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Which? Response to Delivering the Broadband Universal Service: Proposals for designating providers and applying conditions

Summary

- Which? supports the action being taken to provide universal access to broadband services in the UK. The detail set out in Ofcom's consultation is an important step forward to delivering this and we welcome the opportunity to comment on how the Universal Service Obligation (USO) will work in practice.
- A successful USO will require a transparent and straightforward process for consumers; provisions to ensure the right quality of service is provided to consumers; and clear accountability for the Universal Service Providers (USPs), with penalties where they don't meet the required standards. Our response outlines a number of areas where we believe proposals should be improved to ensure these requirements are delivered.
- Establishing eligibility to receive a USO connection must be as straightforward as possible for the consumer. USPs must be required to ensure consumers understand if they are eligible for the service. Ofcom should introduce a requirement for USPs to test their marketing material to ensure it will be effective in raising awareness of the USO to those who could benefit.
- When a premises is not eligible for a USO connection as a result of a publicly funded programme due to be delivered within the year, the status of that ineligibility must be periodically reassessed by the USP in case the publicly funded programme is changed or delayed. The onus should not be on the consumer to check that any publicly funded scheme is progressing to schedule.
- Assessment against the £3,400 cost threshold is a key eligibility criteria for potential USO recipients. As such we believe calculating the cost using a forecast level of 80% is a fairer approach for consumers. Consumers must be reassured, through for example spot-check audits by the regulator, that the costs quoted when they fall above the threshold are reasonable. Consumers must also be made aware of the full range of options available when their costs exceed the threshold, including options outside of the USO.

- Ofcom should reconsider whether a voluntary broadband social tariff goes far enough to protect the most financially vulnerable in society. If the decision is taken to proceed on a voluntary basis Ofcom must keep this under close review to ensure that all consumers have access to an affordable broadband connection
- We welcome the requirement on USPs to publicly report on a range of performance metrics, however testing of the quality of the connection delivered must be included within this. Across all the performance measures and delivery requirements Ofcom must set out the penalties it will impose if a USP fails to meet the required standards. This must include provisions for consumers to be awarded compensation where they have been directly impacted.

Introduction

Broadband is an essential service. Consumers are more dependent than ever on their broadband connection for undertaking a wide range of everyday tasks. Therefore, the USO is an important safety-net to ensure that all UK consumers are able to participate in our increasingly digital society.

The success of the USO delivery will require Ofcom to ensure that the consumer journey for potential recipients is straightforward and transparent. In addition, measures must be in place to guard against USO customers being treated less favourably than commercial broadband consumers. We set out in the detail of our response the additional considerations and processes which we believe are required to deliver this.

More broadly, the USO is just one of a number of initiatives available to deliver better connectivity to UK consumers. This range of initiatives must work alongside each other in a strategic and coherent way, with delivery of one programme not detracting from delivery of another. As such there needs to be a more joined up approach between Ofcom, Government, infrastructure providers and Internet Service Providers to ensure that consumers get the connections they need and that there is alignment and clarity on the vision for UK connectivity.

An example of where there needs to be clarity in the approach and interaction between differing policies is with regards to the expectation that BT will cover approximately 450,000 USO eligible premises with commercially deployed fixed wireless access prior to the USO coming into effect. We appreciate that this could significantly reduce the number of USO eligible premises. However, testing is still ongoing to establish whether this technology will meet the technical specification of the USO. The results of this testing could greatly impact on the scale at which the USO will need to deliver. Ofcom and BT must publish the outcomes of its performance testing as soon as possible. Furthermore Ofcom must ensure that where a consumer takes up a fixed wireless broadband connection and subsequently finds the service to be inadequate, they must be able to exit that contract without penalty where they would otherwise be eligible for the USO.

Proposed requirements for establishing eligibility for the broadband USO

Which? welcomes the detail provided by Ofcom in its consultation regarding the steps for establishing eligibility for an USO connection. It is essential that the consumer journey to getting a USO connection is clear and straightforward.

Consumer awareness of the USO

The 'right to request' nature for a connection under the USO makes it imperative that conditions are placed on the USPs to raise awareness amongst potentially eligible consumers of their right to request a USO service. The consumer journey set out in Ofcom's consultation document begins with the consumer contacting the USP to request a connection. However, where consumers already have a connection, we consider it unlikely that they will be aware of whether or not their existing broadband connection meets the technical specification of the USO, or how they can go about finding out. Therefore, the promotion of the USO must help improve consumer awareness and enable consumers to understand how they can check the current speed of their broadband, for example by using a speed checker tool. This fundamental first step must be made clear to consumers as part of each USP's marketing efforts.

