



Delivering the Broadband Universal Service

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1 Executive summary

- 1.1 BT supports the objective of Ofcom and the Government to bring decent broadband connectivity to all UK citizens. We are ready to play our part in delivering this as a Universal Service Provider ('USP'). The Universal Service Obligation ('USO') will address some of the most challenging areas of the UK and the scheme must be designed in a way that effectively balances the speed, quality and cost effectiveness of the service provision in these areas.
- 1.2 We are also committed to delivering the best possible customer experience, ensuring that we provide the right information to eligible customers, set expectations appropriately, process orders efficiently and effectively, and deliver a service that closes the gap between those who do not yet have access to decent broadband connectivity and those that do.
- 1.3 However, BT remains concerned with some elements of Ofcom's proposals which we consider run contrary to the interests of consumers:
 - **Timelines.** The proposed timelines for implementation, and particularly the requirement for fixed network build within 12 months, are not achievable in all cases. We need Ofcom's proposals to be more flexible, recognising that in a minority of cases build will take longer than 12 months. To manage customer expectations effectively, we propose to provide information to customers about the reasons for a longer timeframe and about what will be possible in these cases.
 - **Cost recovery.** We need greater clarity than Ofcom has provided to date on how we will recover our costs. We would expect that other communications providers (who will contribute to the USO fund) will also welcome more clarity sooner rather than later. This clarity is critical particularly if we are to accelerate the scheme by incurring costs ahead of formal designation.
 - **Fixed wireless access ('FWA').** We appreciate Ofcom's recognition that its objectives can be met through a number of different technologies, but we would now welcome explicit acknowledgement that fixed wireless products can meet the eligibility criteria for the USO. As we have explained previously, 450,000 of the 600,000 premises that cannot get a fixed line solution meeting the USO eligibility criteria already have access to faster, more cost effective Fixed Wireless Access services that do meet the criteria.
 - **Affordability.** Ofcom's proposals to introduce a safeguard cap and a specific affordability threshold amount to the introduction of retail price regulation for USO services. We understand Ofcom's concern that USO services should be affordable, but retail price regulation is unnecessary to achieve this. The equivalent pricing

requirement is sufficient to ensure that our pricing will be constrained by UK-wide competition.

- 1.4 We address these four elements in turn below before responding to Ofcom's specific questions.

It is not possible to deliver all connections within 12 months of individual customer requests so more realistic timeframes are needed to avoid customer disappointment

- 1.5 Customers applying for USO services need confidence that connections will be delivered to time and quality. We need to be able to manage and meet their expectations. Ofcom's proposals make this impossible.
- 1.6 First, successful implementation of the USO requires us to carry out intensive preparatory work. We must pre-plan the infrastructure build and set up the requisite customer handling procedures. We anticipate high volumes of enquiries and requests, and want to ensure the best customer experience possible by creating an excellent customer interface (the Universal Broadband Support Group). We must also ensure full compliance with the new obligations relating to quality of service ('QoS'), performance, complaint handling and record keeping. It is challenging to do this quickly and to do it well. BT Consumer will need to introduce new processes, supported by system changes and appropriate training.
- 1.7 We estimate that we will be ready within 12 months of the point of formal designation to receive customer enquiries, so long as we get the necessary data (and associated APIs) from Ofcom on third party connections and there are no unexpected changes in USO requirements. This would mean that if Ofcom formally designated BT as the USP in Summer 2019, we would expect to be ready to take orders in Summer 2020.
- 1.8 In parallel, Openreach could carry out the necessary planning work so that it is ready to start the build once we begin taking customer orders. However, we can only commence this planning work when we have the relevant information – including from Ofcom – on the premises that are eligible for the USO.
- 1.9 We agree with Ofcom that 30 days following a customer enquiry is a reasonable time period to check eligibility. However, to achieve this service standard we will need to base our customer response on cost estimates. Having made our initial assessment, we must be able to revise our decision on eligibility at a later date, should, for example, detailed site surveys of the local environment indicate that delivering a connection to the premises would materially exceed £3,400.
- 1.10 In addition, where a premise is not eligible because it exceeds the £3,400 cost threshold, 30 days is not sufficient for us to conduct the detailed work needed to assess the excess costs of connection i.e. to offer the customer a contract to pay the excess above £3,400. In these cases, we propose a total of 90 days from the customer's initial enquiry to fulfil this requirement.
- 1.11 We are particularly concerned with Ofcom's proposed timescales for new network roll out following the receipt of customer orders. In our response to Ofcom's call for

expressions of interest,¹ we explained that imposing a 12 month or shorter maximum delivery timeframe from request, would be arbitrary and unrealistic, and would not deliver a satisfactory customer experience. Ofcom has nonetheless proposed a 12 month delivery timeframe from the moment the consumer confirms an order, albeit subject to narrowly defined exceptional circumstances.

- 1.12 We do not agree with Ofcom's proposed timeframes; they fail to recognise the practical realities of network roll out and the scale of the task at hand in what are very challenging locations. The extent of planning, design and preparation work required, as well as actual network build, to deliver new network assets in rural and very remote areas (that we expect will be the majority of any USO roll-out) remains significant.
- 1.13 Our experience provides clear guidance on what is reasonable: unless exceptional circumstances arise, we can commit to delivering the majority of connections within 12 months of a confirmed customer order, but many orders will take longer to fulfil. In those cases, we will provide clear information to customers about what is needed and what they can expect. Except in exceptional circumstances, we can commit to delivering the remaining orders within 24 months of the date at which the order is placed.

