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Alan Pridmore  
Competition & Markets  
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Dear Mr Pridmore,

**Response by Hutchison 3G UK Limited (“H3G”) to Ofcom’s consultation on the review of the Universal Service Obligation (the “Consultation”).**

H3G is pleased to respond to the Consultation. Our response is made in addition to the response by the Mobile Broadband Group of which H3G is a member.

**Introduction**

H3G supports the objective of maximising the network effects of communications services for the benefit of all citizens however we believe there has been a fundamental shift in technology from fixed to mobile provision which Ofcom has failed to fully analyse or reflect in the Consultation. As a result the Consultation has somewhat artificially concentrated on the provision of social benefits from the fixed network and failed to recognise the benefits delivered by mobile networks through managed competition and the vast number of additional connections mobile has delivered to the UK telecommunications network<sup>1</sup>. Competition and investment in the mobile market has been highly successful in achieving universal service objectives which go way beyond those achieved through fixed telecommunications. Mobile phone penetration is running at 80% of the population and inherently offers more immediate and mobile access to the telephone network for citizens. The level of investment in mobile we believe is much greater than that in fixed and the social utility of that investment is greater than for fixed. Essentially we believe that understanding the value of telecommunications to the UK economy, both to individual

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<sup>1</sup> One of the underlying principles of universal services is that the utility of the network for all users of the network is increased as more users are connected to it and that therefore low access prices may optimise the value of the network for all. Mobile has provided an additional 50 million connections over and above the 27 million provided by BT and therefore is already a much greater provider of connectivity to the network than BT.



users and society as a whole, is a matter of understanding the development of mobile communications, and investment in mobile and the future of mobile.

In H3G's particular case it offers mobile broadband service with coverage of 82% of the UK population (in addition to its 99% coverage for voice and text) well ahead of the formal requirement to do so, and has successfully stimulated competition to bring better value mobile services to UK consumers. The existing 2G networks and newer entrants have made access to the telephone network available to consumers for as little as the cost of a £5 SIM card - it is this figure against which the cost of provision of fixed communications should be measured and would indicate that the obligation to provide fixed telecoms service to meet USO objectives is simply irrelevant in a large number of cases.

H3G supports the assertion in the MBG response that debate on the USO should be guided by Ofcom's principles (and statutory obligations) for regulating the telecommunications market, in particular, that as competitive conditions allow, Ofcom may withdraw from certain forms of regulation. However we also believe that this does not mean that Ofcom should withdraw from setting and maintaining the conditions which ensure that competition operates transparently and on a level playing field, and that investors can invest confident in the knowledge that dynamic investment incentives will be maintained.

We appreciate that USO seeks to achieve wider political objectives in cases where the market may not otherwise deliver for certain groups, but question the extent to which evidence shows that the mobile market is not delivering for specific sectors of society. It is also already clear that the benefits to society of managed competition in the mobile sector have been very significant and broadly spread already.

H3G regrets that the review does not reflect the reality of today's communications market, where increasingly converged media exists across different platforms, and which renders technology specific solutions redundant. We would strongly urge that Ofcom, in it's consideration of the review of the USD later in the year, seeks to ensure that the delivery of a Universal Service is considered from a technology neutral perspective both at the network level (fixed, mobile) and at the content level.

We feel that an opportunity has been missed to cross reference the potential for delivering aims of both the USO and Public Service Broadcasting. In our view the ability of mobile to deliver broadband access and the potential for delivering PSB content on mobile, clearly illustrate the importance of considering these key issues in the context of converged media. Furthermore the specification of fixed line internet access is increasingly meaningless in a market where broadband internet access is readily available on mobile handsets, the entry cost of which to the user is significantly less than that of a PC. It is entirely possible that the next few years will see the broadband mobile handset compete with the PC as the main method of access to



entertainment and information at broadband speeds. It is also the case that mobile, with its much lower entry costs, will be available to a wider range of income groups than the PC. All of these factors appear relevant to the USO debate.

We would also like to see detailed analysis of the extent of the current unmet need. In the absence of specific figures from BT and the detail of which geographical areas it remains difficult to deliver a universal service to, it is difficult to judge whether fixed line access is the most efficient means of delivering the USO or whether it could be delivered by alternative means. It is disappointing that a review of this nature, fails to provide the information required in order to assess the effectiveness of the current USO and potential alternatives. If there is unmet demand for telecommunications services then we need to know where it is. Alternative measures for meeting this demand through wireless access can then be considered. Ofcom has only just begun to require BT to disclose information on this which we think is unusual. When a commercial company seeks a subsidy from competitors it is incumbent on it to provide all the data necessary for a full and informed debate.

