

CWU/CONNECT 2nd SUBMISSION ON OFCOM'S REVIEW OF THE UNIVERSAL SERVICE OBLIGATION

The Communication Workers Union (CWU) & Connect between them represent over 100,000 telecommunications staff working in around 20 companies, both fixed and mobile operators, both incumbent and competitor operations. These companies include BT, Kingston Communications, Cable & Wireless, Telewest, O2, Vodafone, T-Mobile and Inmarsat. Furthermore some of our members work as independent telecoms consultants. This gives us a unique perspective on the British telecommunications industry.

We welcome the opportunity to respond to Ofcom's second consultation on its review of the Universal Service Obligation. Whilst we agree with many of the proposals Ofcom makes in its consultation document, there are also some specific areas where we disagree, and we outline our views in the following pages.

USO and the Strategic Review of Telecoms

There are two (related) issues on the USO that arise in the context of the Strategic Review of Telecommunications (SRT): first, should the USO be funded differently than at present and second, should the scope of the USO be expanded?

Taking the funding issue first and working on the basis that the USO remains the same, the statement and further consultation asserts: *"... as competition erodes high margins, at some point providing USO may become an 'undue burden' and joint funding might become appropriate."* (para. 3.5) and reminds us that: *"The Telecoms Review concluded that it is not necessary to reach a decision now but that it should be kept under review."* (para. 3.6).

In our original USO submission, we made the point: *"...in our view, it would be helpful to have clarity from Ofcom as to how it would determine at what point the USO became "an undue burden". There ought to be some sort of threshold or trigger mechanism."* The statement and further consultation gives no guidance on this, but it remains an important point. It is unreasonable for the current funders of the USO not to know the basis on which such an important decision is likely to be made.

Moving on to the second issue, that of the scope of the USO, clearly any expansion of the scope would increase the case for a new funding mechanism. The statement and further consultation points out that: *"The conclusion of the Telecoms Review is that there is not a case to recommend an extension of USO at this time but there are issues to consider for the future."* (para.3.7). Further, it reminds us of the position of the European

Commission: *“For broadband the Commission’s view is an extension of USO is not appropriate at this time as broadband is not used by the majority of consumers.”* (para. 3.8).

However, we would like to rise to the challenge posed in the first section of the Commission’s Communication, *“to launch a broader policy debate on universal service provision”* by inviting Ofcom and the Commission to think much more innovatively and imaginatively about ‘universal service’ when it reviews the Directive in its entirety in 2006. Now is not the time for a paucity of ambition, and next year’s review presents a clear opportunity to make some important and valuable adjustments to the scope of the USO.

Essentially the universal service concept in telecommunications is simply a carry-over from other utility industries like water, gas and electricity, but telecommunications is a much more differentiated service than these others, the technology of telecommunications is developing much more rapidly than in these other industries, and the consumer and citizen implications of non-participation in the newer technologies and services have profound implications for individual consumers and citizens and – because of the externalities of communications networks – society as a whole.

Therefore we would invite Ofcom and the Commission to consider a more sophisticated approach for telecommunications. Currently a service cannot even be considered for inclusion in the universal service obligation until it is already used by a majority of subscribers (see Articles 4.2 & 15). This is too slow and too blunt an approach for telecommunications. It should be possible to consider inclusion of a service once it is used by “a substantial proportion” of the populace. This would enable policy-makers to take a more forward-looking and pro-active approach. In the case of broadband the definition of ‘substantial’ could be considered to be as low as 10 or 20 connections per hundred population when we take into account that several people per household benefit from a single connection, and many people make use of broadband through publicly available means. A low threshold is also justifiable because of the huge social and economic benefits offered by broadband services.