We need confidence in the arrangements for cost recovery before we can commit funds to prepare for the USO

- 1.14 We have expressed concerns before about the insufficient clarity provided by Ofcom to date on cost recovery. Our ability to commit resources sooner rather than later to ensure smooth and speedy implementation of a broadband USO critically depends on clear line of sight to cost recovery. It is also important to ensure clarity for communications providers that will contribute to the funding of USO.
- 1.15 In this regard, we disagree that Ofcom is constrained in the level of certainty that can be provided on whether the cost would be a net burden, and whether this should be deemed unfair (which Ofcom claims will depend on uncertain factors). There is nothing to prevent Ofcom building a broadband universal service business case based on forecast wholesale input costs, other avoidable downstream costs and end-user revenues. This would estimate, in advance, the net cost burden, taking into account a reasonable return, of providing the service. BT would be happy to provide information to support such a process.
- 1.16 It is clear that BT will incur significant capital expenditure in the delivery of the USO, with limited potential revenue. BT's very approximate estimate is that the USO will involve capital costs of circa £[<]- £[<]. This is commensurate with the cost of a large BDUK programme where it was accepted and expected that BT should receive compensation. The same principles should apply here.
- 1.17 It is also clear that the market benefits from serving additional customers are likely to be a small percentage of the costs (including up-front costs). Further, we expect any intangible benefits (for example on brand as a result of USO marketing) to be minimal

¹ [BT's Response to Ofcom's request for expressions of interest](#), at paragraphs 7.3-7.10.e

– indeed there may be intangible reputational costs given the potential build and provisioning challenges in some locations.

- 1.18 Whatever the exact net cost, we consider it evident that the USO will impose an unfair net burden on BT and that the lack of a fund would contravene the Universal Service Directive ('USD'). Indeed, without a fund, it would be extremely difficult for BT to dedicate the necessary funding to the USO, with detrimental effects on the customers that should benefit from it.
- 1.19 Ofcom should, therefore, give an indicative assessment of whether there is likely to be an unfair net burden on BT. Ofcom should also set out how such a cost would be recovered in practice, and do this as soon as possible, and ideally in conjunction with the statement on designation this summer.

We need explicit acknowledgement from Ofcom that our existing FWA service meets the USO criteria and can therefore already deliver decent broadband to customers (outside the USO)

- 1.20 Ofcom has recognised that FTTP and FTTC are suitable technologies to deliver decent broadband. In our response to Ofcom's call for expressions of interest submitted in September 2018, we explained how we could provide FWA solutions commercially to connect the large majority of households without decent fixed broadband today, as they already have access to FWA via 4G networks (c450K of the 600k estimated by Ofcom).²
- 1.21 In our response, we set out evidence that the technical capabilities of our FWA products meet the minimum standards prescribed by the USO.³ In recent months, BT has worked with Ofcom to conduct additional testing of our FWA products with independent consultant SamKnows. We have provided Ofcom with sufficient evidence to allow it to take a definitive position on the performance and quality of service of FWA.
- 1.22 BT has started to plan work, ahead of designation, to implement the USO smoothly. We have conducted this work on the basis that our approach to FWA has been accepted, but to proceed further, Ofcom must now confirm that it accepts that FWA is a suitable technology to deliver broadband services to consumers.
- 1.23 We consider that any lack of clarity from Ofcom on this issue poses significant risks. The impact on consumers if FWA is not accepted would be threefold: (i) the number of premises that could not be served with fixed connections under the £3,400 cost threshold would rise sharply to c300k; and (ii) the increase in the number of premises that would need to be served by fixed connections would extend the length of time it would take us to build to these premises by years. (iii) In addition, there would be an

² See [BT's Response to Ofcom's request for expressions of interest](#), p. 9 and Annex 1

³ See [BT's Response to Ofcom's request for expressions of interest](#), p. 10-13

increased risk of replication and overbuild of commercial and publicly funded networks, which would be a poor allocation of resources.

Ofcom's introduction of a £45 affordability eligibility criterion and an equivalent safeguard cap have the potential to unduly restrict pricing in both USO and non-USO areas

- 1.24 We agree that consumers should have access to decent broadband connectivity at affordable prices. Ofcom's proposal for an equivalent pricing requirement will deliver that by ensuring customers in USO areas have access to services at prices that are demonstrably affordable in non-USO areas. The constraints on prices from competition in non-USO areas would also constrain prices paid by USO customers.
- 1.25 There is no need to introduce, in addition, an explicit affordability threshold and as we explain in more detail in our response to Question 4, the affordability threshold seems to go beyond the Order.⁴
- 1.26 Further, we are concerned by Ofcom's proposals to go beyond the affordability threshold, and introduce a retail safeguard cap as an additional remedy. This would, in effect, introduce a new form of retail price regulation across the country (since we would be obliged to charge the same prices in USO and non-USO areas). This is contrary to Ofcom's overarching approach and duty to regulate prices only where necessary and to do so as far upstream as possible. In this regard, the existing wholesale regulation is sufficient. In addition, a further cap risks constraining the ability of industry to migrate customers to faster products.
- 1.27 If Ofcom persists with its proposal for an affordability threshold, then there is an additional reason why the safeguard cap is unnecessary: any consumer that did not currently have a connection meeting the USO specification at £45 (for example, in areas served by BT's fixed wireless products) would be able to request such a connection. We would have no option but to offer the customer a USO service at or below that price in order to meet the USO criteria, making a further price cap redundant.

⁴ The Electronic Communications (Universal Service) (Broadband) Order 2018, 28 March 2018.

2 BT Response to Ofcom’s Consultation Questions

2.1 We do not comment on Questions 1 and 3 which do not relate to BT’s designation.

Question 2: Do you agree with our proposal to designate BT for the whole of the UK except for the Hull area?

2.2 We support the objective to deliver decent broadband throughout the UK, and we are prepared to do our part to meet the objectives of the broadband USO scheme. However we consider that:

- a) The USO conditions must provide realistic timescales for delivering the USO – see our responses to questions 5 and 7 in particular
- b) Ofcom should provide greater clarity on the cost recovery mechanism – see Section 3.
- c) Ofcom should acknowledge that premises that can be served with a FWA solution meeting the USO criteria will not be considered eligible for a fixed network USO service.
- d) Ofcom should drop its proposal for a safeguard cap and / or an affordability threshold, in light of the uniform pricing obligation – see our responses to questions 4 and 11.

Question 4: Do you agree that the Threshold for an affordable price for the purposes of USO eligibility should be set at £45 a month (including VAT, connection charges, monthly payments and other broadband charges)?

