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A new broadband Universal Service Obligation: Consultation on Design

Summary

- Which? welcomes the steps the Government is taking to provide universal access to broadband services in the UK. 90% of people consider broadband essential for their everyday life, and over half (55%) of people consider it very essential. Which? regards it as a utility.
- However, the lack of detail contained in some areas of the consultation is concerning. Which? welcomes the additional information published on 6 October by BT on its voluntary offer. It is possible that the approach set out by BT will offer benefits compared with a regulated USO. However, to be able to take a considered view on this requires additional information and the Government to publish a full assessment on how the two options compare.
- We welcome the inclusion of quality parameters (i.e. download and upload speed, latency, contention and data cap) as part of the USO specification. However, the Government has not provided enough information to enable assessment of whether 10Mbps is the appropriate download speed, or whether 100GB should be the minimum data cap.
- In delivering universal services the download speed should be the actual speed that consumers receive in their homes at peak times. Average local download speeds collected from providers and published as part of Ofcom's connected Nations Report 2016 were at least 10% higher than speeds measured by consumers themselves via Speedchecker Ltd in 204 of 391 local authorities. In 15 authorities the difference was c. 50% or greater.
- In principle, a regulated USO should have a uniform price to ensure that consumers are not disadvantaged as a result of where they live. However, it should also be affordable to ensure take-up. Therefore, careful consideration should be given to the impact on bills for different consumers. The Government also needs to put in place a robust and transparent framework to ensure value for money in the provision of the USO and adequate safeguards to protect consumers against future changes to the USO that might result in increases in bills.



- Consideration should also be given to the use of central government funds, as opposed to industry funding, to support the USO given the wider social benefits from superfast broadband access. An industry funding model may impose additional costs on broadband consumers meaning that some consumers may choose to disconnect or not connect, undermining the original objective of the intervention.
- To ensure commercial investment is not undermined, the USO should only be deployed to those premises which do not have access to broadband services that meet the USO specification.
- Which? recognises the need for a cost threshold to ensure the USO is delivered cost effectively. However, neither the Consultation nor the Impact Assessment (IA) provides enough evidence to support the proposed level (of £3,400) for the cost threshold. The Government needs to determine the level that will deliver the highest net benefit for the UK.
- The USO should be technology neutral provided that the relevant specification is delivered. This should minimise market distortion and encourage delivery through the most appropriate technology to ensure the right level of service is delivered cost effectively.
- The time period for demand aggregation must allow sufficient time for aggregation to occur, but not prohibit consumers from being able to get online swiftly. Demand aggregation should be allowed to occur via individuals, communities and third parties, as well as through the provider.
- The USO must be monitored on a regular basis. This will ensure that the USO remains fit for purpose and that it meets the needs of consumers who rely on it.

Background

Which? welcomes the steps the Government is taking to provide universal broadband service in the UK. Broadband is increasingly seen as an essential service, with 90% of people considering broadband essential for their everyday life, and over half (55%) of people considering it very essential. Consumers are dependent on their broadband connection for undertaking a range of tasks. For example, Which?'s research has found that email and online banking/paying bills were the most valued online activities. Respondents also placed high importance on using the internet to access government and local council services.

However, the lack of detail contained in some areas of the consultation is concerning. Which? welcomes the additional information published on 6 October by BT on its voluntary offer. The Government now needs to publish a full assessment on how the two options compare and should integrate this option into the Impact Assessment (IA).

Finally, the USO is a safety-net to ensure all UK consumers are able to participate in a digital society. In parallel, the Government should ensure the right conditions are in place for the UK to have world-class digital connectivity.

