



## **KCOM's response to Ofcom's consultation: Delivering the Broadband Universal Service Proposals for designating providers and applying conditions**

### **Summary**

- 1.1 KCOM Group PLC ('KCOM') welcomes the opportunity to respond to Ofcom's consultation on the broadband USO (the 'Consultation').<sup>1</sup>
- 1.2 As we have previously submitted, we support the introduction of a broadband USO as a 'safety net' used to ensure customers have access to reliable and affordable broadband with a baseline speed of 10Mbit/s.<sup>2</sup> In our view, the baseline speed and other operational parameters required by the USO will need to increase over time and as these parameters move it will have implications for the underlying technology used to deliver it.
- 1.3 As we have also previously submitted, we have a clear interest in the application of the broadband USO and USO policy more generally as we are both the current USO designate (the Universal Service Provider (USP)) for basic telephony and functional internet access in the Hull Area, and a supplier of network services in the rest of the UK. In particular:
  - It is our intention to deploy our fibre network across the Hull Area and given our Lightstream broadband services are capable of meeting or exceeding the technical specification of the broadband USO and our consumer and business broadband services are provided at fair and common pricing we consider there is a clear case for Ofcom to designate KCOM as the USP for the Hull Area, which will be the quickest and most efficient solution for the geography.
  - We provide broadband services nationally and would, in principle, be a contributor to the broadband USO fund. For this reason, we have a clear interest in ensuring that the broadband USO is delivered as effectively and efficiently as possible. We consider that BT is best placed to meet the broadband USO in the UK (excluding the Hull Area).
- 1.4 We have the following key points to make in relation to Ofcom's proposals:
  - There needs to be additional clarity provided by Ofcom on the operation of the technical and affordability criteria both for consumer and business broadband USO requests made of the USP. The primary objective of the broadband USO is to ensure that a customer obtains qualifying connectivity. It's a 'safety net' measure. It is not intended to drive changes in the structure of products and pricing across geographies that otherwise produce fair and affordable prices set at uniform rates. For example, if the USP offered an entry level fibre broadband business product at speeds materially above the safety net level and at a price above the proposed 'affordability' threshold currently expressed

<sup>1</sup> Ofcom (2018), *Delivering the Broadband Universal Service Proposals for designating providers and applying conditions*, Consultation, 5 December 2018, available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/129408/Consultation-Delivering-the-Broadband-Universal-Service.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/129408/Consultation-Delivering-the-Broadband-Universal-Service.pdf)

<sup>2</sup> The full technical specification of the USO is as follows: (i) a download sync speed of at least 10Mbit/s; (ii) an upload sync speed of at least 1Mbit/s; (iii) a contention ratio of no higher than 50:1; (iv) latency which is capable of allowing the end-user to make and receive voice calls over the connection effectively; and (v) the capability to allow data usage of at least 100GB per month.

with reference to consumer broadband services we do not consider it appropriate for Ofcom to expect either (i) the USP to be required to supply a lower bandwidth broadband product at a price within the prescribed affordability parameters in order to meet a USO request; or (ii) to be a legitimate basis for a request to be made by a customer (either residential or business) where they were already obtaining a qualifying broadband service based on technical parameters but were paying more for the service on an end-to-end basis than the affordability criteria set out by Ofcom, even if those services were provided at common prices. If that were permitted that would have the practical effect of crowding out existing investments, or otherwise forcing the introduction of new products outside the current portfolio.<sup>3</sup>

- We would invite Ofcom to consider their approach to the affordability in light of government's policy intent.<sup>4</sup>
- Ofcom is proposing to provide the USPs with appropriately restricted access to the dataset that it uses for the purpose of producing Connected Nations and the associated Updates. In so doing, it would allow the USP to identify coverage areas where customers appear, *prima facie*, to be eligible to request a broadband USO connection. In principle, we support this approach. However, in practice there are two qualifiers:
  - The approach envisaged by Ofcom requires that it captures the network coverage from across the UK and thereby has an up to date and comprehensive picture of the potentially qualifying deployments. Failure to capture all qualifying networks in the Connected Nations dataset is likely to have two impacts. Firstly, it could result in the USP inadvertently undermining existing investments where it deploys to locations with the support of USO funding that it would not have otherwise deployed to, or if it had deployed to the location in question it would have done so at a different point in time. This is economically inefficient. Secondly, it could lead to an unwelcome legal challenge by a communications provider against the USP.
  - The data contained in the Connected Nations and associated Updates is historic. While Ofcom has recognised the role played by forward-looking investments made as part of the supply-side interventions<sup>5</sup> undertaken by BT in response to State aid measures there are other interventions that are not easily accounted for using this approach. Specifically, the UK is supporting SME Gigabit Connection Vouchers (GBV) and other (Local Full Fibre Network (LFFN)) interventions. Both measures have the prospect of delivering qualifying broadband connections to both consumers and to SMEs. Planned near term

