



8 October 2015

Dame Patricia Hodgson DBE  
Ofcom Chairperson  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Dear Dame Patricia

### **Ofcom Strategic Review of Digital Communications**

Leaders and elected members of Scottish Local Government have over the last few weeks considered Ofcom's discussion document on the Strategic Review of Digital Communications. They agreed to respond to your consultation on the review with a wide political statement of growing concern about the commitment from UK Government to the roll out of universal broadband and the equity of funding for all communities to an appropriate minimum threshold of broadband, mobile and digital services. The delivery of a universal broadband commitment is critical. There is further strategic comment summarised in the annex attached to this letter.

COSLA has welcomed the pledge from previous UK Governments that no one, or area, in the UK will be left behind in the rollout of superfast broadband, whether in rural or urban areas. However we would welcome autonomy over the solutions to be used to reach the hardest to reach areas in terms of infrastructure and participation in future, it will be key that the regulatory environment fits with this request for greater autonomy. Solutions need to be found that match local circumstances.

Leaders have previously argued that further funding should reflect the cost of providing a minimum level of outcomes, a minimum tolerable threshold for broadband, reflecting the costs of this infrastructure implementation the length and breadth of the UK and not allocated on a pure population basis. Funding needs to take account of geography in the allocations.

Council Leaders have outlined a desire for equity and fairness and that public sector interventions continue into the future until all communities have been provided with the minimum tolerable and future-proofed standard of digital, broadband and telephony services. We believe that there must be a minimum tolerable standard for broadband especially given the digital delivery agenda for public services and the hints from your consultation about BT wishing to switch off in the future the telephony network and deliver services over the internet rather than copper phone lines.

We think it would be fair to say there is a growing sense of frustration with them amongst Council Leaders and elected members around the speed and transparency of BT's commercial broadband roll-out plans in Scotland. Albeit, some councils have highlighted examples of good work with BT. Currently, despite receiving £1/4 billion of public subsidy in recent years they are viewed as much part of the problem as part of the solution by some of our digitally remoter communities, whether in the far isles or central belt.

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Without such a minimum standard, these future service changes would cause real problems for our digitally remote communities and also present resilience issues for the provision of emergency service transmissions in remote areas, if a 4G successor to the “airwaves” system does not provide full and reliable coverage across the UK.

Leaders in their debate noted Ofcom’s recent suggestion that the bare minimum for broadband speed for household was 10Mbps, both upload and download. Many had examples where they have constituents who are struggling to get beyond dial-up speeds or basic broadband. They are concerned that the policy focus might shift to other digital issues before we had provide an equitable and fair minimum standard of access to all communities.

Also, reflecting that in terms of economic competitiveness and reducing inequality, two core blanks of Scotland’s Economic Strategy, we need good coverage across Scotland. Various studies have outlined the link between connectivity and economic growth. This is especially relevant for all businesses but especially start-ups, who may operate from home and need a minimum standard of a range of telecommunications: broadband and mobile coverage.

As part of your Review and emerging proposals for superfast and ultrafast broadband we seek your support for the continued rollout of appropriate levels of broadband funding within Scotland. COSLA has previously lobbied strongly that digital roll-out and regulation must take account of other factors that influence the cost of delivering services to more remote communities.

COSLA has also agreed strongly with Ofcom’s suggestion of the potential for a growing digital divide and social exclusion from digital services if further targeted action is not progressed. There is clear social value in connecting all communities, however many members observed we need to find a framework that quantifies this value economically and facilitates its use in regulatory and public funding discussions.

We agree with your view that competition alone will not provide widespread availability of digital connectivity, and that there will be a continuing requirement for public interventions in terms of funding, policy and regulatory frameworks. Not only in broadband but also in terms of mobile phone connectivity, which can be of a significant poor quality for making calls or accessing mobile internet services across significant parts of Scotland.

Excluding significant numbers from the benefits of a digital society could have a significant impact on skills development, the ability to consume public services and local economic development. Accordingly, we seek further social inclusion obligations on the private sector be included in the conditions of future rounds of public policy and funding initiatives.

