

## The BiT Commons response to 'Delivering the broadband universal service obligation (B-USO)' February 2013.

Thank you for the opportunity to respond to the consultation on Delivering the broadband universal service.

The fundamental issue arising from this consultation is that B-USO 'order' wants to fix rural not spots 'quickly'<sup>1</sup>, when the labour intensive 'snagging' nature of the task in hand points to the job being anything but quick. BT has confirmed 'quickly' is at best problematic. The notion of 'quickly' referred to my Ofcom suggests the 12 months<sup>2</sup> for BDUK work to finish is also arbitrary. This submission provides a calculation that shows BDUK's work in rural can be completed sometime in 2023, suggesting 36 months rather than 12 months is needed from the time the B-USO order is implemented.

The author will submit a request to Parliament to amend the order to provide 36 months instead of 12 months to conclude the BDUK activity. This will still leave a significant amount of the BT Capital Deferral unspent but likely to be treated by BT as network investment for cost recovery purposes. The latter is for Ofcom for to resolve.

The B-USO 'order' when requested by Parliament ignored the status of the BDUK funding, largely because this status was not reported, as the programme has been subject to a significant effort by BT Group to game its costs and its capital contribution to the direct costs. The gaming of costs has been tolerated by Government in the interest of getting the job done, despite BT using commercial confidentiality agreements to propagate mis-representations, including mis-leading evidence to Parliamentary Select Committees in 2013<sup>3</sup> and 2016<sup>4</sup>. Ofcom's efforts to define a B-USO independent of the BDUK activity has been shaped by its desire to avoid reviewing BDUK subsidies during the 2017 Wholesale Broadband Access Market review. The UK is now in a position where a totally unfit for purpose B-USO is putting at risk the hard-fought upside emerging from efforts to seek transparency in the BDUK contracts. That upside of a possible additional 600-700k full fibre connections in rural from the existing BDUK rural programme is at risk if the proposed Ofcom approach to fulfilling the 'order' goes ahead as outlined. The Ofcom approach arises directly from the Government being uninformed at the time of the legislative process and the department following blindly the wishes arising from a Parliamentary 'wash-up' process in 2016. It is not clear why officials in the same department could not allow for the interaction of the BDUK activity with the proposed B-USO to be worked through.

In addition, as the 'order' is currently written it creates the possibility of;

- 1) BT being funded by competitors to fix its network in urban areas. Some 280K of England's 650k <10Mbps/1Mbps eligible lines are in urban areas. This includes 108k in Greater London. Is it Government's intention that Hyperoptic/Cityfibre/Vodafone/Virginmedia contribute to BT's costs In urban areas?

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<sup>1</sup> 'quickly' is used 24 times in the consultation document without defining it.

<sup>2</sup> 12 months is used 42 times in Ofcom's consultation document.

<sup>3</sup> PAC 2013 – claims on 'most competitive price' can be disproved.

<sup>4</sup> CMS Select Committee into Broadband, .. claims on the then(2016) direct capital contributions have been disproved.

- 2) The proposal may also permit BT to reclaim from Mobile Operators the costs of extending its mobile reach where BT intends to deploy wireless solutions to some 450,000 premises.

It is assumed once Ofcom considers the urban not spots, missed in 2016-17, technical solutions are likely to be expanded to include standard 4G and future 5G services which in a converged data transport world ought to be near equivalent to a fixed line, thus eliminating the need to fund fixed B-USO in urban areas. The B-USO 'Order' will still need to be amended to formally reflect this.

If the wireless approach is fully embraced, 4G or 4G plus antenna, then Ofcom ought to consider designating O2, the holder of the 98% 4G coverage obligation as a B-USO provider.

- 3) The 'order' is likely to cause the BDUK activity to miss its original objective of fixing rural connectivity using funds already available and intended for the task. The 'order' with its 12 months for BDUK to finish work clause, is likely to substitute an already funded means of delivering full fibre services to another 600-700k rural premises with an inferior scheme with lower throughput thresholds where the expectation is that industry picks up some of BT's costs. This is on the assumption that the work can be delivered 'quickly', where the evidence from BDUK activity that delivering 'quickly' is unlikely. BT's submissions to Ofcom on this matter also questioned the nature of a 'quick' delivery.
- 4) It is likely the 98% oft quoted coverage can be delivered from the outstanding 450,000 premises already contracted but work yet to be completed<sup>5</sup>. This leaves a substantive additional funds to go beyond 98% and complete much closer to 100% using full fibre.