H3G notes that the delivery of the USO in the longer term is to be considered within the Strategic Telecommunications Review ("STR"). Given this we find it surprising that the STR devotes only two bullets to the USO issue out of 285 pages. Accordingly it is not clear that the STR is actually addressing these important issues.

### ***Questions related to Section 3 – Universal Service and the STR***

*What should be the arrangements for funding USO in future?*

H3G notes that funding arrangements can only be properly considered once the scope of the Universal Service Obligation has been defined by the EC Universal Services Directive ("USD"). Furthermore, at present mobile services are not part of the USO, nor could they be as the USD and therefore the Order only relate to fixed services. We would urge Ofcom in its input to the USD to ensure that the reality of converged media make any notion of delivering the aims of the USD through technology specific measures, largely redundant.

In terms of the social aims of the USO, H3G, and other mobile networks have already delivered affordable telephony without being formally obliged to do so - rather the mobile operators incentives have been set by the competitive environment established by Government policy. Consequently given the net benefit to BT in being the USO provider, we do not believe there is any need to change the funding arrangements. Any future discussion on the funding arrangements should taken into account the service provided by mobile networks, and H3G has strong reservations about requiring MNOs to contribute towards a Universal Service Fund. A proper analysis would we believe, indicate that mobile's contribution to USO objectives matches or exceeds that of BT by a considerable degree.



Given that the requirement for a Universal Service is also driven by wider political priorities, H3G would like to see further discussion on the provision of funds direct from central government. There is also merit to considering whether the fund should be raised through a supplement on consumers' (individual and businesses' bills). If the USO is set at a political level, there is no reason why the government should not be accountable for the amount raised. Having the amount of the USO fund transparent to the public to assess the value for money of the services provided is a principle H3G would strongly advocate.

The task of calculating an equitable scheme for sharing the cost of the USO will not be trivial. It may not even be possible to agree who should share the funding, particularly as the USD does not cover mobile. If it were decided to extend the funding base then the extent to which a provider already makes available USO services as part of its competitive offering should clearly be taken into account when calculating the USO contribution.

*How could competition for the delivery of USO be organised in future?*

In principle, there could be advantages to introducing competition to the provision of the USO or certain elements of it. It may be possible to auction off the right to deliver USO on a regional basis – whilst recognising that it may be necessary for Ofcom to retain backstop powers in the absence of any competitive tenders. Ofcom should require BT to disclose much more information on what its USO "costs" are and where and how they are incurred.

*Should mobile technologies be used to help address the existing USO?*

As the newest UK mobile network operator, H3G is arguably more embryonic in its development than many of the UK's broadband providers. We would therefore question the rationale behind Ofcom's assertion that "it is too early in the development of the broadband market to expect broadband providers to be able to meet specific conditions". Many broadband providers are backed by large telecoms operators that have been in the market for decades e.g. Bulldog. ADSL has been on the market longer than 3G services. Whatever reason Ofcom has for not including broadband providers in its analysis it cannot rationally be the one stated in the consultation as despite being a new entrant H3G has been required under GC15 to support USO objectives since that requirement was extended to mobile. Ofcom should reconsider this point and explain its reasoning properly and transparently. We look forward to seeing an explanation that is consistent with Ofcom's views on technology neutrality.

Mobile operators already contribute enormously towards meeting the political, social and economic objectives of universal service provision. When the first mobile networks were launched in the early '80s, it was expected that a mature UK market



would see a penetration of about 300,000 subscribers – mostly business users. As we know, this has turned out to be a huge underestimate. Through a combination of standards development, timely spectrum licensing and competition (principally from H3G in the past two years) the mobile phone is today all but ubiquitous both in terms take-up and geographic coverage.

Simply by regulating to support competition the Government has ensured that mobile has made an enormous contribution to USO objectives:

**Low user tariffs:** The mobile sector is held up as an example of good practice by such charities as Age Concern for the range of low user tariffs offered – particularly those with no fixed charge element.

**Public call boxes:** According to BT, there has been considerable substitution of call box traffic by mobile traffic. While this has made it more difficult to make a call box pay, it has also meant that BT can reduce its call box estate. The availability of mobile as an alternative continues to make it easier for local stakeholders give up their call box (in areas where there is network coverage). Mobile operators, to date, have not sought a contribution to their investment costs to compensate them for those installations that prove uneconomic and which have been driven by coverage obligations. Its not clear why they shouldn't do so if BT is allowed to recover its "costs" for those parts of its infrastructure that it finds insufficiently profitable.

