

KCOM's non-confidential response to Ofcom's consultation: Compensating providers delivering universal services

Summary

- 1.1 KCOM Group Limited ('KCOM') welcomes the opportunity to respond to Ofcom's consultation on the broadband USO (the 'Consultation').¹
- 1.2 We have a clear interest in the application of the compensation mechanism applying to USO designate (the Universal Service Provider (USP)) for qualifying telephony and broadband services in the Hull Area, and as a supplier of network services in the rest of the UK. In particular:
 - As the USP in the Hull Area, we intend to meet our USO obligations using our fibre network, which has been deployed across the Hull Area. We can do so as our Lightstream fibre broadband services are capable of meeting or exceeding the technical specification of the broadband USO and are provided within the relevant affordability threshold.
 - We provide broadband services nationally and would, in principle, be a contributor to the broadband USO fund. For this reason, we have an interest in ensuring that the broadband USO is delivered as effectively and efficiently as possible by BT as the USP outside the Hull Area.²
- 1.3 [redacted].³
- 1.4 We agree that it is appropriate for USPs to be able to seek compensation for any unfair financial burden to which they are subject as a result of the universal service conditions imposed upon them and for that reason Ofcom is correct to undertake the Consultation on making The Electronic Communications (Universal Service) (Costs) Regulations 2020, which sets out the proposed rules and procedures Ofcom will follow when assessing any net costs of the provision of a universal service and, where appropriate, compensating the USP for those costs.
- 1.5 We agree with Ofcom that the draft funding regulations should not be made specific to the broadband USO but rather apply to costs incurred in connection with all present universal service conditions as well as universal service conditions which may be imposed in the future. By extension:
 - It appears preferable that Ofcom considers the net cost calculation in the round i.e. to include all elements of delivering the USP (e.g. public payphones). Indeed, Ofcom has indicated its intention to review the legacy USO obligations and therefore seems appropriate to include these in the round as part of a net burden assessment. In our view, this is only relevant to the extent that Ofcom

¹ Ofcom (2019), *Compensating providers delivering universal services: Consultation on the funding process and notice of Ofcom's proposal to make funding regulations under section 71 of the Communications Act 2003*, Consultation, 5 November 2019, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0034/176497/consultation-uso-funding.pdf

² KCOM is a member of UKCTA, who have submitted a separate response to the Consultation response which relates to the compensation funding for BT as the USP in the UK (excluding the Hull Area).

³ [redacted]



considers the universal provision of such legacy services makes any sense per se.

- It is our understanding that the financial reporting provisions only pertain to the broadband USO element and as such the net cost calculations would be captured under the general provisions in the event that Ofcom considers, following consultation, that legacy USO should remain in force.

1.6 We have the following specific points to make in relation to Ofcom's Consultation proposals as they apply to KCOM in the Hull Area:

- While the Communications Act 2003 (the "Act") provides for Ofcom commence a review of the extent, if any, of the financial burden of complying with one or more of the universal service conditions applied to a particular USP we recognise that the USP is likely to make the request to Ofcom in advance of any active decision by Ofcom to do so.
- It reasonable for Ofcom to expect to review no more than one net cost claim per year. We would expect Ofcom to decide on the scope of a review and when the review will begin in consultation with the USP.
- We note that, in accordance with s71(3) of the Act that Ofcom can only determine that an industry fund should be set up if the USO makes a specific application requesting that Ofcom determine that other CPs make contributions towards meeting that burden.
- We agree that a USP must submit enough information to support their claim for compensation and that the specific information required of the USP and relating to a broadband USO claim is capable of being submitted by the USP.
- Once Ofcom has decided to commence a review of a potential net cost, we recognise that Ofcom may need to make a number of determinations as part of the funding process. In particular:
 - It is appropriate that, once Ofcom has determined a net cost, that the regulator decides whether it would be unfair for the USP to bear some or all of that cost and this would include considering: the cost to Ofcom and industry of establishing and administering an industry fund; the impact on the USP of bearing these costs alone; the method of designating the USP; and the outcome of any previous determinations.
 - If Ofcom decide that delivering the USO is an unfair burden, Ofcom may establish an industry fund to compensate the USP, determine who will contribute to the fund, and how much they will contribute. This will include any threshold below which contributions will not be required.



