



**RESPONSE BY BRITISH SKY BROADCASTING GROUP PLC**  
**Ofcom Consultation Document:**  
**“The UK Communications Infrastructure Report”**

**30 September 2010**

1. The Government has, through the newly enacted Digital Economy Act 2010, tasked Ofcom with the new duty to report every 3 years on the state of the UK infrastructure (amongst other matters).<sup>1</sup>

We would urge Ofcom to ensure that the manner in which it chooses to discharge this new duty - the interpretation of the scope of the duty, the level of detail required, and collation process - does not go beyond the government’s original intention in requesting a high level picture of the nation’s communications infrastructure, and its wish to avoid the imposition of any disproportionate and impracticable requirements on industry. As such Ofcom should look to minimise any additional burden to business through a pragmatic and light touch approach which relies principally on the considerable bank of information it already accrues through research and information requests.

**The scope of the report**

2. In tasking Ofcom with this duty, the Government did not link it to a need to address any specific concern, problem, plan, or aspiration. In its guidance about its intention of the reporting, the Government, as noted by Ofcom, refers to an “...*indication of the state of the health of the communications infrastructure*”<sup>2</sup>. This suggests that the report and the data in it, is required to provide Government with a high level, general view of the state of UK infrastructure, notwithstanding the detailing of the breadth of data prescribed in the Act. Ofcom notes that the Act gives Ofcom discretion in what it reports on<sup>3</sup> and the Government’s guidance explicitly acknowledges the burden information gathering places on business and Ofcom. Ofcom already gathers a huge amount and range of data through the performance of its other duties which could be re-presented to meet

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<sup>1</sup> Digital Economy Act 2010 inserted a new section 134A into the Communications Act 2003; [http://webarchive.nationalarchives.gov.uk/20100511084737/http://www.opsi.gov.uk/acts/acts2010/ukpga\\_20100024\\_en\\_1](http://webarchive.nationalarchives.gov.uk/20100511084737/http://www.opsi.gov.uk/acts/acts2010/ukpga_20100024_en_1)

<sup>2</sup> Ofcom consultation document: The UK Communications Infrastructure Report, 22 July 2010, paragraph 2.5, <http://stakeholders.ofcom.org.uk/consultations/uk-comms-infrastructure/> and BIS DEA Ofcom Duties: Factsheet, December 2009, <http://www.bis.gov.uk/assets/biscore/corporate/docs/digital-britain/factsheets/factsheet-ofcom.pdf>

<sup>3</sup> Ofcom consultation 2010, paragraph 2.6

the Government's needs. In this regard, we would remind Ofcom of its general duty to ensure best regulatory practice and hence minimise the burden placed on industry in responding to information requests.<sup>4</sup> This position is also reflected in Ofcom's guidance on information gathering where Ofcom states that wherever possible it will draw from existing information sources to avoid unnecessary duplication of effort and to minimise the burden placed on those from whom information is requested.<sup>5</sup>

3. There are specific requirements which Ofcom must consider in examining the electronic communications networks as set out in section 134A of the Communications Act 2003. Sky considers that Ofcom should exercise caution in seeking to extend the scope of the report to cover the specific matters that it has identified – 2G mobile coverage and broadband speed availability. We consider that Ofcom should limit the scope of the report, exercise restraint and not extend the coverage of the report to areas not expressly provided for in requirements of the Communications 2003. These specific matters are not required to be examined in order to enable Ofcom to fulfil its reporting obligation and give an indication of the “state of health of the communications infrastructure”. In particular, in relation to broadband speeds, Sky considers that Ofcom has already gathered significant data from industry and already reports on this issue through other projects. The detail on broadband speeds proposed to be gathered, including the likes of “*modem sync speeds*”<sup>6</sup>, would appear to extend the reporting into operational performance – a subject not requested by the Government to be reported on.
4. In the absence of any specific matter identified by Government to be addressed, the wish to minimize the burden on all involved, the flexibility afforded Ofcom, and the huge amount of data that Ofcom already gathers, Sky considers that Ofcom should not need to seek any further information from industry. Further, a light handed approach should be taken in the production of the first of these new reports, and if Government finds that the information is not sufficient for some, as yet unspecified need, then it can provide Ofcom with further guidance to assist it in the production of the subsequent reports.

