



A new broadband Universal Service Obligation: consultation on design

Department for Digital, Culture, Media and Sport Consultation

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Introduction

The CLA represents over 32,000 landowners and rural businesses in England and Wales. For the farmer, the diversified rural business and the landed estate, the provision of an effective broadband connection is vital for the efficient running of the business. Without it, there is a clear, competitive disadvantage with the impact being a reduction in growth and productivity. In addition, the lack of broadband for a rural community, irrespective of location, can lead to a form of social exclusion which can do untold damage to the fabric of the community.

Indeed, telecommunications through broadband provision is now seen as the fourth utility. As such, we fully supported the Government's objective of introducing a Universal Service Obligation (USO) that would be available to all and would finally allow all citizens the opportunity to experience the advantages of the internet revolution.

Of course, the design of the USO is crucial to fulfilling the objective of universal coverage, the key policy aim of the CLA. This means that the opportunity of responding to the consultation from the Department for Digital, Culture, Media and Sport (DCMS) on the proposed design of the USO is both welcome and timely.

The CLA's response will focus on a number of issues which are raised by the consultation and which follows the meetings the CLA has had with DCMS and other trade associations.

CLA policy

The CLA recognised the importance of broadband and the internet to rural areas as far back as 2002 and we were the first national rural organisation to call for a Universal Service Obligation in order to establish universal coverage. One of the most significant issues that remains as relevant today as it did 14 years ago is the disparity between rural and urban areas in the provision of broadband. Unfortunately, it is still the case that rural areas lag well behind urban areas meaning that rural businesses and communities continue to suffer from a lack of competitiveness and social exclusion. We believe that the provision of a USO will go a significant way in redressing this imbalance.

One of the key features of CLA policy is the need for an integrated approach to policy making in telecommunications. We have made it clear that for universal coverage to be met, Government must adopt a clear and transparent approach to firstly, setting an integrated broadband network and secondly, ensure that delivery of universal coverage takes into account the needs of all

sectors of society, whether they be rural or urban. The underlying objective therefore has to be the eradication of the rural – urban digital divide.

The Government regulatory approach and the BT “offer”

The consultation sets out the evidence and logic of a regulatory approach to the creation of the USO, in line with the principle set out in the Digital Economy Act 2017. This would establish the legal right for a person to request the provision of the USO, subject to actual location and the type of technology to be deployed.

However, the foreword to the consultation from the Minister, Rt. Hon. Matt Hancock MP, also stated the following:

“On 30 July Government announced that BT had made a detailed voluntary proposal for delivering universal broadband of at least 10Mbps to premises across the UK. We welcome this proposal, which we are carefully considering, as it has the potential to deliver better connections to people more quickly than under a regulatory route. We will work with BT to develop its proposal over the coming months. We will pursue both the regulatory USO and BT’s proposal in parallel until a decision is taken on the best route for delivering universal broadband.”

This means that there are in fact two potential ways forward in putting in place a USO. Although the consultation gives no detail as to the BT offer, in discussions with BT, we understand that the offer provides initially for 99% premises coverage and for this to be extended to 100% by 2022. There would be no price threshold set for those in remote areas but there is, as yet, no legal guarantee as to the right to the USO.

There is a certain attractiveness to the BT offer. Firstly, we acknowledge that under either proposed system there are likely to be a series of practical issues that need to be resolved. If it is the case that under, the BT offer, the provision of a USO would effectively commence mid-way through 2018, this would be considered as a major step forward, particularly given the Government stating that it was unlikely that a regulatory USO would start before 2020.

Secondly, there is the issue of the cost threshold that is examined in section 5 of the consultation. We understand the principle set out in the consultation that there would need to be a price threshold put in place in order to ensure the commercial viability of a connection. However, if it is the case that the BT offer effectively removes the imposition of such a threshold, this could be considered as a major plus point for this offer.

However, as far as the CLA is concerned, the underlying principle set out under the regulatory approach is the legal right of a person to receive an effective broadband connection, upon reasonable request, of a set speed. We believe that such a legal right is the foundation of a universal service obligation. This means the CLA will only support a proposal where this right to a universal service is enshrined in a legal form. It is clear that the Government’s regulatory approach would ensure such a legal right; it is however, unclear whether this is the case with the BT offer. Although the greater detail submitted publicly by Openreach is helpful, the question of the legal guarantee remains unanswered.

Practical considerations of either proposal

The implementation of the USO will undoubtedly have to deal with a number of practical issues. One of the most important of these will be the need to inform and educate the public that the USO is available. This will require a joint effort between government and the industry. Secondly, there will need to be an awareness campaign that sets out the rights of the public to the USO as well as the benefits that will flow from the USO.

Future projections of the USO footprint

We understand the logic employed by Ofcom in the three scenarios put forward. However, we would suggest that evidence from the most recent NFU survey points to a higher number of premises that fall under the 10Mbps threshold. It is important that the scale of the issue is understood so as to ensure that the principle of universal service can be met.

Quality parameters: upload speed, contention, latency and data caps

It is understandable why the parameters above can be considered as central to the USO. We have the following comments on each of these points.

