

## Ofcom Consultation – Compensating providers delivering universal services

### **About INCA**

INCA brings together many of the most dynamic organisations creating new digital infrastructure in the UK.

The members of INCA are supporting, planning, building and operating sustainable, independent and interconnected networks that advance the economic and social development of the communities they serve and permit the provision of applications and services through open competition, innovation and diversity. They work together to create cohesive interconnected next generation networks.

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### **Consultation Response**

INCA members are supportive of the broadband USO and of Ofcom's work for establishing the terms under which it will operate.

We have two significant concerns with the current consultation:

1. The uncertain scale of the USO in terms of premises
2. The potential for market distortion for independent operators, which rises if the number of properties is at the higher end of the range.

### **Scale of the BUSO Challenge**

In the 2018/18 consultation Ofcom estimated the number of premises that would be eligible for the USO at 600,000. Of these BT said it expected to cover 450,000 **commercially** with EE wireless broadband and a further 110,000 would be out of scope, being beyond the £3400 USO cost limit. This left 40,000 eligible premises which BT said it would cover with a mix of FTTC and FTTP.

In the most recent Connected Nations Report (Dec19) the number are very similar, 610,000 unable to get decent broadband, estimated to fall to 155,000 'factoring in the coverage from fixed wireless networks, including those of the mobile operators.' Interestingly in the past year the number has apparently not fallen due to EE/FWA.

Consequently, it is still not clear whether 40,000, a subset of 150,000 premises in scope of cost, or a subset of the full 600,000 premises will be subject to the BUSO. If it ends up being 600,000 one has to question what happened to commercial wireless deployment using EE services.

### **Competition Issues - Mitigating the Potential for Market Distortion**

The past three years has seen an explosion of new entrants delivering fibre and wireless infrastructure, often with substantial commercial funding behind them. Many are planning and building networks in rural areas. As far as we are aware all are building networks that can deliver services of far greater speed than the minimum mandated by the BUSO. These operators are helping to reduce the scale of the BUSO requirement both directly in rural communities and have the potential to reduce the cost of BUSO delivery in some areas where they have existing network assets.

During the course of the 2018/2019 consultation '*Delivering the Broadband Universal Service - Proposals for designating providers and applying conditions*' Gigaclear in particular argued that BT should be mandated to use available local infrastructure from other providers when seeking to deliver the USO. This would have gone some way towards reducing the cost of delivering and the risk that the BUSO could undermine commercial or indeed state aid funded projects delivered by providers other than BT.

In the design consultation Ofcom essentially ducked this issue, noting that various respondents advocated use of 3rd party infrastructure ... 7.41 as part of assessment of any unfair net cost claim by a USP Ofcom will consider whether the USO could have been delivered more efficiently using alternative network infra. But in 7.42 will do this by assessing the reasonableness of USP's overall technology and network design choices, rather than by requiring a specific costing valuation of all alternative network options.

The Compensation review does not seem to take account of the potential for existing alternative local infrastructure to reduce cost.

Para 4.7 In making a decision on whether to commence a review [of the net costs], in the specific case of the broadband USO, we will look to see whether sufficient network has been built and if enough premises are receiving connections to ensure that adequate information on the following is available:

- a) the infrastructure necessary to deliver the broadband USO connections requested;
- b) the capital expenditure incurred in making these connections; and
- c) the products purchased by the premises that are receiving these connections.

However, there is an imperative to consider the efficiency with which the costs have been incurred:

5.14 We would assess the efficient net cost of delivering the USO. To do so, we would consider the evidence that the costs were efficiently and necessarily incurred to deliver the USO in question. If we concluded that this was not the case, we would make appropriate adjustments to the net cost. This should provide an incentive for the Universal Service Provider to deliver the USO efficiently, as it risks not being compensated for any inefficiently incurred costs in delivering USO connections.'

5.7 f) the evidence that the net cost was efficiently and necessarily incurred

5.8 It is the efficient net cost of providing the USO which will be the focus of any net cost assessment. In that respect, we consider that efficiency includes (among other things) considering whether the Universal Service Provider has used the most efficient technology to deliver USO connections and incurred an efficient level of costs in delivering USO connections.



5.18 b) the extent to which the costs of complying with the relevant universal service conditions were efficiently and necessarily incurred;

**Question 5:** Do you agree with our proposed approach to calculating, verifying and auditing a net cost?

**Question 6:** Do you agree with the proposed factors we will consider when assessing an unfair burden?

We believe that including costing the use of third-party infrastructure where available on commercial terms would help meet the efficiency/necessity tests and reduce the potential for market distortion. It will also assist in determining whether an unfair burden has been incurred. If BT decided not to use available alternative infrastructure the amount of any claim against the BUSO fund could be reduced to reflect the additional savings that could have been made

### **Contributors to an industry fund**

INCA members note that the proposals for the industry fund indicate that there is likely to be a wide pool of contributors to spread the burden of unfair net costs. We agree with the analysis that requiring contributions from small new entrants may distort competition in the longer terms and welcome the proposal to limit the pool to those with sufficient resources to contribute.

7.30 For example, requiring contributions from small firms, that have not yet achieved a significant market presence, has the potential to inhibit entry into markets and this can distort competition in the longer term. This distortion can be avoided by exempting such providers. To determine the appropriate threshold, we will need to balance the effect of the threshold on competition in the longer term with the impact that excluding smaller competitors has on the remaining contributors.

**Question 8:** Do you agree with our proposed approach to determining which providers will contribute to any industry fund?

Yes.