2.3 We are responding to this question and Question 11 together as they are closely linked.

We agree with Ofcom’s proposal for an equivalent pricing requirement

2.4 Ofcom’s proposal reflects the guidance in the Order that Ofcom should ensure that any designated USP is required to offer broadband connections and services at prices that are *“uniform throughout the UK, unless Ofcom have determined that there is a clear justification for not doing so.”*⁵

We disagree with Ofcom’s proposal to introduce a £45 affordability threshold

2.5 The Order distinguishes between eligibility conditions and affordability. The obligation to provide affordable broadband (at paragraph 1, Schedule 1), only applies to the extent that all the eligibility conditions (at paragraph 2, Schedule 1) are met. Those conditions do not refer to affordability.

2.6 The Government’s intention is clear:

“In order to ensure that people connected under the USO pay no more for equivalent services to people in other parts of the country, we have included guidance to Ofcom in the broadband Universal Service Order on the pricing of broadband connections and services provided by the Universal Service Provider under the USO. The guidance

⁵ Schedule 2, paragraph 2(b) of the Order. We assume that *“equivalent”* and *“uniform”* are synonymous in this regard.

requires that these should be affordable. It also requires that prices are uniform, unless Ofcom has determined that there is a clear justification for not doing so. The benefit of this approach is that it avoids setting a specific price, and instead links the price to existing prices for a similar or equivalent broadband products.”⁶

- 2.7 In other words, the USO would facilitate an upgrade for consumers without a good connection (subject to a £3,400 cost threshold), while ensuring that those same consumers would not have to pay a premium compared to the rest of the country. However, Ofcom’s proposals ignore this, merging the two concepts and imposing a strict definition of affordability. They fail to recognise that constraints on prices from competition in non-USO areas would also constrain prices paid by USO customers. In our view this is inappropriate, disproportionate and unnecessary to achieving both Ofcom’s and the Government’s objectives.
- 2.8 Regardless of the original Government intention, a specified affordability threshold is unnecessary. Equivalent pricing ensures that customers in USO areas would have access to services that are demonstrably affordable in non-USO areas. Ofcom does not therefore need to specify (in addition) an affordability level. This point is reinforced by Ofcom’s finding that household income in USO areas is, on average likely to be higher than in non-USO areas.⁷
- 2.9 Ofcom may have a concern that without a specific pricing requirement for a product consistent with the minimum USO specification, some customers might be forced to purchase a higher specification product at a price they would not find affordable. This is not the case in areas where we already have services meeting the USO specification (either with our fixed line network or with our fixed wireless network) as we currently offer services that exceed the specification at prices below £45 and as we will offer these same services to USO customers, they will pay the same prices.
- 2.10 However, there may be some parts of the country served by providers at prices above £45. Ofcom’s proposed £45 threshold would ensure that consumers in these areas have access to cheaper USO services but, as Ofcom also recognises, it creates a risk of overbuild. For example, in an area where the majority of customers are happy to take a higher specification product from another communications provider at a price a few pounds above £45, the USP would nonetheless be obliged to extend its network to connect the few consumers that demanded a product at £45 or less. This would be inefficient and costly.
- 2.11 Ofcom dismisses this risk on the basis that £45 is only “marginally” below the prices that “many” of the other networks charge. It suggests that those networks might cut their prices to avoid overbuild. In our view, Ofcom has underplayed this risk: it is clear that the strict threshold will distort the market in some locations, with potentially damaging consequences for investment incentives. There is also a risk that it will undermine the case for investment carried out with public money.
- 2.12 Further, if overbuild were to occur it would be very costly. According to Ofcom’s demand aggregation proposals, we would expect to be able to recoup the unfair net

⁶ DCMS published ‘[A new broadband Universal Service Obligation: Government’s response to consultation on design ahead of the USO Order being laid before Parliament. This document set out the Government’s position on affordability.](#)’

⁷ Para 8.23 b) of the Consultation

cost burden from the USO fund in cases where actual take-up of the USO service is below 70%. In overbuild cases, it is highly likely that the actual take-up would be materially below 70% and all of the costs of the network extension would need to be recoverable through a future USO industry funding scheme.

- 2.13 In addition to the risk of overbuild, the imposition of an affordability threshold would add complexity to the consumer journey. Dropping the affordability threshold would avoid situations where we pointed consumers to alternative providers that only offer USO specification services at prices above the affordability threshold. We explain this point further in our response to Question 5 below.
- 2.14 For all of these reasons, we disagree with Ofcom's proposal for a £45 affordability threshold.

BT's position if Ofcom persists with the £45 affordability threshold

- 2.15 Notwithstanding the points above, if Ofcom maintains the affordability threshold, the following principles are critically important:
- The threshold should be no lower than £45 and it should rise in line with inflation over time.
 - The proposal should be amended to allow for the consequence of a change, for example in the VAT rate (or defined pre-VAT). It is clearly inappropriate that BT should bear a risk that a VAT rise would force it to offer services below cost.
 - Ofcom should explicitly recognise that if the eligibility criteria for the USO change (for example to include higher speed services) then the affordability threshold should be revisited.
- 2.16 There is an important link between the affordability threshold and Ofcom's proposals on information sharing. As we discuss in more detail in our response to Question 5, the USO eligibility process would be streamlined if Ofcom provided us with premises-level information not just about technical availability of services meeting the USO specification, but also affordability information.

The introduction of a retail safeguard cap, as an additional remedy, is also unnecessary and disproportionate

- 2.17 We further object to Ofcom's proposal to introduce a retail safeguard cap. A safeguard cap would have the effect of introducing a new form of retail price regulation across the country. It introduces a restriction on what we could charge in USO areas, and extends that restriction to non-USO areas by requiring us to charge the same price in both USO and non-USO areas.
- 2.18 This is contrary to Ofcom's duties and overarching approach to price regulation which is to regulate prices only where necessary⁸ and to do so as far upstream as possible.
- 2.19 The uniform pricing requirement provides sufficient protection for customers. It will require BT as a USP to offer broadband connections and services to USO customers at

⁸ Sections 3(3)(a) and 6(1) of the Communications Act 2003.

the same price that they are offered to non-USO customers. This extends the benefits of retail competition and existing wholesale regulation in the fixed market (via the 40/10 wholesale price cap) to USO areas. Our USO prices will therefore be constrained in the same way as our prices are in the rest of the country. This addresses any concern Ofcom might have about the USP setting above-market prices to USO customers in areas currently served by BT's broadband products.

