

FAO: Selina Chadha
Riverside House
2a Southwark Bridge Road
London SE1 9HA

By Email
24th January 2019

Dear Selina

REF: Broadband USO Obligation Letter received 10th January 2019

Many thanks for your correspondence relating to the Broadband USO on the 10th of January. We have concerns about several suggestions within the letter and have aimed to expand on those below.

In principal we are happy with the sharing of data in a sensible way to enable customers at covered properties to contact prospective suppliers, however I think it is critically important to us that you ensure the USP doesn't use this as a way to gain significant access to market information.

The G1 Safeguards are very well intentioned however we have seen regular evidence of the use of our leaked rollout information to rapidly overbuild communities we are working to cover and given the competitive advantage the USP will gain to target poorly served communities (our core target market) we believe it should be possible for Ofcom to pass the information directly to the consumer without the USP knowing.

Rollout without request: Our understanding of the scope of the USO is that it should enable the rollout to an individual customer based on a request to the USP. However, we are hugely concerned by your comment within point 2, bullet 2 where you state that the rollout will be 'taking into account the extent to which costs can be shared with other properties' this sounds like you will be giving access to the USP to undertake rollouts to multiple/numerous properties in a block, some of whom will not have made a USO request. At £3,400 per request this amounts to uncompetitive allocation of funds to a large-scale rollout without tender. Our target market is largely within areas that have less than 10Mb/s and we could/are rolling out for less than £3,400 per property - in many cases with full FTTP.

- Please could you confirm that the USP will not be able to claim funds to connect additional properties that have not specifically made a USO request themselves, even if they have less than 10Mb/s?

Use of up to date coverage information: We are rapidly rolling our FTTP network using the gigabit voucher scheme, private investment and other DCMS led schemes, how will the table of up to date coverage take into account planned rollouts? The FITR report made great plans for commercial investment, this requires planning and if the government wishes to attract private investment that it must give confidence to the market that planned rollouts cannot be overbuilt by the USO.

- We understand the connected nations report is only showing actual coverage, what planned information will be included and how will we feed that to you?

- Will you also pull data from other sources such as the DCMS list of properties that suppliers have registered Gigabit Vouchers / community schemes for?
- If there is the ability to report planned coverage will the property status of planned or covered be given to the USP, if so this presents significant additional concerns as it is particularly sensitive information?

Calculating cost threshold: Within your paragraph about calculating cost thresholds you state that you will give the USP a full list of properties within their area that do not have access to 10Mb/s broadband.

- Please explain why you will give this list to the USP's and not release it to the whole market at the same time?

Surely there is no justifiable reason to give the USP a competitive advantage against other suppliers who have also fed into that database. If the list is to be released it should only be done so by open release to all providers concurrently.

Proposed Safeguards: The information set out within the December 2018 consultation relating to clause G1 is woefully light on detail. It sets out a high-level statement of protection of information but gives no detail of how that will realistically be implemented between departments. BT especially is a company who has material interest in that information for its competitive advantage.

What will happen for instance if an employee with this information wishes to move department from the USO office, will their knowledge of the information bar them from working within another department? And how will the informal sharing of information between friends and former colleagues be stopped, the damage is done via informal requests to friends and is very difficult to prove, the failure of the safeguards have the potential to cause material impact to our business and should not be taken lightly.

We don't see why a system can't be put in place to pass the customer to an automated line that could pass the supplier information directly to the customer from Ofcom without the USP ever having access. Much in the way as bank details are now passed from customers in many systems.

- If this is not possible please explain why the information cannot be kept from the USP and expand on the safeguards and how other suppliers can see the USP penalised with reasonable information to prove that the information is being misappropriated?

Consent to disclosure of information: we do not currently feel confident to disclose our information to the USP's while the above concerns around the use and release of that information are outstanding.

However, I believe it is important that our information is included in the database and I hope that prior to implementation we will have seen sufficient information demonstrating that the USO is not anti-competitive whereupon we will be happy to release it.

I look forward to your response.