<sup>3</sup> "Therefore, if a consumer cannot access a decent broadband connection for £45 per month or less (including the pro-rated connection or upfront charge and VAT), they could request a broadband connection from the Universal Service Provider, subject to the other eligibility requirements for the USO scheme... There is the potential for an eligibility threshold to impact on other broadband network providers because it raises the prospect that their networks may be overbuilt by the Universal Service Provider. 100 With an eligibility threshold of £45 per month we expect this risk to be small." *Ibid*, para. 6.23-6.25, p. 49.

<sup>4</sup> DCMS (2018), *A new broadband Universal Service Obligation: Government's response to consultation on design*, 28 March 2018, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/696490/USO\\_consultation\\_government\\_response\\_28\\_March\\_FI\\_NAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696490/USO_consultation_government_response_28_March_FI_NAL.pdf)

<sup>5</sup> European Commission (2016), *SA. 40720 (2016/N) – National Broadband Scheme for the UK for 2016-2020*, European Commission, C(2016) 3208 final, 26 May 2016, available at: [http://ec.europa.eu/competition/state\\_aid/cases/263954/263954\\_1760328\\_135\\_4.pdf](http://ec.europa.eu/competition/state_aid/cases/263954/263954_1760328_135_4.pdf)



broadband connectivity built in response to the UK's demand-side interventions will not feature in the Connected Nations dataset. In practice this may mean that a USP legitimately responds to a complex broadband USO request with a long delivery lead time and during that period the customer also seeks to benefit from a GBV.

- 1.5 Given our commitment to full fibre in the Hull Area we envisage any request for a broadband USO connection to be something that we can meet within the relevant timescales.

### Ofcom's consultation questions

Question 1: Do you agree with our proposal to designate KCOM in the Hull Area?

Yes, we agree with Ofcom's proposal to designate KCOM as the USP for the Hull Area.<sup>6</sup>

Question 2: Question 2: Do you agree with our proposal to designate BT for the whole of the UK except for the Hull Area?

Yes, we agree with Ofcom's proposal to designate BT as the USP for the UK (excluding the Hull Area).

Question 3: Pursuant to paragraph 3(2)(c) of the 2018 Designation Regulations, are there alternative proposals from any other person to be designated as a Universal Service Provider instead of BT or KCOM?

Not applicable.

Question 4: 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)?

We do not consider the use of a price cap to be appropriate.

If Ofcom seeks to prescribe an affordability threshold we would note that It is not entirely clear why Ofcom considers a consumer price cap at £45 per month incl. VAT (end-to-end) to be the correct level for consumer broadband when its own analysis identifies the range to be £20-£55 per month. Given that, and based on Ofcom's own assessment, we would expect the consumer price cap to be set at £55 per month incl. VAT (end-to-end).<sup>7</sup>

In practice, the proposed consumer price cap is above our commercial pricing for on-net consumer fibre broadband services that we offer across the Hull Area and the wider East Riding of Yorkshire. Moreover, these consumer fibre broadband services far exceed the baseline technical requirements of the broadband USO. Our Standard USO qualifying

<sup>6</sup> The Hull Area accords with the geographic boundary that is defined by KCOM's original license granted on 30 November 1987 by the Secretary of State under Section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc (KCOM).

<sup>7</sup> "We explain that most UK consumers can access a variety of products at prices ranging from around £20 to £55 per month, and the vast majority of consumers consider broadband to be affordable when they have access to this range of prices. *Ibid*, para. 6.21, p. 48.