### **A snapshot view**

5. The Act states that the report “*must relate to the position on a day specified in the report*”<sup>7</sup>. Ofcom appears to have taken this to mean that much of the data needs to be collected on a specific day; referring to “*offering a snapshot view*” and their proposal to “*select a date in June 2011*”<sup>8</sup>(emphasis added) as their reference point. In a meeting with UKCTA on 13 September 2010, Ofcom noted that a forthcoming s135 information request for an extensive array of broadband line characteristics would be reissued in June 2011 requiring operators to repeat the data gathering on a specific date to provide input to this infrastructure report (Sky has responded separately to Ofcom on the scope and nature of this request). Sky considers that any information requests issued for the purposes of compiling the infrastructure report should consider, in the

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<sup>4</sup> Section 3(3) of the Communications Act 2003

<sup>5</sup> Paragraph 3.6 of Ofcom Statement on “Information gathering under section 145 and section 13B of the WTA 1949”.

<sup>6</sup> Ofcom consultation 2010, paragraph 3.42

<sup>7</sup> Digital Economy Act 2010, section 134A (2)(a)

<sup>8</sup> Ofcom consultation 2010, paragraph 2.14

first instance, all the information that Ofcom has already gathered and only then seek further information from stakeholders as necessary for the clearly defined purpose of the report in accordance with its obligations to ensure that information requests are proportionate and fully reasoned.

6. Sky considers that, given the general high level view being sought by Government, Ofcom can provide a snapshot view through making intelligent extrapolations and estimates of data gathered throughout the year. It is difficult to see how appropriate estimates structured to present a picture of all the data in the report as at a particular day, would not meet the requirements of the Government, given the lack of any specificity of use.
7. Failing the following of the above suggestions, Sky request that if information requests are to be made of industry, that the industry be given a reasonable amount of time to critique and comment on draft information requests, and then fulfil each request. Additionally, the requests should be spaced out over as long a period as possible.

### **Excessive detail**

8. At paragraph 3.15 of the consultation, Ofcom proposes to ask fixed network operators for “*data on premises passed at **full postcode level***” (emphasis added); that is, for data on each and every active line that Sky has provisioned. It is difficult to see how this granularity of data fits with providing a mere “...*indication of the state of health of the communications infrastructure*”<sup>9</sup> requested by the Government. Sky considers that such a detailed information request would amount to ‘gold plating’ and is quite disproportionate to what is being asked of Ofcom. In this regard, Sky notes the requirements of section 134B of the Communications Act 2003 for the report to consider a range of matters including geographic coverage and proportion of the population covered. To fulfil this requirement, postcode level data of homes passed would appear to be excessive and not proportionate to the objectives of the report.
9. Similarly, at paragraph 3.42 Ofcom state that “...*the relevant data would include the modem sync speeds and IP profiles for **each active line***” (emphasis added). Again, Sky considers information about each line to be excessive to the requirements of this report.

### **Selection of networks**

10. Table 1 of the consultation lists those networks that Ofcom is proposing to report on. Sky considers that there are two omissions. Under “*Fixed broadband*” there is no mention of WiFi networks. Given the importance that Ofcom is placing on broadband and the growing take up of wireless access options, Sky would consider that these types of networks need to be included in the range of network Ofcom reports on.
11. Similarly under “*Television broadcast*” HFC Cable is not included. Sky consider that Cable should be included under this category of interest to be reported on and note that it is already included in another category of services (Broadband service speed).

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<sup>9</sup> BIS DEA Ofcom Duties Fact Sheet

12. Sky considers that 3G mobile network coverage and capacity would be of as much, if not more, relevance and interest today as the planned reporting of 2G mobile networks and recommends that the report include such information on these networks.