- Once Ofcom has established an industry fund, calculates individual contributions, it invoices and collects monies from industry participants and compensates the USP in a timely manner.
- We agree that where a net cost is calculated by Ofcom to apply to one or more of the USPs that it is appropriate that Ofcom's calculations are independently audited. (It follows from the cost claim mechanism that is only necessary for Ofcom to determine the existence and level of any net cost to the extent that there has been any compensatory claim made on the fund. So, any assessment of whether the costs incurred in delivering the USO were efficient is only relevant to the extent that a compensatory claim is sought made.)
- At Annex 5 of the Consultation Ofcom detailing the proposed draft regulation (The Electronic Communications (Universal Service) (Costs) Regulations [2020]) appears to be appropriate, including the consultation provisions contained within it.
- At Annex 6 (A.6) of the Consultation Ofcom details the draft reporting direction in which Ofcom proposed that KCOM provides reporting information of any request that it makes in relation to compensation for qualifying broadband USO request
- We consider it important that the formulation of the final reporting direction (and associated Annex) does not, in principle, preclude KCOM from making a broadband USO funding submission. It would therefore be helpful for Ofcom to ensure that the direction recognises the relevant cost categories for a claim to be made by the USP but that it is not determined by a reporting template that precludes KCOM from making such a claim for the Hull Area.
- As a technical point, we may use Fibre to the Basement (FTTB) in certain MDU deployments, which in principle we may seek a compensatory payment for. The reporting annex only appears to contemplate the use of FTTP as a solution. In our view, the annex should not necessarily prescribe FTTP as the only qualifying technology eligible for compensation.

1.7 We would welcome the opportunity to discuss these points further with Ofcom.

Ofcom's consultation questions

Question 1: Do you agree with our proposed procedures for commencing a review of a net cost of complying with universal service conditions?

Yes, we agree with Ofcom's proposed procedures for commencing a review of a net cost of complying with universal service conditions.

Question 2: Do you agree with our proposed procedures for making an application requesting compensation for any unfair burden?



Yes, we agree with Ofcom's proposed procedures for making an application requesting compensation for any unfair burden.

Question 3: Do you agree with our proposed procedures when making determinations when assessing a net cost claim, including our proposed approach to finality?

Yes, we agree with Ofcom's proposed procedures when making determinations when assessing a net cost claim, including our proposed approach to finality.

Question 4: Do you agree with our proposal on the information the Universal Service Provider should provide alongside an application to review a net cost?

Yes, we agree with Ofcom's proposal on the information that the USP should provide together with an application for a review of a net cost. (This is a separate question to a proactive review of legacy USO obligations. In these circumstances, there is a recognition that such obligations are an anachronistic and it should therefore be for Ofcom to evidence the net benefit for retaining the obligation (e.g. public payphones) rather than presuming they should be supplied per se.)

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

We note Ofcom's proposed approach to calculating, verifying and auditing a net cost. However, we would expect to look closely at the benefits calculations (e.g. value enhancement to the brand resulting from being designated as the USP), particularly in relation to legacy USO obligations.

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

We note the proposed factors that Ofcom will consider when assessing an unfair burden.

Question 7: Do you agree with our proposed approach to determining whether an industry fund should be set up?

Yes, we agree with Ofcom's approach to determining whether an industry fund should be established.

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

Yes, we agree with Ofcom's proposed approach to determining which providers will contribute to any industry fund.



Question 9: Do you agree with our proposed approach on calculating contributions from fund contributors?

Yes, we agree with Ofcom's proposed approach on calculating contributions from fund contributors.

Question 10: Do you agree with our proposed approach to collecting contributions to an industry fund?

Yes, we agree with Ofcom's proposals.

Question 11: Do you agree with the proposed process by which we would compensate the Universal Service Provider?

Yes, we agree with Ofcom's proposals.

Question 12: Do you have any comments on the specific provisions of the draft funding regulations?

No.

Question 13: Do you agree with our proposed approach to the choice of the counterfactual for the calculation of a net cost of the broadband USO?

Yes.

Question 14: Do you agree with our proposal to use an NPV methodology to calculate a net cost of the broadband USO?

Yes, in principle.

Question 15: Do you agree with our proposed reporting requirements in respect of the broadband USO?

While we agree with the need for financial reporting, we keen that this is not overly formulaic and BT-centric and as such does not act to prohibit a claim by us.