Lightstream consumer broadband package is a fibre-based service (30/15Mbit/s) with a 150MB monthly data allowance. This is currently priced at ~£37 (incl. VAT) per month inclusive of amortised connection charge of £25.<sup>8</sup>

Question 5: Do you agree with our proposed approach to how Universal Service Providers should check eligibility for the USO?

We agree with the proposed approach in our checking whether a premise is eligible for the USO. In particular, we consider it appropriate:

- That we use the Ordnance Survey's AddressBase Premium product (the 'AddressBase product') as a means of assessing whether a residence (including second homes) or a place of business the premise is within the Hull Area and use an evidence-based approach to establish the legitimacy of USO premise in the event the premise is not listed on the AddressBase product.<sup>9</sup> In the event the matter cannot be settled then this should be handled through the dispute handling process.
- To assess whether an affordable connection and service meeting the technical specification in the USO Order<sup>10</sup> is or will become available.
- To assess whether the premise can be connected within the £3,400 per premise limit for the cost of each connection.<sup>11</sup>

While we consider the eligibility assessment process detailed in the Consultation to be broadly acceptable for the Hull Area we would like Ofcom to consider three points:

- (i) It is envisaged that the USP will be able to establish whether the USO connection cost will be more than £3,400 and that this information can then be communicated within 30 calendar days to the consumer. There are a number of cost issues (e.g. wayleaves) that might take a significant time to resolve. Given these will form a relevant input into costing a USO connection and are outside the direct control of the USP the 30 days threshold should be framed as 'normally within 30 calendar days' i.e. subject to exceptional circumstances. The prospective customer should obviously be informed of the position with the 30 days threshold in any event.
- (ii) A demand aggregation approach would have to use desk-based forecasting to meet the envisaged timescales as any other approach (e.g. demand stimulation) is likely to take longer than 30 days to complete.

<sup>8</sup> Our Standard Lightstream consumer fibre broadband package (24 months) includes line rental, superfast broadband and an 150GB data allowance with a £25 connection charge. A variant of the same speed package offers unlimited data usage and is available at and ~£42 (unlimited data allowance) incl. VAT. Both packages therefore meet both the relevant technical characteristics required by the proposed broadband USO and are available across the Hull Area at prices below the £45 incl. VAT proposed safeguard cap.

<sup>9</sup> In exceptional cases, if the address of the location where the consumer is requesting connection cannot be found on the AddressBase product, or it can be found but is not categorised as residential, commercial, dual use, stately home or place of worship, the USP designate should request evidence from the consumer making the request of the location's liability for council tax if it is a home, or liability for non-domestic (business) rates if it is a business. Such evidence could be any document confirming the location's liability, such as a copy of a bill or a letter from the relevant local authority. We consider that evidence that the premises is liable for either form of taxation should be sufficient to confirm that the location meets the definition.

<sup>10</sup> SI (2018), *The Electronic Communications (Universal Service) (Broadband) Order 2018*, 2018 No. 445, available at:

<http://www.legislation.gov.uk/uk/si/2018/445/made> (the 'USO Order').

<sup>11</sup> Consumers faced with a connection charge in excess of the £3,400 threshold will have the choice to: (i) pay the excess costs of installing a connection that meets the USO technical specification; (ii) use an alternative technology, such as commercially available satellite broadband outside the USO scheme; or (iii) maintain their existing service that will deliver a lower technical specification than the USO.

at some level requires either demand stimulation activity, or a

- (iii) It is important for the USP to understand clearly which alternative providers are offering qualifying USO services at the point of designation. If there were a dispute in that regard it is possible that the relevant ADR scheme may not be best placed to make the assessment and they may require technical support from Ofcom.<sup>12</sup>

However, the proposed approach might present issues outside the Hull Area. Specifically:

- The information that will be available to the USP (i.e. Connected Nations) is historic data. There have been a number of material investments in full fibre networks proposed by providers. During a period of sustained investment in potentially qualifying networks the gap between reported deployments and new investment may prove a source of inefficient investment by the USP designate, and the source of subsequent disputes.
- While the State aid information relating to Next Generation Access (NGA) interventions in superfast broadband will provide information on contracted services (i.e. white NGA interventions) it will not provide the information relating to near term private sector investments. BT (or KCOM) will not have visibility (nor should they) from the relevant dataset of those postcodes where another party is making a near term investment but the sequencing of that investment places the deployment outside the 12 month period associated with the broadband USO window.

