire; the first wholly full-fibre contracts secured under the BDUK programme.

Gigaclear now holds 20 BDUK contracts delivering full fibre connectivity across the South of England.

Do you agree that the threshold for an affordable price for the purposes of USO eligibility should be set at £45 a month (including VAT, connection charges, monthly payments and other broadband charges)?

To determine whether an end-user is eligible under the USO scheme, The Electronic Communications (Universal Service) (Broadband) Order ('the Order') demands that the USP assess whether an affordable connection and service meeting the technical specification in the Order is (or will) become available at the end-user's premises. The Order also stipulates that there should be a 'safeguard cap' on the affordability of the service provided under the USO.

As both measures seek to ultimately address affordability for an end-user, we agree that the affordable price for the purposes of eligibility should be the same as the 'safeguard cap' for the supply of USO connections and services, as both are intended to ensure affordable broadband services.

As to what this affordability threshold should be, Ofcom is right to highlight the risk of setting the threshold too low to the point that network operators would have to reduce entry level prices or risk the USO operating to oblige the USP to overbuild these networks.

This would risk the knock-on effect of reducing profitability and deterring investment in these alternative networks; an outcome that would be directly contrary to DCMS's FTIR goal of seeking to encourage increased infrastructure competition.

Whilst Ofcom's starting point is that 'most UK consumers can access a variety of products at prices ranging from around £20 to £55 per month'⁷, we caution against Ofcom substantiating this, in part, on ISPs whose vertically integrated networks exclusively serve densely urban areas. Such network operators have a lower 'cost per premise past' when rolling out network infrastructure due to their urban density, so are better placed to offer lower rates than of network operators with a wider national footprint.

Further, as the USO will inevitably focus on rural areas that are harder to connect⁸, the risk of overbuild due to a low affordability threshold will be higher for rural networks. Particularly if the network is exclusively rural, as it will face comparatively higher 'cost per premise past' builds and consequently higher product prices.

If the USO affordability threshold is to then apply nationwide and Ofcom seek to mitigate against the risk of overbuild/reduced profitability, the higher end of Ofcom's range is more appropriate. Gigaclear then supports the £45 threshold.

It should also be noted that as a recipient of state aid under the BDUK programme, Gigaclear's product portfolio is also obliged to meet an affordability requirement.

With that said, it is concerning that Ofcom have not considered how this threshold should be reviewed over time. Inflationary pressure will likely see broadband prices rise in the future, thereby increasing the risk of entry product prices being deemed as 'unaffordable' when compared to the £45 threshold, which consequently increases the risk of overbuild by the USP.

To avoid this, Ofcom should consider an inflationary buffer to the affordability threshold.

⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0024/129408/Consultation-Delivering-the-Broadband-Universal-Service.pdf

⁸ <https://ruralengland.org/wp-content/uploads/2019/02/SORS18-Full-report.pdf> p28

Do you agree with our proposed approach to how Universal Service Providers should check eligibility for the USO?

We do not, as Ofcom's justification for this approach is based on excessively rigid reflection of what is set out in the Order. The Order states that where an end-user's current broadband connection does not meet the technical specification required, the USP would need to assess whether such a connection would become available at that location as a result of any publicly-funded rollout programme within the period of one year from the request date.

In response to the June 2018 USO consultation, Gigaclear, along with multiple other operators, highlighted that the 'one year' element of this assessment was unlikely to be a sufficient means of mitigating against the operation of the USO undermining wider publicly funded rollout programmes, as many of these have delivery timeframes significantly beyond that of 12 months.

Gigaclear then asked Ofcom to consider expanding the 'one year' cut off timeframe, to instead align with inclusion within a publicly funded-rollout programme.

In response, Ofcom state that 'we cannot change the parameters of the Order, including extending the cut-off timeframe from the point of the request beyond one year. We cannot therefore impose any obligations in the universal service conditions which may be in contradiction to, or inconsistent with, the provisions set out in the Order.'⁹

Gigaclear believes that this is an inaccurate reflection of the Order. The Order stipulates that a premises will be ineligible for a connection under the USO if a connection meeting the relevant technical requirements is 'made available to that location through a publicly-funded intervention within the period of one year beginning with the date on which the request is made'¹⁰. The Order then only demands that premises to be served within a year are ineligible. The Order does not then prohibit Ofcom extending the parameters of ineligibility to simply exclude any premises included within a publicly-funded rollout programme. Considering ineligibly beyond one year is not then in violation of the Order.