- 2.20 If, notwithstanding our representations above, Ofcom persists with its proposal for an affordability threshold, then there is an additional reason why the safeguard cap is unnecessary: any consumer who did not currently have a connection meeting the USO specification at £45 would be able to request such a connection. We would have no option but to offer the customer a USO service at or below that price.
- 2.21 **In summary**, we consider the safeguard cap inappropriate, unnecessary and disproportionate. The protection that Ofcom is seeking to ensure is already achieved through equivalent pricing.⁹

Question 5: Do you agree with our proposed approach to how Universal Service Providers should check eligibility for the USO?

- 2.22 We agree that the USP should play a central role in determining customer eligibility for the USO.
- 2.23 However, it will be challenging to do this quickly and to do it well. Failure to provide a smooth customer experience will undermine confidence in the USO and have adverse reputational consequences for the USP. Critically, we would be reliant on information from outside the business to check eligibility effectively – information which we do not currently have. Moreover, we are concerned that some parts of the process set out by Ofcom could lead to inefficiencies and poor customer experience. We set out the key issues below.

It will take time for us to prepare properly – and we do not currently have all the information we need to undertake this process.

- 2.24 BT will need to conduct planning, prepare systems and train staff in advance. This is essential to a good customer experience when the scheme starts.
- 2.25 We expect that we will be ready within 12 months of formal designation (assuming Ofcom also provides the necessary data and systems interfaces at this point) to create the right customer support environment (in the form of a Universal Broadband Support Group ('UBSG')). This timeline is based on our existing experience of setting up new customer management processes and systems. It comprises the following activities:
- a) Finalisation of the scope of the end-to-end systems and process design
 - b) Design of order processes for sales agents and on-line
 - c) Integration with the new Ofcom systems / database

⁹ We note that in paragraph 8.29 of the consultation Ofcom says it will seek voluntary commitments from BT in relation to BT's social tariff. We will discuss with Ofcom how broadband will be treated within the social tariff in due course.

- d) Implementation of appropriate data and storage requirements – for example, access controls for what will be a new class of data (to ensure that only agents working on USO are able to access USO eligibility checks)
 - e) Implementation of reporting requirements
 - f) Recruitment and training of additional support staff
 - g) Systems testing
 - h) A trial launch to enable full end-to-end testing of the new processes
- 2.26 In parallel, we will need to prepare ourselves to provide a timely assessment of likely eligibility against the cost threshold and other technical criteria when customers start to call. This pre-planning work will assess how best to connect a customer premise to our existing network.
- 2.27 Pre-planning involves a review of the physical geography and the network presence that we already have. We will consider what clustering of premises is possible to achieve the most efficient build for less than the cost threshold. We will also need to take local circumstances into account (for example, planning considerations).
- 2.28 We anticipate that pre-planning will take between [3<] months after the data about eligible premises is made available. This data needs to be comprehensive, including all existing connections from third parties and planned publicly funded build. We may also need to update initial plans on the basis of subsequent data updates from Ofcom ahead of launch.
- 2.29 There is an important link between the pre-planning process and the information Ofcom can provide about affordability. Our understanding of Ofcom’s current proposals is that it intends only to provide data on **technical** eligibility. However if, notwithstanding our representations above, Ofcom persists with the £45 affordability threshold, then, for the purposes of pre-planning, Ofcom should provide us with information on the premises that satisfy both the **technical** and **affordability** eligibility criteria. With this data we can carry out a more accurate pre-planning exercise than would be the case with just the technical information. In particular, with only technical information we would need to make an assumption that all third party connections that meet the technical criteria are below the affordability threshold. This might have the unintended consequence of underestimating the amount of necessary build.
- 2.30 Taking the UBSG set-up and pre-planning activities together, and assuming we receive the appropriate information from Ofcom by the point of designation, it will take us 12 months from designation to the point at which we can start accepting orders. Assuming designation in summer 2019, it would be realistic for BT to start to accept USO orders in summer 2020.

We are unclear about the roles of Ofcom, the USP and the customer on the affordability check process

- 2.31 Ofcom's current eligibility checking proposals require activity by the USP, Ofcom and customers. In order to ensure the best customer experience, there needs to be a clear understanding of the respective roles, particularly for the affordability check.
- 2.32 We understand that Ofcom does not currently propose to provide the USP with information about whether available services that satisfy the technical criteria are affordable. We consider this to be an error, and urge Ofcom to provide the USP with eligibility data that takes into account the pricing of the products that are already available. The information would identify where there is a product that meets both the technical and affordability criteria and as a result the USP could confidently refer customers to the relevant alternative providers knowing that an affordable service was available.
- 2.33 We do not see Ofcom's ability to provide this information as relying on Ofcom imposing a specific affordability threshold. Rather Ofcom can exercise its own judgement about the affordability of alternative services recognising that judgement might (usefully) change over time in the event that circumstances change.
- 2.34 On the other hand, if Ofcom does not provide data on the affordability of third party connections, the role of the USP would be limited to making the customer aware that there is a connection meeting the technical specification available, but making no assessment of affordability. It would then be for the consumer to contact the third party to enquire about the price of the service. The fact that the consumer is still potentially eligible for a USO service creates a number of practical issues.
- 2.35 For example, if Ofcom uses a strict definition of affordability (with the £45 affordability threshold), the customer would need to calculate whether the cost of the connection met the affordability threshold. This could be confusing for the consumer: for example, they would need to understand how to take into account any connection fees and limited time period discounts and cash-back offers in the calculation of average cost. This requires significant understanding on the part of the consumer, and they may not be clear as to their eligibility.
- 2.36 In addition, it would be difficult for the USP to verify the accuracy of a consumer's statement that the connection they were offered by a third party was not affordable. The USP might need to set requirements for evidence, such as a written quote from the third party, to verify the customer's account of the price they have been quoted. The burden of this would fall on the consumer.
- 2.37 In practice, this means that in these cases we would most likely need to take the customer position at face value. We would explain the price of the USO service (consistent with the equivalent pricing requirement) and the customer would then have the choice between our product and the (more expensive) product from the alternative provider. We would not take any steps to verify the information from the customer: if the customer wished to proceed with a USO service, we would confirm the customer order, deliver the connection and expect to recover relevant costs from the USO fund.
- 2.38 **We propose** that Ofcom should develop its database such that it holds up to date information on the technical eligibility and affordability of services from alternative