Question 6: Do you agree with our proposed approach to how Universal Service Providers should take account of shared connection costs?

Yes, we broadly agree with Ofcom's proposal on how the USPs should take account of shared connection costs.

As has been previously noted, demand forecasting in locations where there is no current take-up will require the USP to carry the risk for the deployment if the take-up does not materialise. Ofcom recognises that the USP could find itself in a position where it makes the investment based on an expectation and the average cost of the connection turns out to be more than the £3,400. It would be helpful if Ofcom could confirm that implication of this being that the USP would have to subsume the cost impact in those circumstances.

Question 7: Do you agree with our proposed approach to informing consumers of the outcome of their USO request?

Yes, we broadly agree with Ofcom's proposed approach to informing consumers of their USO request. In particular:

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<sup>12</sup> We expect this to be an unlikely eventuality given our declared deployment intent in the Hull Area.



- The consumer is informed of the outcome of their USO request within 30 calendar days. (Please note the possibility of exceptions set out in our response to question five above.)
- The USP details the reasons for its USO eligibility decision. In particular:
  - If a request is accepted then the USP confirms that a consumer is eligible under the USO scheme, the USP explains that the request meets the USO Order criteria and at the same time the USP makes an offer to supply the connection and service for the consumer to accept
  - If a request is declined then the USP should set out why it does not meet one or more of the eligibility criteria specified in the USO Order, and, where relevant, to direct the consumer to third parties. Moreover, where the USP declines the request based on costs it should specify the work required to deliver the specific connection and associated costs and to note that the consumer has the following options:
    - paying any excess connection costs (ECCs) themselves;
    - doing some of the deployment work themselves to help reduce costs (e.g. digging a trench on their land); or
    - purchasing commercially available satellite broadband (outside the USO scheme)<sup>13</sup>
    - to make a complaint if they are dis-satisfied using the USP's complaint process (with potential recourse to ADR).

If, having received the costs, the consumer agrees to pay the ECCs then the request is re-instated and is subject to the relevant delivery timescales. (We would note that where the consumer agrees to doing some of the civils activities themselves then our ability to meet the relevant timescales is contingent on their completion of such activities.)

- The USP provides contact details (company name and web address) of providers that seemingly offer qualifying connectivity at a premise and to note any safeguard threshold. (See our points on the latter.)
- The USP confirms any public-funding broadband rollout and provides for re-application if the connection is not made within the requisite 12 month period (i.e. supply-side State aid intervention and which is not applicable in KCOM's case.)

Rather than requiring the USP to continue to monitor rejected USO requests an alternative method would be to simply confirm to the prospective customer that things change over time and that any future USO request would be welcomed.

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<sup>13</sup> It would be helpful for Ofcom to confirm that ECCs are not the only potential cost associated with making a USO connection (e.g. wayleaves).





It would be helpful if Ofcom confirmed whether the proposed approach was intended to be applied to business customers making USO requests.

Question 8: Do you agree with our proposal to include a universal service condition requiring Universal Service Providers to raise awareness of the USO?

Yes, we agree with Ofcom's proposal to include a universal service condition requiring the USP to raise awareness of the USO.

Question 9: Do you agree with our proposals set out above, including to set a timeframe of 12 months for the delivery of USO connections unless exceptional circumstances have arisen?

Yes, we agree with Ofcom's proposals and note the potential for exceptional circumstances to develop.

Question 10: Do you agree with our proposals on how exceptional circumstances should be defined and operate?

Yes, we agree with Ofcom's proposals.

Question 11: Do you agree with our overall approach to ensuring USO connections and services are affordable, specifically on: a) our proposal to introduce a two-part obligation imposing (i) an equivalent pricing requirement, and (ii) a safeguard cap; and b) setting the level of a safeguard cap at £45 per month (including VAT, averaged over the fixed commitment period, including any upfront connection charges, monthly payments and other broadband charges)?