The importance of this cannot be overstated when for so long, full fibre has been treated as some exotic material only permitted to those willing to pay private circuit rates. Doing the extra miles in rural will bury for ever the myth that this is unaffordable and unobtainable while bringing closer the reality the ambition of full fibre networks by 2033.

In previous responses on this subject, The BiT Commons has drawn Ofcom's attention to the greater than £900m<sup>6</sup> in the BDUK procurement pipeline, plus the now £712m<sup>7</sup> BT Capital Deferral which should be applied to extending fibre services in rural areas in advance of the 'Order' being applied. I indicated some flexibility would be needed on the 12 months allowed to finish BDUK projects. Ofcom have indicated there is no flexibility, this suggests a means needs to be found to get the order amended. I highlight below as little as an additional two years (sometime in 2023) is needed to complete the works if 60k<sup>8</sup> rural are passed per quarter.

This is not a surprise as the 'Order' was written when both Government and BT claimed the BT Capital Contribution to the BDUK projects had been paid, while the full extent of the clawback was not understood. The 2016 claims on BT's Capital payments made at the CMS SC Inquiry into Broadband are unlikely to be true given the change in position on the matter evident in the WPQ exchanges since 2016. This is no different to the change in position on BT inflating its costs in the

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<sup>5</sup> BDUK January 2019 Performance report, comparing contracted (5,466,595) with delivered premises – (5,011,052).

<sup>6</sup> BDUK January 2019 Performance report, procurement pipeline tab, £765m for 15 projects plus Northern Ireland -£150m -

<sup>7</sup> BTPLC.com results page, q2 2018/19, PDF doc on results, page 6 on Capital Expenditure.

<sup>8</sup> See ref 14.

BDUK between the NAO reports in 2013 when price inflation was denied and the NAO report in 2015 when Government could no longer confirm they had received BT's best price.

Ofcom discuss the '12 month' issue in depth but feels it cannot move from the date in the 'order' while at the same indicating it would not deal with Local Authorities directly but only BT. This approach is likely to work against the interests of the UK rural economy and indeed the national objective for full fibre networks. This response will outline what is possible and why Ofcom ought to change its current position or bring these consequences to Parliaments attention.

The BiT Commons did respond to the DCMS consultation in 2016/17 on the B-USO definition and highlighted why provision was needed to accommodate the re-investment of BDUK funds, in part arising from the controversies which led Parliament and specifically the CMS Select Committee Inquiry to call for the separation of Openreach from BT. The issues remain and will continue to do so until BT's direct capital contribution is reported publicly and subject to audit. A fix or accommodation is required if the UK rural economy is to benefit from the full potential of connectivity upgrades which has yet to be delivered but where funds are available to do the work.

Responses to selective questions are outlined below. The overall effect is how 'time' is bought to deal with the unprecedented consequences arising from the lower than initially portrayed costs and higher customer take-up from the subsidised activity so far, and the need to re-invest those funds to achieve a deeper fibre roll-out.

Ofcom are predicting a reduction in the <10Mbps/1 BUSO service from 860,000 to 600,000 by early 2020's. These numbers although ok continue to ignore the amount that can and could be completed by Local Delivery Bodies using the budgets available to achieve full fibre by I am estimating 2023. cursory references to Wales, Scotland and Northern Ireland are not enough. A full analysis is needed of the potential if rural English areas are not to be dis-advantaged. Some 111 English Constituencies have less than 95% coverage. This response includes some illustrative costings for the remaining works.

It is noted that under paragraphs 6.47 and 6.48 Ofcom do not intend engaging directly with Local Delivery bodies but rely on data from BT. Given the historic level of mis-representation on these projects which has been documented and provided to Ofcom<sup>9</sup> it would seem appropriate that Ofcom conduct a full review with the BDUK Value for Money team, who according to the most recent WPQ's hold all the data for each project<sup>10</sup>. It does not seem too big an ask for Ofcom to do more than record some high-level objectives for Scotland, Wales and Northern Ireland but seek out and accommodate the delivery dates associated with all these projects. The opportunities to complete works in England's most rural counties should also be fully reported upon given the budgets available to conduct the work. This includes Capital Deferral in BT's accounts which has been building since July 2015. It was reported in Q2 2018/19 as £712m. The then CFO of BT is on record in 2015 saying that clawback would be in the 'tens' of millions<sup>11</sup>. It is now £712m and this is before any publication of the status of BT capital contribution to these projects. The is unprecedented and unique and such circumstances demand more than Ofcom just ignoring the matter.

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<sup>9</sup> OCCTelecom ref 00557595

<sup>10</sup> Written Parliamentary Question 209730

<sup>11</sup> Recorded in BTresultspage circa April 2015 – oral questions.