Whilst Ofcom must then have regard to the Order's guidance when setting universal service conditions under section 67 of the Communications Act 2003 to secure compliance with the universal service order, it is within Ofcom's gift to exclude all properties to be connected through a publicly-funded rollout programme from USO eligibility.¹¹

We strongly urge Ofcom to consider this proposal. If it does not, the USP will be compelled to connect premises which are included in publicly funded network rollout programmes, but which will not be connected within a year of the request being made. This has two severely negative outcomes;

1. The USP delivered connection (if delivering just over the required technical parameter) will likely be redundant once the aid programme connects that premises to a superior service.
2. The USP delivered connection (if above 30mbps) risks rendering the premises served as ineligible to be connected under the publicly funded network rollout.

⁹ https://www.ofcom.org.uk/data/assets/pdf_file/0024/129408/Consultation-Delivering-the-Broadband-Universal-Service.pdf

¹⁰ The Electronic Communications (Universal Service) (Broadband) Order 2018

¹¹ Where the connection to be provided will meet the required technical parameters as set out within the Order.

The first point not only risks the USPs (and ultimately the USO industry fund) investing in infrastructure with a short lifespan, but also that the marginal improvement in speed delivered will have a material impact upon the rate of uptake on the publicly funded network rollout subsequently delivered. This suppression of expected uptake of the publicly funded infrastructure will likely result in an expansion of the investment gap that the state aid programme seeks to fill.

The second point is most prominent where the USP for a given geography is an alternative entity to the network operator that has secured a full fibre state aid contract and/or a digital exclusion area across the same location.

Many of these larger programmes come with delivery timetables significantly beyond 12 months.¹² This is often due to fibre delivery in rural areas requiring substantial works activity with an often-finite labour supply, an absence of viable backhaul options and a limited delivery speed due to highways access restrictions. It is then likely that, as currently designed, premises included within large state aid intervention contracts will still be eligible for connectivity under the USO.

If a premises is then served by the USP as opposed to the full fibre state aid programme, it risks receiving an inferior connection and will also reduce the pool of premises eligible for delivery under the intervention, making aggregation more difficult and increased distances between each covered premises, thereby increasing the required level of aid and/or descoping premises from improved coverage due to increased costs per premises past (CPPP), which consequently requires changes to design which result in delivery delays.

End-users requesting a connection under the USO may then unknowingly be trading the promise of a full fibre connection in the medium term for a +10mbps service in the short term.

To mitigate this problem, we propose that premises due to receive a connection meeting the USO technical parameters through a publicly-funded network rollout programme be exempt from USO eligibility. Delivery timeframes would then be set by the state aid delivery timetable, as agreed with the national competency centre for state aid broadband. This would still meet the requirement set out within the Order to excludes premises where a connection would become available as a result of any publicly-funded rollout programme within the period of one year from the request date.

Alternatively, USPs could be obliged to first explore using the network infrastructure that has secured the state aid contract/intervention area, when serving premises included within that geography. In this manner, the entity that has secured the state aid contract is given the opportunity to prioritise the rollout in order to serve it within 12 months.¹³

However, we acknowledge that this requires the USP retailer to be operating over the state aid network as an ISP. We discuss this in more detail in the below.

¹² For example, see <https://www.gov.scot/Publications/2017/12/2810/1>

¹³ Thereby making the premises ineligible for a connection through the USO.

Do you agree with our proposed approach to how Universal Service Providers should take account of shared connection costs

No, as we are concerned that Ofcom's assessment of the dangers associated with forecast take-up exceeding actual take-up overlook the danger of inefficient overbuild.

If the USP forecasts a higher level of take up than realised when delivering the USO within state aid intervention areas, the USP will connect premises that do not intend to request a connection under the USO. ***Yet in delivering the service, the USP may render these premises ineligible for state aid (dependent on the technical parameters of the service ultimately provided), despite the end-user having never made a request for a connection through the USO.***

Whilst Ofcom analysis points to a forecast of 70% reflecting the midpoint of a reasonable estimate range, this is based on long run national trends of take up of broadband services below and above 10mbps. We believe that this is an unsuitable means of assessing take up of USO services in areas where it is known that a publicly-funded network rollout programme will be delivered.

In these scenarios, the delivered USP connection will face competition from the service provided through the aid programme, which is likely to deliver faster services, particularly in light of the FTIR's commitment to provide '£3 billion to £5 billion' to support full fibre rollout.¹⁴ Uptake of USP delivered services is then likely to stall as a superior alternative is delivered and bandwidth demands increased to a point which the USP service could not accommodate.

To then mitigate against the risk of unnecessary overbuild and frustration of state aid programmes, we then ask that Ofcom consider a lower forecast take up model in areas where aid programmes are operational.