We hope as you progress with your strategic review, you will be in a position at some point this year to meet to discuss the next stages of Ofcom’s work. We trust you will find the strategic political points from Scottish Council Leaders useful in your further deliberations on the Strategic Review of Digital Communications.

In continuation of the current partnership working on broadband and digital matters in Scotland we have copied this letter to the Deputy First Minister, John Swinney MSP.

Kind Regards



Cllr David O’Neill  
**COSLA President**



Cllr Stephen Hagan  
**COSLA DES Spokesperson**

## Annex - Key Challenges for Scottish Local Government

1. The Ofcom discussion document provides welcome recognition of the major cost challenges of extending existing broadband networks. Generally focussing on rural areas because of the spread of customers widely across a large area without the radial settlement patterns, but also recognising that some urban locations which can also have issues of availability or low broadband speeds, due to a range of issues including low demand due to low incomes within specific urban areas and/or lack of cabinets in the area.

### Minimum Broadband Capacity

2. In terms of the aspiration for universal broadband across the UK, the report highlights that Ofcom estimates a typical household will need 10Mbit/s speed to benefit from the most popular online services. Today only 8% of UK premises fall below this threshold, with around 2% (½ million households) unable to receive the most basic 2Mbit/s service.
3. Furthermore, whilst the objective is 95% coverage of superfast broadband capacity by 2017, only 82% of SMEs will have access across the UK. Similar concerns apply to the coverage of mobile services particularly in rural areas for both residential and SME users. However, the report also points out that in some areas consumers or businesses are not willing to pay for commercial services and so to an extent self-exclude and there is a role for continuing education and encouragement of the take-up of services. COSLA Members wished to highlight that presumably further competition through regulation could improve prices and quality, encouraging greater take-up.
4. Ofcom have previously suggested that the minimum speed for universal basic broadband should be increased from 2 to 10Mbit/s. In March 2015 the UK Government outlined its intention to raise the Universal Service Obligation from dial-up speed to 5M/Bits. COSLA Leaders have outlined their support for the Ofcom proposal to raise the minimum obligation to consumers still further given the need to deliver long-term future-proofed broadband and digital communication networks.
5. At the other end of the broadband spectrum, the discussion document also highlights the potential competitive trade-off between the further roll-out of superfast broadband alongside increasing demands for ultrafast networks in certain localities for specific sectorally focussed economic reasons. This issue will be an emerging matter for future discussions in regard to public sector interventions in network capacity investment and a potential issue for Ofcom to investigate in further infrastructure reports. Alongside, an analysis of the capacity and resilience of the industry to deliver any multi-tracked infrastructure delivery in future.

### Mobile Coverage

6. The discussion paper recognises that although the UK enjoys widely available mobile services there are significant gaps in coverage, particularly in rural areas. As with broadband, this raises concerns for COSLA about social inclusion and a growing digital divide in terms of voice calls availability but also access to mobile data services.
7. Ofcom highlights that most UK premises for voice calls are covered by a network, 97% of all UK premises have outdoor coverage from all operators. Albeit this figure drops to 83% for indoor coverage, where the majority of consumers probably wish to make their calls. Also, this figure drops still further on strategic and main local road networks with only 59% coverage on A and B Roads. The figures are significantly lower for mobile data across the same locations. However, Ofcom has stated these figures will improve as 4G is deployed. Current figures show that today 4G delivers outdoor coverage from at least one operator to 90% of UK premises and 42% from all operators.