Furthermore the universal service is currently set out in absolutist terms – either there is an obligation to provide a service to everyone now or there is simply no obligation at all. In the case of broadband service, in particular, this is too simplistic an approach. From the operators’ point of view, it is not reasonable to expect every new service to be available everywhere immediately. From the consumers’ point of view, what bandwidth is regarded as ‘standard’ or necessary will evolve (rapidly) over time. It ought to be possible to express an ‘obligation’ in less absolutist terms, for instance by suggesting targets for particular proportions of the population to be covered by particular dates and/or by using ‘lighter’ formulations such as “using one’s best endeavours” or “making every reasonable effort”.

We would invite Ofcom and the Commission to think more flexibly along these lines, so that some elements of universal service at least are seen less as an absolute obligation and more as an indicative policy.

Special Tariff Schemes and Disconnections

We welcome the revised proposal for an Early Payment Discount (EPD) which will provide customers who pay their bills promptly with an additional Inclusive Call Allowance (ICA). Ideally, however, we would wish to see the EPD set at £3, rather than the proposed £2, to align it with the discount for those paying by Direct Debit (DD) and Monthly Payment Plan (MPP). By setting the EPD discount lower than the DD discount, the proposals still penalise low income users without a bank account or those who avoid using direct debit to help keep control of their finances.

It is our view that in practice, those users who meet the early payment deadline provide the same benefit to BT of facilitating cash flow as those who pay by direct debit. There is consequently no reason why they should not be entitled to the same level of discount as those who pay by direct debit.

We welcome the removal of the income-related criteria, for which the suggested threshold of £10,400 was too low and failed to acknowledge that there are different levels of poverty threshold according to household size.

We are still concerned, however, that the proposal to introduce eligibility criteria based on Income Support, Pension Credit and Housing Benefit, will exclude low income users who are entitled to benefits but who fail to claim them. The Government's pension credit scheme is a case in point, with a third of those entitled to the credit failing to claim it.

Nevertheless, we recognise that if Ofcom is determined to introduce a targeted scheme there needs to be an eligibility criteria of some sort, and having discounted an income based criteria, a form of income brought to account to include benefits may be the only other option. If Ofcom eventually opts to use means tested benefits to assess eligibility, then the commitment it gives to continue dialogue with stakeholders and relevant government agencies regarding benefit criteria will be vital in achieving a solution that is effective in reaching those who are genuinely in need of assistance.

We agree that the scheme should not be available to Indirect Access (IA) and Carrier Pre-Select (CPS) customers whilst they are using a service provider other than BT. However, where customers can show an increase in the cost of their original IA/CPS service, we think they should be entitled to transfer back to a BT special tariff scheme, on the basis that the terms under which they applied for the IA/CPS scheme no longer apply.

The new proposals on mobile users go some way to addressing our concerns in this area. Specifically, we are concerned that people with mobile phones

cannot necessarily afford a standard BT fixed line because the cost of mobiles has reduced considerably, and they may only be kept for emergency and occasional use. The intention to formally exclude only the monthly contract customers, and the higher paying pre-pay customers, is a valid distinction to make providing the policy is administered fairly and consistently. To this end there needs to be a clear and realistic threshold set at which point mobile users become 'higher paying' users and are deemed to be able to afford a standard BT fixed line.

We do not have any informed view of what that threshold should be in monetary terms, only that it should ensure special scheme access is not denied to those who genuinely cannot afford a standard BT fixed line. This is vital, primarily because to leave households without a fixed line puts lives at risk in an emergency situation. It must be remembered that mobile phones are usually personal to one user, who may be absent from the home during an emergency, and that mobile phones by their nature are not fixed to one place and may not be located quickly enough to save lives in an emergency.

Furthermore, mobile phones do not currently offer functional internet access and are therefore not a compatible substitution for fixed network access. This is another reason why Ofcom's proposals must ensure that low income mobile users who genuinely cannot afford a standard BT fixed line, will be eligible for the targeted scheme.