We also accept that to perform this cost calculation, USPs will need to be aware of the location of premises that may be eligible for connectivity through the USO. We acknowledge that this is most effectively done through the sharing of information Ofcom collects through the 'Connected Nations' information gathering process. We will continue to work with Ofcom in ensuring that the sharing of this data does not compromise commercially sensitive data held by alternative networks.

¹⁴ <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>

Do you agree with our proposed approach to informing consumers of the outcome of their USO request?

Whilst we are supportive of the in-principle procedure that Ofcom sets out, we do not believe that Ofcom has given due consideration to the incentives that such a procedure would place on the USP where the USP is utilising its own vertically integrated network infrastructure. In this scenario, we believe that the USP would face incentives to attempt to 'reactively save' end-users who are ineligible for the USO because another network already delivering a connection above the technical standard set out in the Order is already available to them.

As an example, where BT is the USP and is assessing the eligibility of a request for connectivity through the USO, BT may discover that a premises is ineligible because it is already served by Gigaclear, Virgin Media or other operators outside the BT Group owned networks (EE and Openreach). Whilst BT should then advise the end-user of the contact details of these alternative networks, at this point there would be a strong incentive upon BT to seek to 'reactively save' this customer from churning to a competitor network, as such a churn will not only result in losing the customer at a retail level (assuming that BT Consumer does not operate on the alternative network), but also at a wholesale level. The lost revenue at both market levels would then incentivise BT to seek to retain the customer through leveraging alternative offers, such as reduced monthly prices and/or inclusive content.

As the defined purpose of the Order is to enable more end-users to access adequate broadband, such an outcome is contrary to the goals of the Order.

To address this, we ask that Ofcom consider regulating the communication between USP and end-users in the above scenario, so that any attempts at reactive saves are prohibited.

Do you agree with our proposals set out above (Telephony Universal Service Obligation), including to set a timeframe of 12 months for the delivery of USO connections unless exceptional circumstances have arisen?

Gigaclear wholeheartedly supports Ofcom's intention to revoke the specific telephony conditions applicable to BT and KCOM and to capture the same obligations within the Broadband USO. This makes intuitive sense, as both may be provided by the same infrastructure and such alignment will enable a smoother copper switch off process.

As Gigaclear will not operate as a USP, we will not comment on proposals regarding the timeframe for delivery post request for connectivity and 'exceptional circumstance', beyond recommending that Ofcom review historic BDUK change requests to understand the impact and frequency of the 'exceptional circumstances' that Ofcom describes in this consultation.

Use of third-party networks to deliver the USO

We maintain that in geographic areas where USO relevant premises are within close proximity to pre-existing full fibre network infrastructure such as Gigaclear's, the most affordable and efficient means of connection is likely to be 'in filling' the alternative network footprint, as opposed to extending the BT Openreach network or investing in a fixed wireless solution to serve a small number of premises.

Using this solution would also bring the added benefit of providing a future proofed connection that would not have to be revisited as bandwidth demand increases¹⁵ and would better align the USO to UK Government's full fibre aspirations; an explicit goal within FTIR.¹⁶

In such scenarios, we are concerned that the USP may have competitive incentives to utilise its own infrastructure in delivering the USO, even where using the alternative network may be the more cost-effective solution.

This will particularly be the case in rural areas where the delivery of a full fibre connection will likely secure future incumbency. In our previous consultation response, we evidenced such scenarios and asked that Ofcom consider compelling USPs to explore using alternative network operators where they have a significant presence. For example, where the USP is delivering a USO connection within the alternative network operator's BDUK intervention area. We believe that this proposal is proportionate and consistent with Ofcom's desire to deliver an efficient USO solution.

We then welcome Ofcom's agreement that the use of third-party infrastructure may in some cases be the most efficient approach to delivering USO connections.

However, Ofcom goes on to set out reservations as to whether the use of third-party infrastructure would be a viable solution. Specially, Ofcom point to concerns regarding:

- Time and costs involved in agreeing wholesale network access between the USP and the third-party network.
- Time and costs in building the platform interaction to facilitate the USP operating over the third-party network.

In response to these concerns, Ofcom should be aware that Gigaclear already carries 'open access' obligations as part of its requirements under its BDUK contracts and already offers wholesale access to 14 ISPs.

Further, [§].

Whilst we then welcome Ofcom's statement that 'in such circumstances, we would expect Universal Service Providers to utilise these arrangements', we urge Ofcom to specifically set out the measures it would take to assess if the USPs selection of its own network infrastructure over where an alternative operator was genuinely viable was a) minimising the cost of delivery and b) not unduly discriminating against an alternative network in order to protect a position of market dominance of its own vertically integrated network.

¹⁵ As acknowledged within the Digital Economy Act 2017

¹⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732496/Future_Telecoms_Infrastructure_Review.pdf