



Ofcom consultation on compensating providers delivering universal services

TalkTalk response

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NON-CONFIDENTIAL

This is TalkTalk Group's response to Ofcom's consultation on compensating providers delivering universal services published on 5 November 2019.

1. The Universal Service Obligation (USO) for broadband will provide a safety net to ensure all UK citizens have access to affordable connectivity offering speeds of at least 10Mbit/s. TalkTalk supports Government and Ofcom's commitment to ensuring nobody is excluded from benefiting from this minimum level of broadband connection required to conduct day-to-day communications and transactions online. We agree that the best way to achieve this objective is through maximising competitive commercial deployment of broadband and targeted Government subsidy schemes, while setting up the broadband USO as a backstop.
2. We note that the anticipated number of premises eligible to receive broadband under the USO – currently between 40,000 (according to BT's estimates) and 155,000 premises (based on Ofcom's *Connected Nations report 2019*) – is significantly lower than previously thought. We also note that KCOM does not anticipate making any broadband connections under the USO as it expects to have delivered universal availability of FTTP in the Hull area prior to the establishment of the broadband USO.
3. Uncertainty remains over the final scale and cost of USO deployment. It is paramount that the scheme design enables eligible customers to benefit from USO, while ensuring that incentives are in place for Universal Service Providers (USPs) to maximise efficiency and minimise costs. Only marginal costs relating to the provision of the USO should be counted within any net cost claims and robust mechanisms must be in place to prevent gold-plating or the over-allocation of costs, particularly given that claims will be made ex-post. Further, any claim must reflect the direct and indirect benefits of providing universal service, including the brand value to USPs.
4. We have the following comments on Ofcom's proposed approach to setting the framework for implementing the broadband USO as set out in this consultation. However, we note the importance of the further consultation(s) on its assessment of specific net cost claims, whether they represent an unfair burden on the USP and the design of any industry fund if it is warranted. Only when we understand the overall cost of implementation, will we be able to assess the fairness and proportionality of the proposed approach to funding.
5. Process
 - We support Ofcom's proposal to only allow one net cost claim per year for each USP as this will reduce administrative costs of the scheme.
 - We support Ofcom's plan to put in place generic funding regulations that could be applied to other universal service conditions, rather than introducing a bespoke set of regulations for the broadband USO.
 - We are concerned about Ofcom's proposal that decisions on net cost claims will be final and only revisited in exceptional circumstances. While it would be disproportionate for Ofcom to reopen a decision in the event for minor variations in actual costs, we consider it would be appropriate to ensure a mechanism is in place to address significant variations, especially given the novelty of providing broadband connectivity under a USO and the consequent uncertainty over costs. Ofcom should consult on an appropriate percentage threshold range for variations in costs to warrant review. It is important that there is a method of review built into the scheme, which would help to avoid the need for any party to legally challenge a funding decision, with its associated costs and drain on Ofcom resources.

- Rigorous external audit of Ofcom's assessment of net cost claims is a vital part of the process to ensure appropriate scrutiny and transparency. Full details of the audit, and subsequent changes to Ofcom's assessment, should be included in the consultation on its assessment.

6. Assessing net cost claims

- The review of net cost claims will present new challenges to Ofcom as the process of assessment will differ from the one used to set regulatory charge controls. For example, it will require review of the technical structure of the network and whether the decisions on network design and components taken are suitable or involve gold-plating and inefficiency. This differs from the ex-ante approach to regulation, where BT's incentives to engage in gold-plating are much lower, as BT's price caps are based on future forecasts of efficient cost rather than the actual costs incurred.
- It will also require Ofcom to make decisions about the attribution of joint and common costs between the delivery of the broadband USO and other products, for example: the reinstatement of collapsed ducts or where the infrastructure has additional uses beyond the broadband USO (e.g. 5G).
- Assessing efficiency and whether costs were necessarily incurred will be difficult given there is limited comparative or time series data to use as a reference point and may require Ofcom to conduct a full technical review of BT's network.
- We support the use of an NPV framework for calculating net costs.
- Given the time that will have elapsed between Ofcom's June 2018 call for expressions of interest and the launch of the USO, we think it would be appropriate for Ofcom to revisit the appropriate counterfactual for the calculation of net costs rather than assuming no other provider would have been designated as a USP in the relevant areas. In the intervening period there have been a range of market developments - including changes in PIA, significant differences in funding arrangements and finances for various market participants, and new entry - which mean the results of this process may no longer be accurate.

7. Assessing whether the costs represent an unfair burden on the USP and the design of an industry fund, if required

- We support Ofcom's proposed approach to assessing whether the net costs represent an unfair burden on the USP and the factors it proposes to consider when determining whether to set up an industry fund.
- We anticipate that given the likely small scale of the overall funding that may be required, the Significant Market Power (SMP) of the USPs and the direct and indirect benefits associated with delivering the USO, it is unlikely to be proportionate to establish an industry fund.
- If an industry fund was considered appropriate following full consultation, we consider that contributions should be drawn from the widest base of fixed, mobile and OTT providers to ensure fair distribution of the costs among all players, no undue discrimination and to avoid market distortion.
- The terms for the collection and distribution of funds should be reasonable and fair and allow sufficient time for payment.