With regards to assessing eligibility for special tariff schemes, the removal of the income related criteria makes the use of a credit checking agency less critical. We would be satisfied that customers self declare to BT that they are eligible, providing the costs to BT of seeking proof of eligibility are not excessive. If BT considers the costs of seeking proof are excessive, we believe they should be shared by the wider industry.

As the proposal stands, we continue to support a continuation of the current schemes, rather than the introduction of BT's new scheme. If, however, the proposed new targeted scheme is altered to take account of our concerns outlined above and summarised below, we would agree that it does represent a viable replacement for the existing social tariff schemes.

Therefore, we agree the new targeted scheme represents a viable alternative providing:

- The EPD is set at £3, rather than the proposed £2, to align it with the discount for those paying by DD and MPP;
- Ofcom gives a secure and ongoing commitment to continue dialogue with stakeholders and relevant government agencies regarding the use of benefit criteria to achieve a solution that is effective in reaching those who are genuinely in need of assistance;
- 'Higher paying' mobile users are identified by use of a threshold set at a level that ensures low income users who genuinely cannot afford a standard BT line are not excluded from the targeted scheme;

- Excessive costs to BT of seeking proof of eligibility to the special schemes are shared by the wider industry, and;
- IA/CPS customers who have experienced an increase in the cost of their original IA/CPS service are entitled to transfer back to a BT special tariff scheme

Disconnections

We welcome Ofcom's conclusion that more should be done to promote BT's special tariff schemes, in particular its pre-pay products. However, we are disappointed that Ofcom makes no commitment to support BT in this regard.

We said in our original submission, and we reiterate here, that the benefits resulting from a reduction in disconnections would be felt widely across a number of industry stakeholders, and therefore we believe that it should not fall solely on BT to provide the costs of achieving those benefits. We would like Ofcom to seek a commitment from Government and consumer groups, as well as giving its own commitment, to assist in the matter of promoting BT's debt management schemes.

Public Call Boxes

Definition of a site

We are against Ofcom's proposal to extend the definition of a PCB site to 400 metres, because it will allow BT to remove more PCBs, directly impacting on vulnerable consumers without access to a mobile phone. Providing details of the nearest alternative PCB is not sufficient to compensate and does not help elderly or disabled people with no transport who are unable to reach the alternative PCB.

As we said in our original submission, the aim of removing unprofitable PCBs contradicts the very idea of a universal service, which should be pervasive and extensive enough to adequately serve those in need.

Public bodies with the local veto

We welcome Ofcom's proposals for higher level public bodies to retain the local veto and to be required to consult with the local community and local public bodies. We agree that this will simplify the process whilst allowing lower level bodies like community councils to retain a role in the decision making process.

Consultation process

We welcome Ofcom's decision to extend the consultation period to 90 days which will allow sufficient time for objections and decisions to be made.

Obligation on public bodies to provide reasons for objecting to removal of a PCB

We welcome Ofcom's proposal to publish guidance for public bodies objecting to the removal of a PCB which will help to make the process consistent and transparent. We are glad to see that the need to make emergency calls and no mobile phone coverage are included as guidelines, but whilst we recognise the list is non exhaustive, we would also like to see the inclusion of distance to and accessibility of the nearest alternative PCB.

Revenue Threshold

We welcome Ofcom's decision not to introduce a revenue threshold, since such a threshold would act in direct opposition to the retention of PCBs for emergency use.

Cashless PCBs

We are disappointed that Ofcom has decided to give BT and Kingston greater freedom to offer cashless PCBs, by requiring only 70 per cent of their PCBs to offer cash payment facilities. This is a significant relaxation of the current requirement to ensure that at least one PCB at a site offers cash payment facilities.

It is implicit in the concept of a USO that where a PCB is provided there should be a cash payment facility. The threat of vandalism can be tackled by employing anti-vandalism measures, which BT has done to positive effect in many of its PCBs.

Services for Customers with disabilities

We welcome the wider remit for the feasibility study on video and other types of relay service and the renewed commitment to establish a Stakeholder Advisory panel.