suppliers. The USP can then check eligibility against this database and avoid customer disappointment when referring customers to third party suppliers.

To ensure a good customer experience, Ofcom should provide timely clarity over the calculation of costs in the £3,400 eligibility check, and provide protection against costs escalating beyond the estimate due to unforeseen circumstances

- 2.39 The universal service designation can only impose a retail supply obligation on the USP. Indeed, the European Court of Justice (in Case C-16/10, *TNUK and Conduit v Ofcom and BT*) established that universal service is a service provided to end-users by the designated USP.
- 2.40 It follows from this, and from the wording of the Order, that the cost to the designated USP must include both network costs and the downstream costs associated with providing the retail universal service, as long as the downstream costs are ‘avoidable’, i.e. they would have been avoided in the absence of the USO. Relevant costs would include those associated with the access network to serve the premises, network for the provision of an end-to-end broadband service, the final drop and provision of a customer router. We set these out in detail in response to Question 6 below.
- 2.41 However, Ofcom has decided to include only infrastructure-related costs in the demand aggregation calculation even when this is not specified in the Order. BT can see no reason for Ofcom’s narrow interpretation of the relevant costs.
- 2.42 Ofcom also proposes that when a request is declined by the USP on the basis of the cost threshold, the USP gives the consumer a quotation which clearly explains the work required to deliver the specific connection, and an explanation of the various costs involved (*para 6.98*). BT proposes to do this on the basis of an **estimated** cost, and to make this clear to customers. We consider that this is the most practical and efficient way to provide a response to the customer within 30 days of an enquiry. To provide a more solid assessment of actual costs would require detailed survey work – given the high volume of requests we expect to receive, it is not possible to guarantee this within a 30 day window without building considerable inefficiencies into our processes.
- 2.43 In practice, costs may escalate following a detailed survey or during the build phase, due to unforeseen local circumstances that require significant additional civil engineering, for example. It is important that the USO allows for such circumstances following the initial eligibility check. BT would not expect to bear any risk relating to these additional costs and would expect to be able to recover them from the industry fund, even if the £3,400 cost threshold was exceeded.
- 2.44 If the cost escalation is relatively small, it may be appropriate for BT to continue the work so that investment already made is not wasted and the customer’s expectations are met. If the cost escalation pushes costs significantly above the £3,400 threshold (e.g. by more than 10%), we would expect to cancel the order or recover the costs from the customer, although this is unlikely to be a frequent occurrence. As a matter of principle, where we continue work and those costs do not increase considerably, we

would not expect to recover excess costs above £3,400 from customers; we would instead claim all additional costs from the fund.

2.45 We propose that:

- All upstream and downstream costs are included in the assessment of the £3,400 threshold.
- Actual costs should be used in the net cost calculation to determine claims from the USO fund.
- BT should provide an assessment of eligibility based on estimates, but have the flexibility to withdraw eligibility should costs escalate dramatically following a detailed survey or during the build process.
- For minor cost escalation (e.g. 10% or less) above the £3,400 threshold BT should continue to build and would claim excess costs from the fund.
- For the purpose of Condition B.8, Ofcom amends the definition in paragraph m, Schedule 1, Part 2.2 of “*Cost of Provision of Infrastructure*” as follows: [*“means the costs directly attributable to providing the physical network infrastructure over which Broadband Services are provided to an individual Premises ~~excluding any equipment costs associated with that individual Premises,~~ **inclusive of any downstream network costs and equipment costs associated with the provision of broadband services to that Individual Premises.**”]*

Question 6: Do you agree with our proposed approach to how Universal Service Providers should take account of shared connection costs?

2.46 We agree with the principle of the formula – but as indicated in our response to Question 5, we believe that the correct interpretation of the Order is costs should include all costs, including downstream costs such as:

- 1) **Openreach** – Access network elements to serve the premises (some of which may be shared across multiple premises). Examples of these include labour and capital charges for project management, installation, equipment (such as, but not limited to, head ends, splitters, fibre, distribution points, duct work, civil engineering, traffic works, tree cutting, street works, backhaul to the handover).
- 2) **Enterprise** – Network elements for the provision of an end to end broadband service. These include, but are not limited to, connection of the CP network to the Openreach local access network/handover point, together with backhaul. They may also include incremental capital and labour associated with the expansion of this, such as Openreach provision of a new handover point in a new location.
- 3) **Openreach** – Final ‘last drop’ installation and provision of service. This involves connecting the customer from the distribution point to the NTE location in their home. Our FTTP installations are all engineer delivered, and this involves the installation (including any civil engineering to dig duct to the customer, or provision a new drop wire, the fibre itself, and the NTE and customer router).

Some last drop distances are considerable and while we aim to minimise this at the network build stage, we may find that this involves new poles and/or duct).

4) **Consumer** – Provision of customer router.