BT's Voluntary Offer

The following additional information should be published in relation to BT/Openreach's offer as well as a detailed assessment by the Government comparing the two options in order for stakeholders to take an informed view of the options available to deliver a universal broadband service across the UK:

- A detailed plan on how the roll-out of BT's voluntary offer will be monitored by Ofcom and/or the Government.
- Whether the technical specification will be reviewed by the Government in the future in light of customer need and what criteria will Government use.
- In relation to the on-demand FTTP product, whether it will be also possible for communities and individuals to request this product. What mechanism will be in place to ensure the cost of this product provide value for money.
- What the cost will be of reaching those consumers that require fixed wireless or satellite.
- Whether a demand aggregation mechanism will be put in place for those areas.
- How the Government and Ofcom will ensure that any additional costs outside the Wholesale Local Access charge control provide value for money.
- How consumers will be informed about the service and the options available to them.

USO Specification

The inclusion of quality parameters - contention, latency and minimum data cap – are welcome as part of the specification as these can have a significant impact on the consumer experience of their broadband connection.

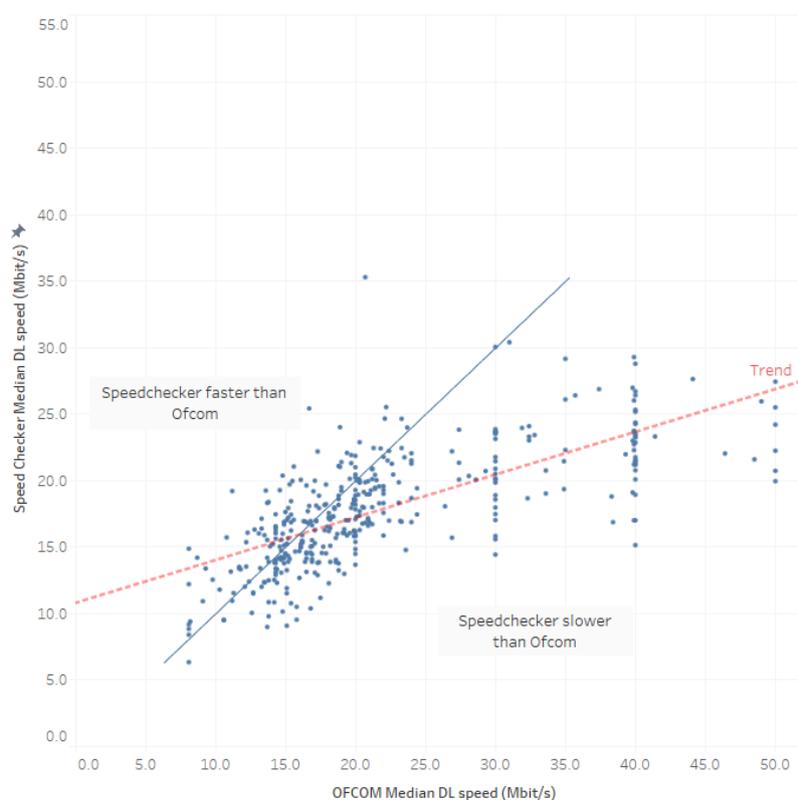
It is important to note the analysis undertaken by Ofcom that shows that 10Mbps may be sufficient for now. However, according to the Impact Assessment (IA) higher USO specifications i.e. 20Mbps and 30Mbps would deliver a higher net benefit. The Regulatory Policy Committee (RPC) is therefore right to state that the Department should provide more information for proposing a specification of 10Mbps. This should include the potential impact of each of the different options on consumers' bills as well as the risk of market distortions, e.g. deterrence of commercial investment, overbuild of commercial and community networks.

The specification also raises some questions, particularly the way in which the speed of 10Mbps will be measured. Given that a minimum speed of at least 10Mbps has been deemed by Ofcom and the Government as a 'decent broadband connection that allows full and effective social and economic participation', this should be the speed that consumers actually receive in their homes at peak times, not just the speed that they could receive. It is reasonable to expect that consumers who receive the broadband USO will have an expectation that the speed they receive will be 10Mbps. If this is not the guarantee, then it is possible that some consumers will continue to experience digital exclusion, and be unable to fully participate in digital society. We note that in May 2016, the former Minister responsible for this policy, Ed Vaizey stated:

"...the Prime Minister has announced the Government's intention to implement a new broadband Universal Service Obligation, with a minimum speed of 10Mbps, to help ensure no-one is left behind."