We further welcome the proposal for increased protection from disconnection for disabled people, the extension of third party contact arrangement scheme to people in hospital, and the extension of requirement to provide contract and other information in alternative formats to people with disabilities other than visual impairments.

We are pleased to note the intention of Ofcom to hold an event for providers and consumer stakeholders on accessibility of payphones to customers with disabilities.

However, many disabled people and their organisations would say that the biggest gap is still the lack of obligation to provide affordable useable terminal equipment. We note that Ofcom and the Department of Trade & Industry (DTI) argue that the EU Directive excludes this as a formal part of the USO, but we would want to see as much progress as possible in the provision of such equipment.

The September 2005 edition of "Disability Now" has a story of two deaf-blind people isolated in the aftermath of London bombings in the absence of affordable mobile phones with Braille input/output. This is the sort of problem that we must try to correct.

Provision of a connection on reasonable request

We welcome Ofcom's proposal to maintain the current threshold of £3,400 which we agree strikes the right balance between protecting customers and ensuring that BT does not face significantly increased costs.

We also welcome Ofcom's proposal to issue guidance on BT's obligation to provide a set of criteria to test for the reasonableness of a request, and we agree that the scope of the proposed guidelines should provide additional flexibility for vulnerable groups.

We believe that some kind of uplifting review mechanism should be established to ensure the threshold stays in line with inflation. Accepting Ofcom's concern that the administration costs of increasing the threshold annually in line with inflation would be prohibitive, our preference would be for a commitment to review the threshold every three to four years, ensuring that it stays roughly in line with increases in the cost of living.

Functional Internet Access

We are disappointed that the statement and further consultation reaffirms Ofcom's original view that functional Internet access should remain at 28.8 kbit/s.

As we argued in our earlier submission, we believe that this is too limited an approach. Instead we believe that Ofcom should proceed with Option 3, an increase in the benchmark minimum speed to 33.6 kbit/s, together with the changes to the Guidelines proposed in Option 2, namely emphasis that the FIA involves the provision of optimal speeds and clarification of the information to be provided by BT.

We live increasingly in an information society where, to ensure full participation in the electronic marketplace and full rights as a citizen, one needs Internet access at greater and greater speeds. By the end of this calendar year, all Government services will be on-line and the speed of Internet access available to citizens will be one factor in the actual use of such services. At a time when a third of the population already has a broadband connection and BT is moving to make 2 Mbit/s its standard offering, it is

bewildering that Ofcom and BT are so reluctant to ensure a minimum provision as low as 33 kbit/s.

For the purposes of this particular review, we are talking only of narrowband access; in the context of both the current Ofcom strategic review of telecommunications and the forthcoming review of the European Directive on universal service, we will be talking about broadband access. The short-term narrowband issue and the medium-term broadband issue are linked, however, because Ofcom needs to be signalling clearly and strongly to the market and to the Government the vital importance to the economy and to citizenship of networks providing ever-greater speeds of Internet access. The Government in turn should pursue the issue in its discussions with the European Commission (where the UK currently hold the Presidency) and European Regulators Group (where Kip Meek of Ofcom is currently Vice-Chairman).

In the specific content of this review, we feel the need to remind Ofcom of several key points that are included in the detail of the original consultation document. First, the minimum benchmark speed at which FIA is provided is not mandatory or binding on BT and Hull – it is a guide to the operators which they should make “*every reasonable effort*” to achieve. As it is not a requirement, there is no question of BT or Hull being fined or penalised for failing to achieve 100% compliance. Second, BT does not currently achieve 100% compliance with the current guideline of 28.8 kbit/s – the company’s June 2004 study found an achievement rate of 99.1% and the company asserts that 0.6% of its customers cannot receive 28.8 kbit/s for reasons that it cannot establish. Third, BT is in effect already achieving the higher rate of 33.6 kbit/s – the June 2004 study found an achievement rate of 94.2%.