We agree that on the whole USPs will be best placed to determine how to effectively market the USO service to potential customers. We further agree that there will be particular benefit from USPs working with the relevant local authority to raise awareness in those areas where there are a high number of premises that could benefit from the USO. However, we believe that there should be a requirement for USPs to work more proactively with local authorities than is currently included in Ofcom's proposals. USPs should be required to identify such areas and work in conjunction with the relevant local authority, taking a targeted approach to inform potential beneficiaries that they may be eligible for the broadband USO.

We are concerned that Ofcom has not set out how they intend to monitor that USPs are taking "all reasonable steps" to discharge their marketing requirements. Furthermore, the proposals do not set out what action Ofcom will take if the USPs fail to take adequate action to raise awareness amongst consumers. As we discuss later in this submission, it is essential that Ofcom sets out in full the penalties that will be incurred should a USP fail to adhere to the universal service conditions. As part of this, USPs should be required to undertake testing of their marketing material to ensure that it is effective in educating consumers about the USO, as well as enabling consumers to understand whether they could be eligible and the process for applying.

We strongly support Ofcom's plans for other third-party organisations to have a role in raising the profile of the USO among consumers. Which? would welcome further discussion with Ofcom about what it could do to help here.

The consumer journey to USO eligibility

The consultation document sets out a clear process that consumers must follow in order to check their eligibility for the USO. Whilst we are broadly supportive of the high-level steps an applicant must follow we believe there are a number of areas where the process could be improved and made more straight-forward for the benefit of consumers.

Where a USO applicant is thought already be able to access a broadband service that meets the technical specification of the USO, they will be advised which network providers serve their address. As part of this assessment, we believe that the USP should also ascertain whether the service would be affordable for the consumer i.e. falling under the £45 per month threshold. This would avoid the consumer having to take a number of additional steps, and having to re-contact the USP if they subsequently discovered the service was not available or not affordable.

Where a consumer has been referred to a third party provider, the consumer is to be advised that if the third party provider is not able to provide a connection and service which meets the required technical specification, or is unable to do so affordably then the consumer can re-contact the USP. However the consultation does not set out what proof will be required for the USP to provide a USO connection that it had previously ruled could be provided by another supplier. Ofcom must provide clarity on this so that the consumer is not further delayed in the process and the USP is able to provide the connection without uncertainty as to whether it will be able to claim from the USO fund. The USP must advise consumers what additional information they will need to provide in order for the USO application to proceed so that they can gather this if from the third party provider at the time of contacting them if necessary.

Expected coverage by a publicly-funded programme

In principle, we agree that where a premise is set to benefit from a publicly-funded programme for the delivery of broadband within a year of their USO request they should not be eligible for the USO. However, given the inherent uncertainty that can come with delivery of such programmes and that they can be subject to change and delay, it is important that provisions are in place to ensure consumers receive a timely broadband connection.

There is a possibility that a situation could arise where a consumer was told they were ineligible for the USO due to the expected delivery of a publicly-funded programme. However, that programme could then subsequently be delayed or changed such that the consumer does not receive a suitable broadband connection within 12 months of their USO application. In such a case, it should not be the responsibility of the consumer to have to continually check whether the publicly-funded scheme is progressing to schedule. Consequently where this determination is made, the USP should be required to periodically reassess that the premises continues to be ineligible for the USO due to the delivery of a publicly-funded scheme within the relevant timeframe. We suggest this reassessment is undertaken on a quarterly basis for a period of one year from when the USO application was made. If, as a result of this reassessment, it is determined that the premises would now be eligible for the USO, the USP must continue to progress the application from the point at which it was previously closed down.

Assessment against the cost threshold

Evidence put forward through the consultation process suggests that the cost threshold will be a key eligibility criteria for many potential USO recipients. The assessment undertaken by

BT detailed in their response to the June 2018 consultation¹ suggested that around 150,000 premises may still be eligible for a USO connection by the early 2020s. However of these, they estimate that 110,000 are likely to be in excess of the £3,400 cost threshold and therefore potentially unable to receive a USO connection. Consequently, it is vitally important that the process for calculating connection costs is fair and transparent. The process must enable consumers to make informed decisions relating to how to proceed with getting a connection if they are excluded from a USO connection on cost grounds.

Fundamental to the determination of eligibility against the cost threshold is the forecast level of demand to be used in the USPs' assessment. The consultation outlines the intention to set this at 70% - the mid-point between the existing take up of 10Mbit/s or above services in non-USO areas and the long-run level of fixed broadband demand. We acknowledge that there will always be a degree of uncertainty in determining the correct assumption to use. However, we believe that Ofcom's proposed forecast level is too low and will result in many consumers being ruled ineligible for the USO (unless they make their own financial contribution). In our view the forecast level of demand should be increased to 80% with the provision for it to be periodically reviewed. We note Ofcom's intention to undertake a review and adjust the forecast if necessary is already included in the consultation. Whilst we acknowledge the risk of overestimation in using a higher figure, the costs of this would be recouped from the industry-wide fund and therefore the impact would be shared across a broad base. Conversely, the cost of underestimation would fall heavily on a small number of individual consumers and therefore, on balance, setting the forecast at a higher level, at least initially, is a fairer approach for consumers and means that more consumers are likely to benefit from the USO.