11(a) While we agree with the safety net principle (i.e. the importance of providing a baseline of service at pricing available elsewhere in the relevant area) we would invite Ofcom to consider their approach to the affordability (specifically the use of safeguard caps) in light of government's policy intent.<sup>14</sup>

We consider an equivalence approach to be the most appropriate. In this case, Ofcom simply requires the USP designate to make available the retail pricing portfolio that it makes available to the rest of the market in other geographies to those in USO eligible locations. This retail portfolio and pricing reflects the competitive dynamics operating a market, where the two proposed USPs both have wholesale SMP regulation. In this context the retail portfolios and associated pricing reflect both fair, and by extension affordable, pricing. To the extent that the USP designates make any future decision to de-average their pricing and apply different prices by different geographies there are other tools available to Ofcom to assess whether this has harmful effects.

11(b) As we note above in response to question four above, we do not consider that the use of price caps appropriate. However, if Ofcom continues to find it appropriate to seek

<sup>14</sup> DCMS (2018), *A new broadband Universal Service Obligation: Government's response to consultation on design*, 28 March 2018, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/696490/USO\\_consultation\\_government\\_response\\_28\\_March\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696490/USO_consultation_government_response_28_March_FINAL.pdf)

to set the bound for retail pricing we would also consider it helpful for Ofcom to reflect on the following:

- *The appropriate level for the consumer price cap based on Ofcom's analysis in the Consultation is £55 incl. VAT.*
- *It is not appropriate to apply a different business price cap. From Ofcom's consultation it appears that the proposed price cap is defined in relation to residential broadband packages. We do not consider that Ofcom's current analysis should be applied to business broadband products and in any event if it were then the safeguard cap is not appropriate. Specifically, business products are not configured to support the same parameters as residential services (e.g. upload / download requirements, SLAs) and are therefore priced differently. Indeed, our entry level business service (250/125 Mbit/s) has a different structure, and these far exceeds the the relevant technical characteristics of the proposed broadband USO.<sup>15</sup>*

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Question 12: Do you agree with our proposal to ensure that USO customers receive at least the same quality of service as non-USO customers?

Yes, we agree with Ofcom's proposals in relation to QoS.

Question 13: Do you agree with our proposed approach to complaints handling and dispute resolution?

Yes, we agree with Ofcom's proposals in relation to complaints handling.

Question 14: Do you agree with our proposal to approve the two Alternative Dispute Resolution (ADR) schemes currently approved under the General Conditions (Ombudsman Services: Communications and the Internet Services Adjudication Scheme) for resolving disputes in relation to the USO?

Yes, we agree that Ofcom approve the two ADRs schemes to resolve the disputes in relation to the USO.

Question 15: Do you agree with our proposed approach to how the Universal Service Providers should report on their performance and maintain records?

Yes, we agree with Ofcom's proposed approach to reporting on performance and that records are maintained.

<sup>15</sup> A 'Lightstream 250' business fibre broadband one package (12 months) which includes line rental, ultrafast broadband and an unlimited data allowance. This Lightstream entry level business service (250/125 Mbit/s) meets and far exceeds the the relevant technical characteristics of the proposed broadband USO. However, this entry level Lightstream business service is priced on an end-to-end basis at £90 incl. VAT (i.e. rental plus the amortised charge of the £120 connection), which is more than the £45 incl. VAT proposed consumer safeguard cap.<sup>15</sup> The customer could opt to a take the equivalent product on a 24-month minimum contract term. While in this case the fibre service is priced on an end-to-end basis at £72 incl. VAT (i.e. rental plus the amortised charge of the £120 connection), which remains above the £45 incl. VAT proposed safeguard cap.



Question 16: Do you agree with our proposed approach to how the Universal Service Providers should report on their performance and maintain records?

While we recognise the importance of demonstrating that the USPs are meeting the operational parameters we would encourage Ofcom to review whether its proposals are proportionate. It is our view that the minimum level of reporting necessary should be required. Furthermore, in our view, a pragmatic response might be to monitor the situation using its own information gathering powers in the first instance but reserve the right to undertake more onerous activities. For example:

- Requiring information that is published to be independently audited and that the costs of such audit are met by the Universal Service Providers.
- Imposing performance targets on the USP with respect to any obligations set out in universal service conditions

Question 17: Do you agree with our proposed approach to require Universal Service Providers to maintain accounting records?

In principle, we are in agreement with Ofcom. However, we would like to discuss the practicalities of this in further detail.