Therefore we believe that for BT to claim that compliance with the higher speed would cost almost four times as much (some £42M) is challengeable. There are two ways in which Ofcom could raise the FIA with minimal extra cost to BT. Either it could simply require that the company uses “best endeavours subject to cost-effectiveness” or it could set a graduated timetable for compliance (for instance, 95% from year 1, 99% by year 2, 100% by year 3).

In our view it would be a serious lost opportunity if Ofcom were to continue with its overly cautious and conservative position on FIA. Given the dramatic growth of broadband in recent years we think it is appropriate now that the benchmark minimum speed for FIA is increased. If Ofcom is not prepared to increase the guidelines at this stage, it could at the very least give a commitment to do so at some point in the near future. To a large extent it is Ofcom’s position on the funding issue that acts as a constraint on the universal service provision. If Ofcom were to introduce a USO fund, the costs of increasing the speed of FIA as a requirement under the USO could be shared by the wider industry, making FIA of at least 33.6 kbit/s perfectly achievable on a universal basis.

Costs and benefits of providing USO

We welcome the willingness of Ofcom, as expressed in the statement and further consultation, to conduct a new cost and benefit assessment of the USO beginning in 2006. However, we are disappointed that Ofcom still seems wedded to the figures it published in the original consultation document.

In our original submission, we pointed out that, on the benefits side of the equation, the major difference between the 1995/96 estimate and the 1998/99 estimate occurred when the benefit from ubiquity was reassessed as going from as much as £80M to *“insignificant”* and argued that this underlines the subjective nature of the assessment of benefits. We queried particularly the estimation of brand image and corporate reputation. This is said to be worth as much as £52M, but we believe that it is doubtful whether telecoms users really understand that BT is carrying a significant cost in serving uneconomic areas, customers, and PCBs. In reality, this so-called benefit could be as insignificant as that of ubiquity.

The statement and further consultation acknowledges that BT has argued that there is *“no evidence for the assumption that brand enhancement was worth 20 per cent of BT’s marketing and advertisement expenditure”*(para. 8.10). Yet, in spite of our suggestion that the value of brand enhancement could be *“insignificant”* and BT’s argument that *“there is not a brand enhancement effect from USO”* (para. 8.10), Ofcom has made no attempt to provide any new evidence to support its figures.

Looking now at the benefits said to accrue from uneconomic PCBs, this is assessed at £11M, the same figure as it was in 1995/96. Yet Ofcom’s own original consultation document acknowledged that, since March 2002, 20,500 PCBs have been removed and, since March 1999, calls made from PCBs have declined by 53%. If there are so many fewer kiosks being used by so many fewer people, it strains credibility that the benefit of advertising on such PCBs can be unchanged.

Summary

We welcome many of Ofcom’s proposals, but there are some fundamental conclusions with which we disagree. Our overriding concerns are around the funding mechanism, the scope of the USO, and the minimum benchmark speed for FIA.

We believe there is a case for a joint USO fund now, and that Ofcom should at the very least identify a point at which the USO becomes an ‘undue burden’ on BT and Kingston and a joint fund becomes appropriate. We think there is a case for expanding the scope of the USO to include other services, especially broadband, and that Ofcom should be more flexible in its approach to considering the inclusion of such services in the scope of the USO. We believe that in the context of ever increasing speeds of broadband access,

Ofcom should raise the benchmark minimum speed for functional internet access to at least 33.6 kbit/s.

When setting out the regulatory framework for USO, we think that Ofcom needs to be bolder in taking account of the dramatic changes experienced by the telecommunications industry in recent years, including the increase in competition and the rise of broadband and mobile services. This will help to create a regulatory environment in which all citizen consumers can engage in and benefit from an increasingly advanced telecommunications network, access to which is fundamental to social inclusion and economic growth.

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