Ofcom's Connected Nations report from 2016 presented download speed data in the UK based on provider responses relating to June 2016. The overall mean speed (37Mbps) was far higher than the results generated by speed tests in the household (relating to Jan-Mar 2017) from Speedchecker Ltd (25Mbps). This difference was also consistently seen at a local level, in 204 of 391 Local Authorities, speeds measured by consumers were at least 10% lower than the OFCOM data showed. In 15 areas the difference was 50% or greater (see figure below).

Median download speeds: Ofcom Connected Nations 2016 compared to Speedchecker Ltd. for Local Authorities.



The level of the minimum data cap is also a matter of concern. According to Ofcom's 2016 Connected Nations report, the average monthly data usage per residential connection was 132GB in 2016, a 36% increase on the previous year. According to Ofcom the average monthly data usage per premise was almost 120GB in 2016 for speeds of 10Mbps, increasing from approximately 80GB in 2015 – an increase of 33%. Considering that the average data use at speeds of 10Mbps is already higher than the specification, it seems possible that the 100GB minimum is already insufficient - this could constrain consumer's use of their broadband connection or leave them exposed to additional charges for data above the gap. The Government should provide analysis which sets out its reasoning behind the 100GB minimum data cap.

Pricing, Affordability and Source of Funding

In principle, it is right that consumers should have access to the broadband USO at uniform prices when the service is provided using technologies which are capable of meeting the USO



specification. Uniform pricing will ensure that consumers are not disadvantaged as a result of where they live. However, it is important that a broadband USO is affordable to ensure take-up.

Which? is concerned about the impact that an industry funded USO would have on bills for some consumers. The consultation states that it would be for Ofcom to calculate the net cost of the USO and does not include details on how an industry fund will work or how widely the costs would be spread, i.e. who will have to pay into the fund. It is disappointing that in considering the source of funding the consultation does not include any consideration of the impact on consumer bills and the subsequent impact on take-up. It is likely that an industry fund would result in higher consumer bills. An increase in consumer bills may mean that some consumers who are price sensitive and currently have a broadband connection choose to disconnect or downgrade their connection. It could also mean that other consumers choose not to have a connection at all. In turn, this could lead to deeper digital exclusion in the UK and, therefore, undermine the original objective of the policy.

In Ofcom's 2015 Connected Nations report, of the 44% of adults who did not have a home broadband connection, 21% believed that home broadband was too expensive.¹ It is imperative that the USO does not distort the market so as to disincentivise people from having a broadband connection, as this will mean that some consumers will become, or continue to experience, digital exclusion.

Financial support for extending the availability of superfast broadband has thus far come from central government. The consultation does not provide a robust justification for this shift away from public funding given the wider social benefits from superfast broadband access.

Independently of the source of funding, it is imperative that the Government and Ofcom put in place a robust and transparent framework to ensure value for money in the provision of the USO and adequate safeguards to protect consumers against future changes to the USO that might result in increases in bills.

Eligibility

The USO should only be deployed in those areas of the UK which currently do not have access to broadband services which meet the USO specification. This should help ensure that commercial investment in infrastructure is not undermined by the provision of the broadband USO and that the USO is delivered cost-effectively. It is important to note that alternative network providers are rolling out broadband in some rural areas; these network builds should not be disincentivised or overbuilt as a result of the broadband USO. Ofcom's latest Connected Nations report highlights the important role that smaller providers are playing in improving the coverage of broadband services, delivering connectivity to those consumers that previously lacked acceptable broadband. The USO must not weaken the investment incentives for these smaller players.

However, in those cases where consumers are not eligible for the USO, they should be given clear advice on how to access a different fixed network provider delivering services that meet the USO technical specification.