The consultation sets out that if a request is declined by the USP because the costs of connecting the premises exceeds £3,400 then the USP will provide the consumer with a detailed quote for the work required and an explanation of the costs involved. However the consultation fails to detail how the consumer can be reassured that the costs are reasonable - consumers are unlikely to have any means to verify the costs themselves. Ofcom must commit to undertaking spot-check audits of the costs being provided to consumers where they fall above the threshold. The consultation sets out that an audit review will be undertaken in respect of USP's calculation of any net cost claims for delivery of the USO service in order to draw compensation from an industry fund. A similar process must be put in place for a selection of the cost quotations provided to consumers in order to reassure consumers that costs are accurate. Such spot-check audits must include both consumers who have agreed to pay excess costs and those who have not. If consumers have been found to have overpaid they must be entitled to compensation and a refund of the excess costs they have paid. Importantly, USP's must be obligated to make clear to consumers that if they are unhappy with the costs quotation provided to them that they can escalate their concerns through the available Alternative Dispute Resolution service.

Where a consumer's application falls above the cost threshold the consultation sets out that the USP must set out to consumers that they have the option to:

- a) Pay any excess costs themselves;

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0013/120361/BT.pdf

- b) Do some of the deployment work themselves; or
- c) Purchase commercially available broadband (outside of the USO scheme)

However this only sets out the consumer's options in relation to the USO scheme itself and does not provide full transparency with regards to the range of other options that may be available. Such options could include the consumer waiting for more premises in their area to apply for USO provision (and therefore bringing the connection cost below the threshold) or waiting for delivery through another means, such as from the result of the government's 'outside-in' strategy² for the delivery of full-fibre. Whilst the latter option may take longer than a year to be delivered, waiting may be considered preferable to paying excess costs and consumers need to be signposted to where they can obtain advice about other programmes that may benefit them. As such we believe that Ofcom should broaden the requirements placed on USPs when they are informing consumers of their options to include fuller details of potential options, both as part of the USO and separately.

In the circumstance where a consumer opts to pay the additional costs above the threshold it is important that they are protected from overpaying in a situation where uptake turns out to be higher than the forecast demand. Ofcom should provide clarity that USPs will be required to recalculate the costs quoted at the eligibility assessment and adjust the consumer's payment requirement downwards if take-up is higher than forecast. Consumers must not however have their cost obligation revised upwards if uptake is lower than the forecast or in the event of overspend by the USP.

Timeframe for delivering USO connections to eligible consumers

We welcome Ofcom setting out a clear obligation on the USPs to assess a consumer's eligibility for the USO within 30 calendar days and to deliver the connection within 12 months of the consumer confirming the order. Ensuring a timely process for delivery is imperative for consumers to benefit from the introduction of the USO programme.

As outlined in the consultation it is important that consumers have a clear indication of when the connection and service will be delivered to them. We agree that initially, providing a specific calendar month as a minimum will be sufficient. However consumers must be provided with a precise activation date as soon as possible. We would suggest that this must be no later than two weeks before the activation date and ideally earlier if possible. More fundamentally, we are concerned that the consultation does not explicitly set out how Ofcom intends to ensure USPs deliver to the outlined timeframes and most importantly, what sanctions will be put in place if they are missed. Whilst the consultation states that Ofcom will be "able to intervene if there are any concerns about compliance with the universal service conditions" there is no further detail provided as to what this will mean in practice. Ofcom must clearly set out what action will be taken and how it will ensure consumers receive a USO connection in line with the timescales they are entitled to.

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As a minimum we would expect that where the USP took longer than 30 calendar days to determine eligibility, and where the customer is eligible and proceeds with a USO, provisions should be place to ensure the consumer is no worse off than if the USP had met the 30 day requirement. In practice this could mean that the 12 month timescale for delivery of the connection is backdated to start on the day after the 30 day eligibility assessment period concluded. Where the USP fails to deliver the connection service within the 12 month timeframe (and none of the exceptional circumstances outlined in the consultation apply) the consumer should be entitled to compensation for each day of the delay until the service is delivered.