- 2.47 Ofcom proposes that a minimum assumption of 70% take-up is used to assess the base against which the costs are spread. Our experience indicates that this assumption is high (in our contracts with BDUK we use a take up assumption of [3<]%) and we would not expect take-up to reach this sort of level potentially for many years. We also expect that in areas where there is a high degree of seasonality (such as in seaside or holiday destinations), the number of premises that would request permanent broadband connections will be lower given the transitory nature of many of the visitors. Ofcom's proposed approach to shared connection costs will, we think, result in a significant number of premises qualifying for the USO where the costs of delivery (given actual levels of take-up) will be over £3,400.
- 2.48 We note that in *paragraph 6.59* Ofcom suggests that BT needs not be concerned about the scheme having higher costs because an unfair net cost burden will be compensated through an industry fund. However, as we discuss in Section 3 below, Ofcom has not yet provided clarity that there will be a fund. It is essential that clarity on this point is provided by Ofcom for the benefit of both BT and wider industry who will be required to contribute into the fund and potentially pass costs onto end-consumers. It is therefore important to ensure that the scheme's costs do not become excessive, and that the proposals are proportionate.

Question 7: Do you agree with our proposed approach to informing consumers of the outcome of their USO request?

- 2.49 BT's objective is to ensure that consumers who engage with the UBSG get an excellent customer experience. In order to achieve this, some amendments and clarifications are required to Ofcom's proposed approach.
- 2.50 The 30 day timeline from enquiry to order is reasonable in the majority of circumstances. However, it is not possible for BT to commit to a definite response within 30 days in *all* cases.
- 2.51 Our response to Question 5 sets out how we will use pre-planning to generate an estimate of the cost of connection and provide an assessment against the other eligibility criteria (assuming data on affordability is provided by Ofcom). This will enable the customer to be informed of eligibility within 30 days in the vast majority of cases.
- 2.52 When we estimate that a customer would not fall within the £3,400 cost threshold they will be made aware that they have the option to fund excess costs above the £3,400 threshold, along with a broad range estimate for how much the excess is likely to be. We propose that, at this point, the customer is also asked whether they wish to receive a full quote for the excess costs. If the customer wants to receive a quote, we will then conduct a detailed survey. We suggest that the timeframe for informing the customer of the surplus they would need to pay following a full assessment should be 90 days

from the original enquiry. At that point we would be able to provide the customer with a firm quote.

- 2.53 It would be unreasonable to require BT to conduct a detailed survey automatically for every premises above the cost threshold following an initial customer enquiry. Our modelling has identified c110k premises that may fall above the £3,400 cost threshold and suggests that excess costs will rise rapidly, with the vast majority of these premises having costs that are significantly above £3,400. We therefore expect take-up above the cost threshold to be low. Carrying out full surveys for all premises in this category would require BT to pay for a large number of detailed surveys, the overwhelming majority of which would never be used. If we were obliged to proceed in this manner, we would expect Ofcom to accept that these costs were efficiently incurred and that they could be recovered from a USO fund as they would not be incurred otherwise. However, given that undertaking these surveys for all relevant customers would be unnecessary, would represent a disproportionate burden on industry and would not generate sufficient benefits for consumers, the USP should be entitled to confirm with customers whether a full quote is justified in advance of undertaking any such exercise.
- 2.54 Ofcom also suggests that the USP should re-contact consumers where circumstances have changed such that they would now be eligible. We consider this to be disproportionate. It would be complex and difficult to build in reviews of ineligible premises into our systems and processes. We are concerned that it would increase the overall costs of the scheme, with little additional value.
- 2.55 We therefore suggest that it would be more effective and more straightforward for the customer to re-contact the UBSG if they want to make a further application, either after a reasonable period has elapsed or if there has been a material change in circumstances. We would explain this to them at the time we notify them of their current ineligibility and therefore suggest that Ofcom's requirement in the legal instrument should be removed.¹⁰ New occupiers of premises would also be able to contact the UBSG regardless of contacts by previous occupants.
- 2.56 We propose that:
- Ofcom confirms 30 days as an appropriate timescale for an initial response to the consumer that tells them they are eligible or ineligible on the basis of an estimate.
 - Ofcom allows 90 days as an appropriate timescale for providing a quote for excess costs, where this has been requested by the consumer and the only reason for ineligibility is that the premise in question is above the £3,400 cost threshold.
 - Ofcom does not impose requirements upon BT to re-contact customers that are judged to be ineligible. Instead, customers can re-contact BT after a reasonable period or after a material change in circumstances (including change of occupier).
 - This should be reflected in the Conditions, in particular, *draft Conditions C.2-C.4*.

¹⁰ Ofcom consultation, A6. Legal Instrument, Schedule 1, Part 3 (Section 2) (B11).

Question 8: Do you agree with our proposal to include a universal service condition requiring Universal Service Providers to raise awareness of the USO?

- 2.57 Yes, we agree that USPs should take steps to raise awareness of the USO, and that a general requirement (rather than prescriptive regulation) is appropriate. However, we note that a requirement to take “all” reasonable steps to raise awareness is too broad and propose that the word “all” is deleted from the draft *Condition H.1*.
- 2.58 Our experience is that the most effective way of raising awareness of our products is through direct contact with relevant customers (for example by post). Ofcom proposes press and local radio campaigns. In our experience, direct, local targeting is more likely to successfully raise awareness among customers in these premises and to prompt USO connection requests. This will also help to manage call volumes effectively and control the overall costs and efficiency of the USO scheme.
- 2.59 We would need to target the message of any marketing campaign carefully such that it is appropriate to the customer group (for example those who are below the cost threshold should receive different messaging than those above it, so that they are aware of the need to make a personal contribution). Ultimately, the goal is to encourage eligible customers to request and take up the service.
- 2.60 To facilitate the targeted marketing to potential USO premises BT would need a bulk data-set showing the premises Ofcom has identified as eligible for the broadband USO (in the same way as the data would be shared with Openreach to assist pre-planning of network build). This data would need to be carefully used and managed for example through the use of clean teams.
- 2.61 In addition to BT’s activities, Government and Ofcom also play an important role in raising awareness and understanding of the USO, so that the public has clear expectations about what the USO will deliver (and what it cannot). We will need to work with Ofcom and Government to ensure coordination and consistency of messages.