¹ Ofcom, Connected Nations 2015. Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0017/13445/uk_5.pdf

Reasonable Cost Threshold

A cost threshold is needed to ensure that the regulated USO is delivered cost effectively. However, neither the consultation nor the IA provide enough evidence to support the proposal of a £3,400 cost threshold. It is important to note that the RPC stated that more could have been done to analyse the wider social and consumer benefits of greater access to broadband. Which? agrees with this view, and more work needs to be done to determine the threshold that will deliver the highest net benefit for the UK.

For those consumers where the cost of the USO is prohibitively expensive, they should still be able to access alternative options, even if the specification provides a lesser service than the USO. In particular, support should be readily given to make them aware of the alternative technologies available, their costs, and the specification of those technologies.

Choice of Technology for Providing the USO

It is important that the right regulatory framework is put in place to ensure the Universal Service Provider (USP) gives sufficient consideration to the future requirements of UK consumers when it rolls out the network. Thought should be given to the fact that the broadband USO should be sufficiently future proofed so that the investment in the network does not need to be made twice. Intervening just once may support better value for money, be more efficient, and ensure that there are not constant re-investment cycles for the USO provision. It is important to note, however, that developments in technology may mean that upgrading broadband networks may be less expensive in future.

The USO should be technology neutral provided that the relevant USO specification is delivered. Neither the Government nor Ofcom, should dictate the choice of technology to be used for providing the USO. This should help minimise market distortion and mean that the most appropriate technology is chosen to minimise costs in delivering the right level of universal service.

It is concerning that the consultation specifies that for those customers who are unwilling or unable to pay the additional costs above the cost threshold, they will receive a satellite connection. This decision is not aligned with making the USO technology neutral. In particular, there may be other technologies, such as White Space Devices, that may provide a better connection than satellite in some areas. It is also important to note that in the coming years new technologies may be developed and come to market which would provide better connectivity to rural areas than satellite.

Demand Aggregation

There are important considerations that must be taken with regard to how long the period of demand aggregation should be. In particular, the period of time given for demand aggregation to take place must ensure that consumers have adequate time available to apply for a connection. However, the time period must not be so long that consumers are delayed from having access to a connection.

In addition, demand aggregation should also be able to occur through the other channels suggested in the consultation as well as through the provider - through individuals and



communities and through a third party. This will ensure that those consumers who want a connection can get one as quickly as possible, as they will have already aggregated demand. This may happen more quickly through alternative channels than through a provider, specifically in smaller communities. This has been shown to be a success by community broadband projects such as B4RN. Furthermore, consumer trust is fairly low in the broadband sector (38%)² so consumers may prefer to have their demand aggregated by parties other than the ISP. This may mean that the rollout of broadband to the remaining premises would occur more quickly than if it were solely provider led.

USO Monitoring and Review

There is a need for ongoing monitoring of the implementation of the USO and for a formal review of the specification given the speed at which the telecoms market evolves and the technologies available to the majority of UK broadband subscribers change. This will ensure that the USO remains fit for purpose and that it meets the needs of consumers who rely on it. It will also ensure that those consumers receiving the USO continue to be provided with a broadband service which fulfils the basic needs of the average UK household and enables consumers to fully participate in digital society.

The Digital Economy Act 2017 states that Ofcom will have to review the speed of the USO:

*"if it appears to the Secretary of State, on the basis of information published by OFCOM, that broadband connections or services that provide a minimum download speed of at least 30 megabits per second are subscribed to for use in at least 75% of premises in the United Kingdom."*³

While it is essential that there is a review mechanism in place for the USO, it is unclear how the review linked to 30Mbps will be evidenced. According to Ofcom's last Connected Nations report, coverage stood at 89% of premises for superfast broadband with a download speed of 30Mbps and above. Meanwhile take-up was just 31%. We would like the Government to provide clarity on how its speed measure for the review would be measured and triggered at 30Mbps.

The review of the USO should also take into account the evolving nature of the market, in particular the availability of technologies available to the majority of UK broadband subscribers.

About Which?

Which? is the largest consumer organisation in the UK with more than 1.7 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

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² Which? Consumer Insight Tracker, July 2017

³ <https://www.legislation.gov.uk/ukpga/2017/30/section/1>