*Q5. Do you agree with our proposed approach to how Universal Service Providers should check eligibility for the USO?*

*Q6. Do you agree with our proposed approach to how Universal Service Providers should take account of shared connection costs?*

Given the inclusion of so many urban areas in the eligible premise's basket, 280k<sup>12</sup> of the 650k in England, 108K premises in Greater London, it seems appropriate to include 4G and future 5G data services in the qualifying service category. This allows an easy way to remove what must be an unintended consequence of competitors funding BT network upgrades in urban areas.

A greater recognition of the role of 4G services with or without an antenna may also allow O2, the holder of the 98% coverage obligation to be considered as a designated USO provider as well. The consultations point to the use by BT of wireless solutions in some 450,000 cases. The process should allow O2 and Vodafone the opportunity to take part in such an arrangement rather than being expected to contribute to some of BT's costs.

BT also suggests these customers could not then benefit from subsidised roll out of full fibre. Such a limitation provides another reason to increase the 12months mentioned to 36 months so BDUK works can be completed.

*Q7. Do you agree with our proposed approach to informing consumers of the outcome of their USO request?*

The approach is little different to substituting for the unfinished BDUK process. The use of mobile should be extended to the other MOLO's. This is not ideal. The BDUK work should be allowed to finish in full before any B-USO order is implemented.

*Q9. Do you agree with our proposals set out above, including to set a timeframe of 12 months for the delivery of the USO connections unless exceptional circumstances have arisen?*

The recognition that 12 months will create a major issue in terms of timescales and costs. This becomes evident in the Ofcom text. The picking of 12 months looks to be arbitrary rather than evidence-based and some way is needed to get it amended. There is a danger than in 'ticking' the box for 12 months, Ofcom will force industry players to find a way to tick the box and 'solve' the problem by providing initial quotes well above the £3,400 threshold. BT in their response have indicated 110k of the 150k FTTP connections will exceed the threshold, while the others 450k will be met using wireless. This makes the B-USO somewhat meaningless as more FTTP can be completed by BDUK without an industry fund while the reliance on wireless suggests the B-USO is being used to substitute for a modified 4G coverage obligation as requested by Parliament in 2012.

Ofcom have a multiplicity of functions where it has to decide how to balance its role, as Government agent (spectrum auctions and fees), Competition regulator, industry policeman, Infrastructure guardian or commentator and the sectors Attorney General. The B-USO order cuts across a number of these functions and as written introduces competition issues (competitors funding BT in urban areas), 'quickly' pushes 4G/wireless putting at risk further full fibre roll-out, and declares a level of convergence not yet reflected in market definitions. The latter is very positive event but perhaps should not sneak out in this way. It is worthy of a greater declaration and alignment with the full fibre ambition.

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<sup>12</sup> Workings in Excel using think-broadband constituency availability data is available on request.

Can the UK do better? It might be better if the 'Order' with the '12' month clause was interpreted to include any work planned or already contracted to be delivered beyond that time. By widening what is included in the 12 months, it would allow more work to be planned and would reduce the reliance on an industry fund. I have estimated that BDUK work could be completed by 2023. If ways cannot be found to 12months to 36 months then the 'order' needs to be amended.

It would also help Ofcom if they acknowledged the expected role of Fibre on Demand, a product announced by BT in support of BDUK in 2014, and promised several times since but not yet full productised or supported. This provides a framework for FTTP to be extended in rural areas through the BDUK activity and completed where needed by the B-USO proposal.

It would be helpful if Ofcom followed up on their WLA statements confirming that FTTP was subject to 'reasonable request' by defining and confirming that a 'reasonable request' would include requests utilising spare fibres on subsidised infrastructure in rural areas. The point from which a reasonable request could be made and costed should be from the spare fibres serving the fibre cabinet or the aggregation node whichever is the closer. It is no longer the exchange building or handover point.

*Q.11 Do you agree with our overall approach to ensuring USO connections and services are affordable, specifically on:*

Some additional flexibility is required on connection costs. In planning FTTP clusters it be more prudent to support connection costs for the final drop where the final drop could be more than 1 DP away. Distance based connection costs of up to £300 could be permitted. Other means of permitting customers in rural areas to make a contribution to overall costs should be catered for.

*Q.12 Do you agree our proposal to ensure the USO customers receive at least the same quality of service as non-USO customers.*

The short answer is yes, but B-USO as stated failed to specify video calling. It references 'voice'. Video calling is a real-time communication service which the underlying data transport service should be provisioned in a manner that supports such an application for a single user in a household. This demands some understanding of the underlying data transport and how its work in the busy period. This is missing from the B-USO. Peak hour data, packet loss, delay, and jitter characteristics should be specified for the data transport service engineered to support the B-USO. A minimum of 500Kbps of backhaul to an internet gateway should be provisioned for each of the customers registered on the system with allowances for this to increase as bandwidth prices drop and usage grows. These parameters compose the planning rules for the proposition so should be revealed.