8. Ofcom recognise that while mobile services are widely available, there are significant gaps in 2G and 3G coverage, particularly in rural areas. While 97% of premises have outdoor coverage from all 2G operators, 21% of the UK's geographic area is a partial not-spot for 2G (i.e. there is coverage from at least one, but not all operators). Mobile coverage in the UK also varies significantly at a national level, primarily due to the high proportion of rural areas in the devolved nations. Geographic coverage from all 2G operators is available to less than half of Scotland. This raises similar concerns about social inclusion, consumer protection and a growing digital divide for all COSLA member councils.
9. Ofcom have advised that they will consider two main issues around network availability in this review. Recognising that whilst the private sector takes the lead in investment and innovation in communications services, they are also keen that any future regulation applied must protect investment incentives if availability is to be maximised. Albeit in terms of recent public policy, member councils have questioned the impact of the BDUK funded Mobile Infrastructure Project investments and members have called for a more tailored funding approach in Scotland in tandem with an innovative regulatory environment.
10. Secondly, Ofcom will consider what more can be done in those geographies where providing a service is not commercially viable. Linked to both these issues is the challenge of whether greater network investment and availability necessarily means that customers will need to pay more. Members may wish to comment on the potential options for ensuring mobile coverage in rural areas, including further lobbying for an extension of the mobile network supplier licence agreement to end in 2017 which obligates one operator to provide at least 98% indoor coverage and at least 95% in each of the nations.
11. Members have recognised that in more digitally remote areas of Scotland, making a purely economic business case for broadband is difficult. However, they have sympathy with the view that we need Ofcom to develop a framework where the wider social value of the deployment of superfast broadband to such areas is captured in any economic impact assessment for expressing the value and costs of furthering universal deployment.

#### Further Phases of Public Funding

12. COSLA Leaders welcomed Ofcom proposals to publish more detailed sub-national information later in 2015. Given the significantly larger proportion of Scotland designated as "rural" compared to the UK as a whole, it will be critical that this granular level of analysis is utilised when designing further public policy interventions and associated funding. In previous phases to extend superfast coverage Scotland received only a roughly pro-rata population share of the available funds.
13. COSLA previously lobbied that funding distribution should also take account of other factors which influence the cost of delivering services to more sparsely distributed communities and lack of commercial potential for investment via BT's access network. Ofcom highlights the potential for a growing digital divide and social exclusion from digital services if further targeted action is not progressed.
14. COSLA Leaders agree with the initial view of Ofcom is that competition alone will not provide widespread availability of digital communications services and that into the future there will be a continuing requirement for public policy intervention. The report highlights that this is especially true in less densely population regions where maintenance of existing service obligations or complete rollout of new networks won't be achieved without further public interventions in terms of funding, policy and regulatory frameworks potentially.

#### Digital Exclusion

15. Ofcom stress throughout the document that without market intervention the risk of social exclusion could increase as communications services become ever more fundamental to

individuals interactions with public services such as health and social care. The risk of exclusion could be on the basis of geography due to lack of network infrastructure in rural areas and/or because of prohibitive costs due to vulnerable circumstances. The report highlights whilst the percentages may be small, the total number of households affected by issues of availability and affordability will be substantial. Excluding significant numbers from the benefits of a digital society could have significant impact on skill development, ability to consume public services and local economic development. Members expressed a view that social inclusion market obligations are included in the conditions of future rounds of public policy and funding initiatives.

### BT's Dominant Market Position

16. The issue of BT's market power and its current ownership and operational structure of BT retail and BT Openreach, the division responsible for operating the 'last mile' of BT's access network on behalf of all communication providers is discussed in the Ofcom report. It suggests there are still challenges around this issue. This is despite Ofcom 10 years ago accepting, voluntary but legal binding, undertakings to functionally separate a division of BT committed to selling key products on an equivalent basis to all providers.
17. The review highlights that the line of separation between BT and Openreach was drawn at a time when broadband was delivered from telephone exchanges over copper lines. However, with fibre taking broadband networks closer to the home, new boundaries to promote further new models of competition might be appropriate. The report highlights that in regard to Broadband Delivery UK funding (BDUK) BT won all of the procurements across the UK to utilise this funding to deliver superfast broadband capacity.
18. The discussion document highlights four broad courses of action from continuing with the current approach, through strengthening the current model of functional separation, considering structural separation and finally substantial deregulation and greater reliance on competition. The reports highlights the potential benefits of greater competition, a view that the current equivalence of inputs or other frameworks associated with the Openreach Undertakings have not provided sufficient incentives to change outcomes and remedies have had to be imposed by Ofcom.
19. On a related question of whether BT is investing sufficiently, we think it would be fair to say there is a growing sense of frustration with them amongst Council Leaders and elected members around the speed and transparency of BT's commercial broadband roll-out plans in Scotland. Albeit, some councils have highlighted examples of good work with BT. Currently, despite receiving £1/4 billion of public subsidy in recent years they are viewed as much part of the problem as part of the solution by some of our digitally remoter communities, whether in the far isles or central belt, in terms of receiving a "World Class Digitally Connected service by 2020" anywhere in Scotland.
20. There have been examples provided to elected members of BT actively not wishing to provide superfast services in certain enabled areas and instead seeking to negotiate its way out of contracts with financial payments to residents to cancel their contracts. In a non-competitive environment this raises significant concerns about the long-term vision of delivering 100% broadband coverage, if the major incumbent is unwilling it seems to respect contractual obligations where infrastructure is in place.
21. COSLA has previously suggested that this may well be because Scotland as a whole is in the position of dealing with a supplier effectively in a monopoly position, especially around the main infrastructure through BT Openreach. Also, in terms of transparency, communities are unsure how much investment BT, as the commercial provider, is putting into its network themselves and how much they, as local and national taxpayers, are funding.

