

**TELEFÓNICA UK LIMITED RESPONSE TO:**

**“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”**

**January 2020**

## **I. INTRODUCTION**

1. Telefónica UK Limited (“Telefónica”) welcomes the opportunity to respond to Ofcom’s consultation on compensating providers delivering universal services<sup>1</sup>.
2. Telefónica supports Ofcom’s aim for people across the UK to be able to access better broadband and also mobile phone services, so everyone can benefit from the services that they deliver.
3. Ofcom correctly identifies that in order to achieve this, it means encouraging investment in improved networks and making sure that coverage extends as far as possible.

## **II. THE MOBILE MARKET**

4. In the mobile market that we operate in, Telefónica has faced its own challenges with providing coverage to all areas. This is due to a variety of issues and barriers, many of which are complex and enduring.
5. Nevertheless, despite these challenges, great strides have been made to improve mobile coverage in recent years, by investment that has been delivered and entirely funded by the mobile operators.
6. Telefónica has worked exceedingly hard to improve its network and extend coverage. Last year we invested £1bn in the UK for our customers and we continue to invest over £2m every day to improve our network and enhance the experience for our customers.
7. Most recently, we’re proud to have played a pivotal role in working with the other mobile operators and Ofcom, to create the Shared Rural Network (SRN) proposal. This will bring mobile coverage to some of the most rural parts of our nation and

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<sup>1</sup>[https://www.ofcom.org.uk/data/assets/pdf\\_file/0034/176497/consultation-uso-funding.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0034/176497/consultation-uso-funding.pdf)

further increase all mobile operator geographic coverage. Partial Not Spots will almost all disappear and over 3,700sq miles of the UK will for the first time be covered by 4G. We're committed to taking this initiative forward in partnership with other operators and with the support of Ofcom and Government.

8. We believe that it is important to highlight that there are coverage issues in both the mobile market and also the fixed market and that these should be examined and addressed separately within each market.

### **III. DETERMING AN UNFAIR BURDEN**

9. In the consultation, Ofcom states that if it decides that delivering the USO is an unfair burden, it may establish an industry fund to compensate the Universal Service Providers. Ofcom states that it will also determine who will contribute to the fund and how much they will contribute.
10. Telefónica believes that it is perhaps presumptive on the part of Ofcom, to begin consulting on a draft legal instrument to make funding regulations before it has first established the fundamental point of whether delivering the USO is an unfair burden, or not.

### **IV. ESTABLISHING A FUND**

11. Notwithstanding the above, in the event that Ofcom does in fact establish that delivering the USO *is* an unfair burden, any proposed funding mechanism must be limited to operators in the relevant market i.e. operators in the fixed market.
12. In the consultation, Ofcom states that it is consulting on a detailed set of processes in this area for the first time. However this detailed set of processes does not clarify which operators will contribute to the fund.
13. Ofcom further sets out the duties to which it must have regard to in fulfilling its role under the legislation in respect of the funding process. When making those regulations and subsequent decisions in individual cases under those regulations, it states that it must seek to secure that the rules and procedures required to establish and administer an industry fund respect the principles of transparency, proportionality, no undue discrimination and least market distortion. In considering no undue discrimination, it needs to ensure that the rules and procedures are

carried out in a manner that it considers does not involve, or tend to give rise to, any undue discrimination against particular communications providers or particular Universal Service Providers, or against a particular description of them.

14. Ofcom states that the legislation allows for costs to be recovered from providers of ECN and/or ECS within the UK, or from a subset of those providers. If Ofcom considers this to be appropriate, it has the power to require only particular providers or a particular description of providers to contribute.
15. Ofcom further identifies that ECN and/or ECS providers incorporate a wide range of suppliers offering access to sets of different products. This includes fixed providers, mobile providers, and suppliers of a wide range of other communications networks and services.
16. The wide range of suppliers, offer access to different products, in separate markets. This is clearly identified by Ofcom in the course of its statutory duties, for example the identification of the fixed market and the mobile market, when conducting market reviews and assessments about competition. This is also apparent in its publication of reports that identify trends in different markets, for example The Connected Nations Report.
17. We are therefore concerned by Ofcom's statement that market distortions may be reduced if it chooses a wider set of contributors to the fund. We disagree. A wider set of contributors that were to include operators that do not provide services in the fixed market, would create distortion as it would be discriminatory and not adhere to the principles that require Ofcom to act in a proportionate, consistent and targeted way and always seek the least intrusive regulatory mechanisms.
18. We urge Ofcom to fully consider its duties in this respect and clarify that, in the event that it finds that delivering the USO *is* an unfair burden and it seeks to establish an industry fund to compensate the Universal Service providers, such a fund will not include operators that do not operate in the fixed market. It would be both inappropriate and discriminatory for Ofcom to require a mobile only operator to fund a universal service provider in the fixed market.