Question 9: Do you agree with our proposals set out above, including to set a timeframe of 12 months for the delivery of USO connections unless exceptional circumstances have arisen?

- 2.62 In our response to Ofcom’s call for expressions of interest,¹¹ we argued that imposing a 12 month or shorter maximum delivery timeframe from request, would be arbitrary and unrealistic, and would not deliver a satisfactory customer experience. We expect most of the USO connections to be FTTP and, as explained in more detail below, our experience with network build to date is that planning and delivery can take longer than 12 months. Other operators that responded to Ofcom’s call for expressions of interest

¹¹ See [BT’s Response to Ofcom’s request for expressions of interest](#), at paragraphs 7.3-7.10.

last summer, such as Gigaclear¹² and CityFibre¹³, also stated that FTTP deployment takes more than 12 months.

- 2.63 Ofcom has nonetheless proposed a 12 month delivery timeframe from the moment the consumer confirms an order. Ofcom argues that the reduced number of eligible premises expected to be below the cost threshold (c40k¹⁴ premises) combined with the demand aggregation approach should allow the USP to deliver to quicker timeframes.
- 2.64 Proposed condition C.5 provides that: “**Unless Exceptional Circumstances have arisen, BT must provide a Broadband Service to an Eligible USO Customer who has placed a Confirmed Order as soon as reasonably practicable and, in any event, no later than the period of 12 months from the date on which the Eligible USO Customer placed the Confirmed Order (emphasis added).**” Ofcom’s reasoning for the proposed timeframe is set out in paragraphs 7.12-7.16 of the Consultation.
- 2.65 We do not agree with Ofcom’s proposed timeframes which still fail to recognise the scale of the task at hand. BT, through Openreach, has extensive experience of network build and we do not believe it is feasible to deliver *all* connections in 12 months. The extent of planning, design and preparation work required, as well as actual network build, to deliver new network assets in rural and very remote areas that we expect will be the majority of any USO roll-out remains significant. We therefore need appropriate flexibility. Critically, we can also only commence this planning work once we have a full list – including from Ofcom – of the premises that are eligible for the USO, and thus a clear view of the required extent of the network build, and its associated cost and revenue components.
- 2.66 The remainder of our response to this question covers: (i) our view of Ofcom’s reasoning for requiring a 12 month delivery timeframe; (ii) our assessment of the work involved in delivering the USO (including potential overlap with other Government initiatives); and (iii) our alternative proposals.

(i) Our view of Ofcom’s reasoning for requiring a 12 month delivery timeframe

- 2.67 In the Consultation Ofcom sets out its reasoning for the proposed 12 month delivery timeframe. We disagree with this reasoning.
- 2.68 First, we disagree with Ofcom that “*it would be inconsistent with the terms of the Order if Ofcom proceeded on the basis that any consumers could be expected to wait longer than the 12 month timeframe which applies in areas subject to publicly-funded rollout*”

¹² [Gigaclear response to Ofcom's Call for Inputs](#): “Many of these larger programmes come with delivery timetables significantly beyond 12 months. This is often due to fibre delivery in rural areas requiring substantial works activity with an often-finite labour supply, an absence of viable backhaul options....and a capped delivery speed due to highways access restrictions.”

¹³ [CityFibre response to Ofcom's Cal for Inputs](#): “Furthermore, many programmes and contracts which are to operate in rural areas face builds of longer than twelve months,..... The build time for these areas, is often due to operational issues faced when building a core network from scratch, a problem particularly prominent in rural areas.”

¹⁴ This estimate will be reviewed and updated prior to actual delivery of the broadband USO, and will be based on Ofcom’s estimate of premises eligible for the broadband USO. The c40k figure was based on initial modelling by BT Group (c40k number quoted in [BT’s Response to Ofcom’s request for expressions of interest](#)) and as we expect the actual number of premises that receive the USO to change from this initial estimate.

schemes.”¹⁵ As Ofcom itself acknowledged in its call for expressions of interest,¹⁶ “*The Order states that, for the purpose of eligibility, the cut-off point for coverage by a publicly-funded programme is one year from the request date.*” The timeframe for deciding eligibility (stipulated in the Order) is separate from the timeframe for delivery (which the Order stays quiet on), and there is nothing in the Order which prohibits Ofcom from stipulating a longer period for the latter. If Government had intended to require a 12 month timeframe for delivery of the USO, it could have made this clear; rather it provided for a 12 month period for the purpose of eligibility only.

- 2.69 Ofcom of course has a degree of discretion in the way it implements the Order. However, in deciding on the timeframe for delivery, Ofcom must take appropriate consideration of BT’s (and others’) submissions and its statutory duties. We do not believe Ofcom has done so, especially given the practical issues associated with building new network to customers in remote areas. Hence, we disagree with Ofcom that “*the maximum time that consumers should have to wait to receive a connection is one year from the request date.*”¹⁷
- 2.70 Second, in light of the potentially high penalties for non-compliance,¹⁸ we consider an imposition of a 12 month delivery timeframe would be unreasonable, disproportionate, and impose an unnecessary burden on BT, contrary to Ofcom’s duties.¹⁹
- 2.71 Third, we also disagree with Ofcom that a period longer than 12 months “*would introduce an unfair distinction between consumers dependent on whether their location was in an area subject to a publicly-funded rollout scheme or not.*”²⁰ There are good reasons for distinguishing between privately and publicly funded roll out (which are set out in more detail below). This is particularly so given the heavy burden and risk placed on the USP. Moreover, the 12 months stipulated in the Order in relation to publicly-funded roll out, does not account for all the work preceding the date on which the request is made. This distinction is even more justified where cost recovery for private build is unclear.
- 2.72 Indeed, Ofcom recognises “*the trade-offs between ensuring that the USO is delivered as quickly as possible and ensuring that the cost of delivery is minimised, both of which form our primary objectives for implementing the USO.*”²¹ However, despite the clear interdependence between cost recovery and delivery timeframes, Ofcom does “*not consider that prospective Universal Service Providers require information on funding arrangements in advance of making our designation decision because it should not affect how they will fulfil the obligations to deliver USO connections to eligible customers.*”²² We disagree with Ofcom on this point. Ofcom’s expectation to consult on funding regulations in summer 2019 does not address our concerns. Understandably BT is reluctant to commit funds without a clear view of when, and which, costs will be

¹⁵ Paragraph 7.12 of the Consultation.