Yours Sincerely,

Hector Gibson Fleming

Managing Director

FAO: Andrew Scoones, Ofcom

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By Email

26th February 2019

CC: Margot James, Lorne Mitchell, Aishani Roy, Phil Foxwood, Justin Leese,

Dear Andrew

REF: Follow-up to Broadband USO Call on 22nd Feb 2019

Many thanks for your time on Friday to discuss the concerns laid out in my letter of the 24th January. It was extremely useful to get an understanding of how you currently view the implementation of the USO.

I have come away from our conversation more concerned about what we see as several anti-competitive aspects of your proposed implementation strategy. We wholeheartedly believe in the purpose of the USO but given the government's significant effort to stimulate competition in the industry we believe it would be counterintuitive to implement the instrument in a way that significantly harms competition and in the long run consumers, especially in rural areas where competition is needed most.

I do appreciate that Ofcom is still in the decision-making process and not all operating parameters are set in stone. For that reason, I have set out my concerns on the two key points we discussed:

Planned Coverage:

Whilst 3 monthly Connected Nations updates will take into account existing coverage and planned state procurement, it was understood that you currently have no intention of making allowances for commercially planned deployments that are underway. Given the 3 to 6 month lead time of planning and deploying fibre to a rural parish or village it is likely that your map will only remove a property from USO eligibility up to 6 – 9 months after we have started investing in the planning, sales and installation of properties in those areas.

I understand your view that the statutory instrument does not make allowance for commercially planned infrastructure, however we see the likely outcome of the current strategy as payment to a USP to overbuild infrastructure already in deployment, which is an enormously anti-competitive and a wasteful use of funds.

I do not see how DCMS's strategy, as set out in the recent FITR, can reasonably believe that the industry will fund the majority of full fibre rollout when it is at the same time saying it does not recognise any commercially funded plans in gap funding instruments such as the USO. It flies in the face of reasonable and coherent strategy and will stifle innovation and investment.

Furthermore, in relation to this point we would like to seek assurance that Gigabit Voucher funding (and any future voucher funding programs) will be considered State funded procurement for the purposes of the USO and so any schemes underway with DCMS funding would be excluded from the USO (at least

for a period of time) with the applicant pointed to the GV supplier. I understand this is a point that hasn't yet been analysed but it would seem an obvious consideration given the funds being invested in these schemes and the rapid times from voucher award to deployment (always sub 1 year as per the USO).

Aggregation Methods:

We understand you have two options for dealing with the aggregation of USO requests and that the preferred at this time is to assume a take up level of 70% of the USO eligible properties around any USO request. You allow the USP to plan, rollout and claim funding for that 70%, irrespective of the level of uptake they actually receive, pre or post rollout.

In regard to this, I would like to reference to the Statutory Instrument, Schedule one, paragraph 2 b, which states that the USO only applies if '*a prospective end-user requests that a broadband connection is provided to that location;*'. How would Ofcom justify that the end use had requested that a broadband connection be provided when the take-up level was assumed and paid to properties that had not made the request themselves?

This aggregation method not only flies in the face of the order but allows the USP to cherry pick build out in the most attractive areas without any real reference to demand from the local area for the USP's services.

As a last point, I would like to raise an example where both of the above are combined; a 3rd party provider is in the process of building out in a village (where their planned coverage is ignored till live) and a USP has the right to build out based on only 1 (or very few) USO requests (judging the eligibility on the day of request not install). The USP would be able to overbuild a commercial or GV funded rollout using significant subsidy when the 3rd party may be nearing completion of their own build. This would be in no-one's interest but the USP's and surely represents a loophole that could be significantly abused. They would also have public information of commercial rollout (given the timing gaps of coverage information) to prioritise schemes where they knowingly have competition, completely contrary to the intention of the USO.

In addition to the above we also discussed several other concerns that were also set out in my first letter and I very much look forward to your response on those as well as the above when you have an update.

I once again repeat my comment that we would wish our coverage information to be openly included with our details but can only give permission to do so once we feel confident that our information will not be abused by USP's both in the above cases and as referred to in my previous letter.

Yours Sincerely,



Hector Gibson Fleming

Managing Director