**Disconnections:** Approximately two thirds of mobile subscribers use a pre-pay tariff. This has lead to widespread uptake of communications services by those with less credit history and who had not previously been able to obtain (or maintain) a fixed line connection. Ofcom should investigate the scale of this effect - historically BT did not provide universal telecommunications - many would be users were priced off the phone network - mobile has brought these people on the network and this should be recognised as the significant contribution to USO objectives that it represents. Its entirely unclear why Ofcom only considers BT's more limited contribution to universal service objectives.

**Services for those with disabilities:** As well as the prescribed access to the relay service the UK's nine million people that are hard of hearing or profoundly deaf have been able to benefit substantially from mainstream mobile products such as video calling or text messaging. H3G's services such as mobile e-mail (with audio transcription), location services, video calling picture messages provide a range of communication means that disabled people are using to their advantage in ways that have never been available on fixed line phones. The trial of the video relay service and the use that some deaf customers are already making of video calling, demonstrates that new technology is bringing person to person telecommunication to a number of deaf people who have not previously used it, particularly those for whom BSL is their first language.



**Connections:** H3G's 3G coverage is currently 82% of the UK population, with 98% coverage available to customers as part of our national roaming agreement for voice and text.

One of the provisions of the USO is for BT to connect all households upon reasonable request. It may be more economically efficient for the USO provider to be allowed to sub-contract this obligation to mobile operators. In this way mobile technologies could be used to address the USO requirement.

The exact terms on which this would be done could be determined through a competitive commercial arrangement between the USO provider and the mobile operator offering the best terms (with respect to service portfolio, coverage, quality of service, resilience and price).

Ofcom should recognise, though, that it is becoming increasingly difficult to obtain planning permission for mobile infrastructure and so any such change in the USO provisions would have to be done in tandem with requirements on local planning authorities. Mobile can only continue to deliver USO benefits if it allowed to build out its infrastructure in a timely way. Further it can only deliver these benefits if spectrum policy actively takes into account the needs of the mobile industry for additional spectrum on clear and transparent terms.

#### ***Questions related to Section 4 – Special Tariff Schemes and Disconnections***

*4 Ofcom is seeking views on all aspects of BT's proposals for a new special tariff scheme:*

*the tariff structure and levels*

*the use of direct debit and monthly payment plan discounts*

*the target market of households within the governments' definition of poverty and in receipt of means tested benefits*

*the relevant means tested benefits*

*the proposed exclusion of IA/CPS and mobile users*

*the use of self-declaration and of a credit checking agency to minimise BT's exposure to risk of abuse; and*

*the marketing approach.*

In paragraph 4.15 of the consultation document (pre-consultation issues), Ofcom states that "the exclusion of mobile users was considered to be disproportionate by some consumer stakeholders given the high penetration rate of mobiles;" We agree with consumer stakeholders on this point that the effect of mobile on the delivery of USO objectives is crucial and should be a key focus of the Consultation. Failing to take into account the existing contribution of mobile makes the Consultation flawed.



*Ofcom is seeking views on the three options proposed: (i) No change to the BT schemes; (ii) BT's proposed new scheme to replace LUS and IC and (iii) BT's proposed new scheme to replace LUS and IC but modifications to the Scheme would be required.*

H3G has no comments (other than those made in answer to Q4.)

### ***Disconnections***

*Ofcom invites comments on Ofcom's view that BT should promote its portfolio of debt management and affordability services more effectively to customers experiencing payment difficulties?*

General Condition 13 of the General Conditions of Entitlement, places requirements on all Communications Providers with regard to the non-payments of bill. H3G therefore questions whether there is a requirement for further regulatory control in this area.

### ***Questions related to Section 5 – Public Call Boxes (“PCB”)***

Given the penetration of mobile phones and the extent and associated cost of network coverage H3G would reject any suggestion that this cost be shared with communications providers not required to provide PCBs.

### ***Questions related to Section 6 – Services for customers with disabilities***

In the absence of evidence from Ofcom H3G questions the conclusion that the “enforcement of individual rights may be more difficult for disabled customers under the DDA than under the conditions”. We would like to understand the degree to which this reservation about Government legislation has been raised by Ofcom with the Department for Work and Pensions (who have responsibility for the DDA). And to what extent Ofcom has recommended a revision to the DDA to ensure that the needs of Disabled People in terms of access to telecommunications can be provided for by anti-discrimination legislation. On principle we reject the notion that regulation should be used as a vehicle to compensate for deficiencies in anti-discrimination legislation.