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

Some of the reporting needs to be adjusted to acknowledge the interaction with the BDUK activity.

Perhaps under USO requests, the number diverted or expected to be met by BDUK should be recorded.

*Q.17 Do you agree our proposed approach to require Universal Service Providers to maintain accounting records?*

BT will be making substantial re-use of publicly subsidised assets which have already been paid for.

Ofcom accounting should record where these assets are re-used so the cost allocations associated with using those assets are not double counted. The legwork for this appears to have been done by Cartesian for the WBA review in 2017<sup>13</sup>. The BDUK worksheet tabs are included in the WBA documents but were unused.

The fabric of the proposed USO delivery team, will have the same elements as the current BDUK programme. Steps are needed to secure the appropriate allocation of costs so costs are not recovered twice.

The proposed accounting records should be maintained with the records of the subsidised network upgrades paid by BDUK and Local Delivery bodies.

### Illustrative costs to complete BDUK’s 2012 mission using existing budgets and the clawback owed.

There is no definitive statement of BDUK’s available funds but the most recent spreadsheets show;

- a) Another 400k contracted premises but yet to be delivered.
- b) A BDUK pipeline of work worth £765m across 15 projects is listed in the latest BDUK spreadsheet. In addition the Northern Ireland contract is separate and is worth £150m.
- c) BT’s capital deferral of £712m is recorded in BT’s accounts but some £130m of this may be allocated for works intended or under way.
- d) BT’s capital contribution to the original phases has yet to be reported and much of it may be owed and available to invest to go further.

It is not unreasonable to assume another £1.2-£1.5bn worth of funds available to complete the works in rural areas would remove the need for most of intended B-USO fund.

The following cost illustrations show all remaining work – all of it costed assuming FTT -in-fill, with an options to reduce subsidies by introducing fibre on demand distance based connection fees.

The following is an illustrative of the remaining. Spreadsheets are available to show how these costs per calculated.

Table 1. Illustrative costs of completing BDUK with FTTP in-fill.

Area (premises <24Mbps)	Illustrative FTTP in-fill subsidy needed. Supplier contribution is separate and extra.	Estimate of Fibre on Demand fees which could reduce the subsidy or increase the monies available.
Northern Ireland 95K premises	£131m	£20.3m
Scotland 166k	£212m	£46m
Wales 77K	£83m	£15m
England (111 rural constituencies) 435k premises	£461m	£95m estimate
Total estimate	£887m	£171.3m

<sup>13</sup> The cost models can be found here [https://www.ofcom.org.uk/consultations-and-statements/category-1/wholesale-local-access-market-review#accordion\\_\\_target-112435](https://www.ofcom.org.uk/consultations-and-statements/category-1/wholesale-local-access-market-review#accordion__target-112435)

Time to deliver based on 63K <sup>14</sup> a quarter	13 quarters	Sometime in 2023
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The available funds, means there is a big margin of error available in these calculations.

I have also estimated if 63K a quarter is delivered, then BDUK effort should be able to deliver a better full fibre solution by 2023.

It must be clear to Ofcom now that the B-USO Order needs to be adjusted to cater for an upside that was being denied through the ongoing gaming of costs from 2012 to 2015 and the failure to report on BT's direct capital contributions to these projects, a matter which is outstanding nearly three years after the completion of phase 1 in 2015 and six years after the initial contracts were let.

There is one other element Ofcom should consider.

#### The accounting treatment of the BT Capital Deferral and the proposed B-USO fund.

It is unclear from BT's results statements how the Capital Deferral of £712m is going to be treated. It is possible that BT could hand this money back to Local delivery bodies and local delivery bodies spend the monies on something other than rural coverage. In this case BT could count this as investment in the network and seek to recover costs as if the money was spent on the network even though the monies are not spent on the network. This matter is then made worse by Ofcom facilitating the creation of another fund, effectively for the same work permitting another set of costs to be incurred facilitating a potential double recovery one of costs and one of the capital deferral.

The above scenario should not be allowed to occur and Ofcom should explain the steps it is taking to make sure such an occurrence is prevented.

End.

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The BiT Commons

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<sup>14</sup> 63k a quarter is the difference between BDUK reporting 5,011,052 in September 2018 and 4,948,017 in June 2018.