22. In light of BT's current inertia on extending their own commercial network and the lack of sustained competition to them within the Scottish market as a whole, COSLA has previously postulated whether now is the right time to send a clear message to those communities unlikely to benefit directly from BDUK funded Digital Scotland Phase 1 or Phase 2 works.
23. In August this year, it will be the third anniversary of the Community Broadband Scotland initiative. COSLA has previously debated whether in the near future extending the timeframe for CBS beyond its current 2018 end date, might place further public pressure on BT to give communities certainty on their commercial plans or introduce further competition into the Scottish market.

#### Consumer Protection

24. The issue of empowering consumers is also a key focus of the review. The convergence, consolidation and increasing product bundling of the market, Ofcom observes is creating a new set of challenges that could affect the consumer experience and dampen competitive pressure.
25. Some initial data presented in the discussion documents infers that it could appear that in telecommunication markets, consumers are significantly less likely to change providers, with the bundling of products sighted as a factor in making switching more complex given differing contractual lengths for different bundled services. Consumers were also highly likely to have 2 or more products with the same provider. Ofcom has highlighted the potential for harmonising the switching process and from a consumer protection prospective this is something COSLA wished to endorse as a proposal to actively progress.
26. One suggestion from the report was whether the communications sector should have its own specialist advice service, similar to the Money Advice Service. Given the already complex landscape of advice services, it might be more appropriate for generic product offerings to be developed that could be delivered to different audiences via established channels. In the local government context this could be via Citizens Advice for consumers or Business Gateway for SME advice.
27. The recent Which? Report on broadband speed advertising is also referenced as a key issue going forward in terms of empowering consumers to make informed choices. The report highlights increasing access to key information and enabling easy switching as key actions, whilst recognising that in the last decade competition has reduce the average real terms total household spend on telecommunications by over 10%. Members were keen that all mechanisms to improve fairness and transparency of advertising regarding broadband speed was delivered.

#### Universal Service Obligations

28. Finally, in terms of network evolution the report highlights a number of potential actions. However, potentially the most significant could be BT's long-term proposal for the switch off of the Public Switched Telephony Network (PSTN), which if combined with the continuation of the telephony universal service obligation will require the migration of solely telephone users onto broadband networks of sufficient quality to ensure life critical telecare and alarms are not diminished. In addition, Leaders wanted assurances that sufficient spectrum would be reserved for emergency communication networks to ensure community safety and ability to access to emergency services remained across the country in future.
29. Ofcom highlights that BT is consulting on a "naked" broadband product not requiring line rental in preparation for a future transition and also it is considering the regulatory

impacts of delivering telephone services over the internet which is currently a situation not subject to the same regulatory environment and associated consumer protections.

30. The document highlights the potential risk of consumers following retirement “legacy” services to be forced to buy services they do not need or want at a higher price and certainly for local communities the retention of some minimum standards/obligations on network access for telephony services could be a key point in any reply for members to emphasise.

**COSLA**  
**October 2015**