*Do you agree that a feasibility study of a video relay service should be carried out? Comments are invited on the scope of such a study.*

Users of a video relay are people who use BSL, and we already know that BSL users can use video calling as they can sign during their video call. Of the options presented by Ofcom, H3G believes that carrying out a feasibility study is our preferred option. Such a feasibility study should have been carried out prior to the imposition of GC15 upon the mobile networks the effects of which have been largely negative.



H3G believes that any formal obligation to support access to a video relay service would be wholly inappropriate in light of our experience with GC15. In mandating H3G to provide access to the text relay Ofcom placed an undue burden upon us as a new entrant, and required us to use an outdated technology that our pure 3G network was never intended to carry. Consequently we do not believe that any further regulatory requirements should be placed on the mobile operators for the foreseeable future. New technologies should be allowed to innovate and regulation in this area to date has had a chilling effect on innovation and has diverted resources away from more effective means of supporting deaf and disabled customers.

There are many interesting developments in the mobile market with video calling, MMS, mobile e-mail and instant messaging which means that customers with disabilities are set to benefit far more from investment in mainstream products than would be from specialist products (as, indeed, has been the case with SMS).

*Ofcom invites views on a Stakeholder Advisory Panel including the membership and terms of reference of such a Panel.*

There are already a large number of advisory panels with views on this topic. Another panel would seem both superfluous and potentially distracting.

*Do you agree that the relay service could publish an annual plan and report?*

No strong view. On balance, this may improve communication with all relevant stakeholders.

*Ofcom invites views on its conclusion that mobile/email access should not be pursued at this stage.*

To clarify we take this to mean that there should be no requirement for text relay users to be able to receive an SMS from a normal mobile phone. We would agree that demand for such a service is likely to be small.

*15 Do you agree that Option 2 (ie maintain existing obligations) offers the best opportunity for improving the accessibility of public call boxes?*

The provision of and access to PCBs is entirely a matter for those providers affected by this requirement. However, we would restate our on principle rejection of the notion that regulation should be used as a vehicle to compensate for deficiencies in anti-discrimination legislation. Indeed it could be argued that the access to goods and services provisions of the DDA make redundant the necessity to specify regulation in this area.



*Do you agree that the obligation should be redefined to apply to all subscribers who are not able to read printed bills and contracts?*

Subject to reasonable requests, H3G makes every effort to supply bills in a format that can be read by the subscriber. However, we would point that such requirements are covered by the Disability Discrimination Act 1995 and as such we believe that any extension to General Condition 15 obligations are in effect unnecessary. Indeed such an extension does not appear to be consistent with Ofcom's stated objective of withdrawing from regulation where appropriate and specifically where existing legal rules apply.

We would also request clear clarification on the definition of which individuals would fall into this category of subscribers.

*G1 Supplementary question: (Annex G). Do you agree that communications providers should be required to consult Ofcom to ensure that the requirements and interests of disabled End-users are fully taken into account in the development and provision of services?*

H3G has no objection to the wording of Condition 15.1 being changed to "The Communications Provider shall from time to time consult Ofcom to ensure.....etc."

We would however, be interested in understanding Ofcom's thoughts as to how such a consultation process will work in practice.

### ***Questions related to Section 9 – The costs and benefits of providing universal service***

*Ofcom invites views on its updated estimates of costs and benefits.*

*Do respondents consider a more detailed assessment of cost and benefits should be undertaken once the new USO regime is in place?*

H3G think Ofcom should reconsider based on a more principled analysis of the fundamental objectives of "universal service" and make a fresh assessment of contributions to these objectives by various operators on a technology neutral basis.

We agree that, assuming the overall approach to the USO does not change, the trend is that the burden of the USO on BT will continue to fall while it still retains significant benefits. As discussed above, we believe that the mobile operators have provided service to a large number of customers that BT would have us believe are "uneconomic". Where such customers substitute a mobile service for the fixed line one, the USO cost on BT is, of course, consequently reduced.



If the scope of the USO changes in any way, a future reassessment of the costs and benefits would need to be undertaken. In making any such assessment, Ofcom should consider the most efficient way of delivering each element of the obligations and the USO provider must only be allowed consideration of this efficient cost to be balanced against benefits.

Yours sincerely

Tim Lord  
Regulatory Director