As of March 2019, customers whose provider has signed up to the broadband Automatic Compensation scheme will be entitled to receive £5 for each calendar day of delay to the start of a new service³. We believe it would be appropriate for delays to delivery of a USO connection to be compensated by the same amount. Crucially this must apply regardless of whether or not the USP has voluntarily signed up to the Automatic Compensation scheme, given consumers have no choice in who their USP is. We are aware that only one of the potential USPs has committed to providing automatic compensation but this will not apply to recipients of fixed wireless connections. A key principle behind providing a good service must be to ensure there is consistency across the different USPs so the consumer experience of the USO is consistent. Automatic compensation must therefore be universally available regardless of the USP or the technology used to deliver the USO connection.

Requirements to ensure USO premises receive a fair service

Affordability

Ensuring provision of the USO is affordable is a key element for ensuring delivery of a fair service to consumers. As such we are supportive of the requirement on USPs to offer connections and services at the same price as non-USO customers and the introduction of a safeguard cap. However, we are concerned that Ofcom only intends to seek voluntary commitments from BT and KCOM regarding the provision of a social tariff for the broadband USO. In setting the level of the safeguard cap at the upper end of the distribution of prices there is a particular need to ensure those on low incomes are not denied access to an affordable USO or restricted to a lower technical standard. In our view Ofcom should reconsider whether a voluntary broadband social tariff goes far enough in protecting the most financially vulnerable in society, particularly given this is a requirement under the telephony USO. If the decision is taken to proceed on a voluntary basis we believe Ofcom must keep this under close review to ensure that the USO is delivering a fair and affordable service to all consumers.

In regards to the detail of the £45 safeguard cap we note Ofcom's intention to update it annually to reflect the consumer price index (CPI). In our view this approach is not wholly appropriate given the intention should be to maintain affordability. A more suitable approach would be for the safeguard cap to be adjusted by the lower of either CPI or market price trends. Alternatively if CPI is used exclusively then Ofcom must commit to undertaking periodic reviews of the cap to ensure that it remains affordable. In addition, the consultation

³ <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/automatic-compensation>

states that the £45 cap is “averaged over the fixed commitment period” but does not set out how long this fixed period can be. We suggest Ofcom should make clear that such conditions must be in-line with the conditions put forward in a commercial offering and specifically that USO consumers cannot be subject to a longer fixed term period than they would otherwise usually be offered.

Quality of service

In our view, provision of a fair service extends beyond just ensuring that the USO is delivered at a fair price. We strongly agree with the need to guard against USO customers being provided with a lower level of service than commercial customers and agree that additional safeguards should be put in place to ensure USPs are incentivised to provide good quality service. However, it is not sufficiently clear from the consultation what these additional protections will be. Whilst we note the provision relating to complaints handling and dispute resolution, delivery of a good quality service extends far beyond what happens when a consumer raises a complaint. As we set out further below it is imperative that USPs are held accountable for ensuring they provide a good level of service to consumers for the entirety of the USO customer journey. This must include not only a requirement for transparent reporting on their performance but also for Ofcom to set out what sanctions and penalties they will impose on USPs when adequate standards are not met.

Obligations on performance reporting and maintaining records

We strongly support the USPs being subject to comprehensive and transparent reporting requirements so that they can be held accountable for delivery of the USO. We therefore welcome the proposals requiring the USPs to publicly report on a range of different metrics relating to their performance. Commercial broadband services are currently reported on as part of Ofcom’s ‘*Comparing Service Quality*’ report. We suggest that the performance of USPs is included with this report to help verify that USO consumers are truly receiving the same quality of service as non-USO customers.

A key area currently missing from the performance measures is the quality of the broadband service being delivered from a USO connection so that Ofcom, and the consumer, can be assured that a connection of at least 10Mbps is being achieved. The consultation states that USPs must facilitate periodic future testing of USO connections as requested by Ofcom to allow assessment of delivered performance. We would urge Ofcom to set out a firm commitment to undertaking and reporting on such testing, given actual delivery of a suitable connection is key to the overall success of the USO programme. In addition the USPs should be required to inform consumers of how they can test their own download sync speed and, as discussed below, be compensated where the promised speed is not achieved.

Crucially, across all the performance measures and delivery requirements set out in the consultation there is insufficient detail with regards to the penalties that Ofcom will impose where required standards are not met. The consultation states that where certain obligations are not met, such as connection delivery timescales, the USP must provide Ofcom with the reason for the delay. In our view, this alone will not act as an adequate sanction when a USP fails to deliver on its obligations. Whilst Ofcom state they will be “able to intervene if there are any concerns about compliance with the universal service conditions” there is no detail

on what form such interventions could take. In our view such action must include imposing sanctions which act as a sufficient deterrent to the USPs underperforming. As part of this, compensation must be available to consumers where they have been impacted by inadequate service. This would include delays to their connection being delivered, failure by the USP to provide the required connection speeds, delays with repairs being carried out and missed appointments. Ofcom must provide detail on the action that will be taken against poor performance to provide absolute clarity on how the designated USPs will be held to account and how it will ensure USO consumers are fairly treated.

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