Regarding the minimum download speed, we accept that the Government has made clear that it is a minimum speed and that it will need to increase as technology improvements are made. We have no issue with the minimum threshold and regard this as being the most practical option for the present time. However, Government needs to realise that in a relatively short period of time, for example, within 5 years, this minimum speed will not be fit for purpose and will be, in effect, redundant.

With regard to contention, we question why Ofcom has used a rate of 50:1. This suggests a lower rate of signal degradation that would be expected in rural areas and there appears to be a failure within the analysis to factor in the negative impact of distance from the cabinet. In addition, there is the issue of the technology to be deployed. The Ofcom analysis suggests a Fibre to the Cabinet model where, inevitably, contention will be a limiting factor. But no mention is made of Fibre to the Premise or wireless solution where contention becomes far less of a factor. Finally, this raises the issue of how the minimum 10Mbps speed is measured and over what time period. There is no reference to this in the consultation.

Latency has always raised issues concerning satellite provision. In the tests the CLA has conducted with suppliers, our view is that this is not the issue it is often made out to be. However, we have been informed that with new technology, such as the greater use of streaming and conferencing, for example, “tele vets”, latency may become a more practical constraint.

Our biggest concern relates to the proposed data cap which the consultation sets at 100GB. This may be sufficient today but it certainly will not be in the future. The advent of new technology will mean that the public will use far more data than proposed by the cap. But there is insufficient detail to suggest the effect of the cap on the USO. We would therefore suggest that Government use Ofcom’s average data usage, from the latest Connected Nations report, as the data cap threshold.

The use of current technologies

We note Ofcom's analysis but we question the basis on which it has been made. The conclusions that naturally arise from the table on page 17 of the consultation suggest that satellite is an unreliable option for the preferred scenario 2. However, this makes the assumption, as set out in the footnote, that satellite would be a major universal service provider. We believe that this is the wrong assumption to make and fails to take into account the role that satellite can play in providing the USO to remote rural areas. Even this is acknowledged under the BT offer.

The cost threshold and demand aggregation

Again, we can see why the consultation sets out a cost threshold of £3,400 per premise. Indeed the principle of such a threshold is a key element of the present telephony USO. However, it automatically presupposes a Universal Service Provider as allowing for only one form of technology – that being based on fibre, either to the cabinet or the premise. It appears to rule out any other form of infrastructure provider, such as wireless and satellite. It is unfortunate because it simply underlines a failure on the part of Government and Ofcom to fully appreciate the difficulties of those who live and work in rural areas.

On the issue of demand aggregation, we recognise that getting this right will be absolutely crucial to the success or otherwise of the USO. So far, with both the public and private rollout of superfast broadband, there is little evidence that previous attempts at demand aggregation have been that successful. It would be correct to suggest that if there was sufficient demand for broadband in an area and where the connections had been provided, the level of take up would be in excess of 50%. As we know with the evidence from the gainshare under the BDUK rollout of superfast broadband, take up hovers around 30 to 40% which is both very poor and extremely disappointing.

What is fundamental is that the level of take up of the USO for those under 10Mbps is significantly higher. Based on Ofcom's analysis, those eligible under the USO will be around 600,000 premises by the time the USO is implemented, the vast majority of which would be located in the countryside. However, on past experience of government initiatives, we remain unconvinced that Government will be able to communicate the availability of the USO without significant industry assistance. As far as the CLA is concerned, given the importance we place on getting the USO right, we will endeavour using our own communication mechanisms and, in conjunction with other rural organisations, see to ensure that those in rural areas are aware of the ability to request the USO.

But we strongly believe this needs to be a joint industry/government approach and the CLA proposes that a body be put in place consisting of government, rural organisations and universal service providers that establishes an effective mechanism and delivers a clear and co-ordinated message.

Affordability

We agree with the proposal that the USO should be underpinned through a uniform pricing model. However, it has to be accepted that, within the telecommunications market, ultimately, it will be the consumer that pays for the provision of the USO. This has been the experience of the impact of new technological deployment in the past and we see no reason why this would fundamentally be different with the USO.

Minimising market distortion and designating Universal Service Providers

The issue of minimising market distortion is one of the most interesting aspects of the consultation given the reality of BT's offer. Indeed, there are two alternative approaches that can be considered. Firstly, if there was a single Universal Service Provider, as long as there were legally binding safeguards for the consumer, it may be practically easier and faster in implementing the USO and move towards universal coverage.

Secondly, however, the designation of a single Universal Service Provider could be said to increase market distortion by, in effect, creating a monopoly. This is the argument put forward by a number of infrastructure providers in response to this consultation. Indeed, this argument is persuasive if the Universal Service Provider was to be Openreach. We simply do not accept the point made in the consultation that Ofcom would impose wholesale access obligations on Openreach. We do not see the sanctions suggested as acting as an effective deterrent and the issue of potential market distortion could very well lead to legal challenge in the courts if Government decides to pursue the route of designating Openreach as the sole Universal Service Provider.

Nevertheless, the balance between the two will need to be delicately struck. The need for universal coverage is a fundamental requisite for rural areas and goes some way in addressing the rural-urban digital divide. But conversely, the more market orientated solution which is based on the actions and needs of consumers would meet the objective of a free market, without effectively creating a state monopoly.

USO review

We would support the Government's proposed approach.



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