¹⁶ Ofcom’s request for expressions of interest of 19 June 2018, at paragraph 3.21.

¹⁷ Idem.

¹⁸ Penalties for breach of USO conditions can be up to 10% of the relevant business turnover in the preceding financial year. Where a breach is ongoing, Ofcom can also impose daily fines (of up to £20,000). Ofcom also has the ability to require performance of USO obligations if those are not met by the prescribed deadlines.

¹⁹ Sections 3(3)(a) and 6(1) of the Communications Act 2003.

²⁰ 7.12 of the Consultation.

²¹ 7.2 of the Consultation.

²² 10.15 of the Consultation.

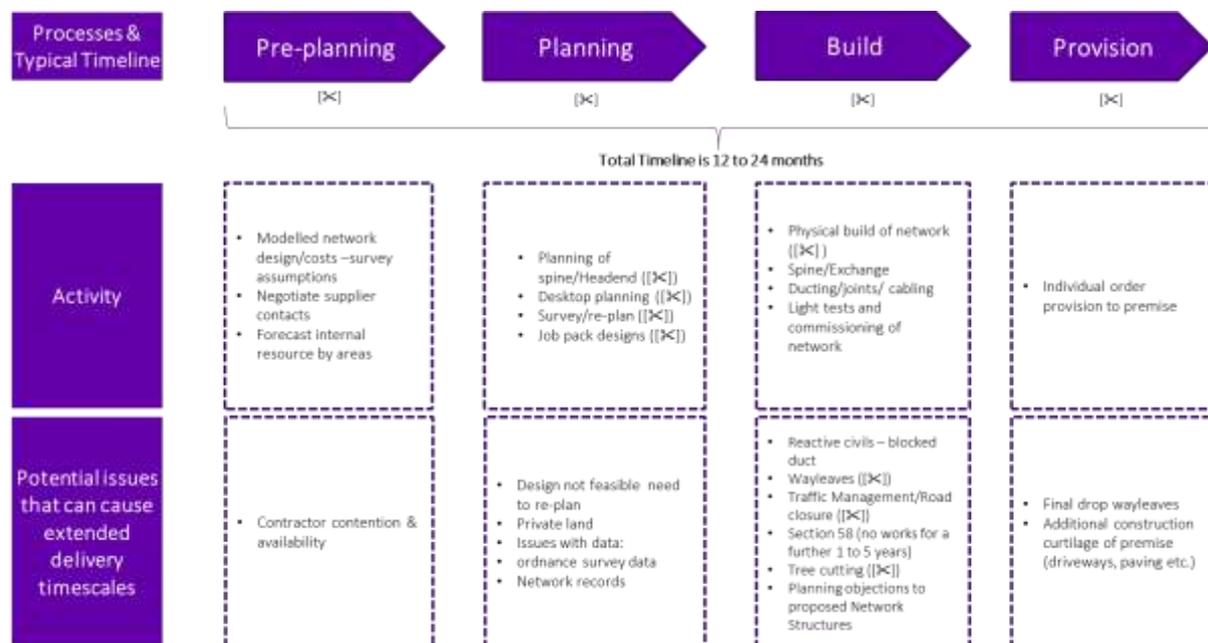
recovered. If Ofcom maintains the 12 month delivery requirement we would need to incur significant additional costs to mitigate the large risk of not meeting Ofcom’s timeline. These costs would be “efficiently incurred” because they would arise from the constraints placed on us by Ofcom. However, they would not, in our view, be in the interests of consumers.

2.73 Ofcom proposes to address some of BT’s concerns where there are exceptional circumstances. However, as we explain in our response to question 10, the proposed definition is very narrow,²³ and it would not address the potentially material number of premises where delays would not be the result of such circumstances. Ofcom seems to recognise this, when it says that “it may be necessary to provide further detail through a direction given under the universal service condition or through guidance, in which case we would expect to engage with the proposed Universal Service Providers to develop a more detailed list of what we may consider to be exceptional circumstances in practice and consult further.”²⁴ Until such time as this is clearer, we remain deeply concerned with the practicability of Ofcom’s proposals.

(ii) Our assessment of the work involved in delivering the USO

2.74 There are three phases to deploy new fixed network assets: a pre-planning phase, a planning phase and a build phase (see Figure 1 below). Once the new network is built, it will be possible to run the fourth and final phase of provision to ensure the end user has a working service/product. We have previously shared this thinking with Ofcom, but have since carried out further investigation of the timing of the different phases. Figure 1 sets out our updated view based on a detailed assessment of available evidence

Figure 1: Network Build Phases (Indicative timing based on sample of 3k BDUK FTTP projects)



²³ “Exceptional Circumstances” means any environmental factor, restriction to street access, or customer or third party wayleave process which has the following characteristics: (i) it is beyond BT’s control; (ii) it is beyond the normal range of expectations; (iii) it has a significant impact on either access or existing infrastructure that causes prolonged delay to the delivery of Broadband Services; and (iv) it is critical to the delivery of Broadband Services;” (Schedule 1, Part 2,2,q)

²⁴ 7.24 of the Consultation.

2.75 These phases do not always run smoothly and the timings above remain indicative. Many of the events that we expect to occur and result in additional delivery time are not exceptional, but an integral part of the reality of delivering infrastructure (see examples below). Given that these events can be expected to occur relatively frequently, we might not be able to rely, in many of these cases, on the exceptional circumstances provision. Therefore, if unchanged, Ofcom's proposals put BT at a disproportionately high risk of not being able to meet the prescribed delivery timeframe in all circumstances (including non-exceptional circumstances). Further, they would also create unreasonable expectations from customers, and frustration when the requested service cannot be delivered within expected timescale. This would undermine trust and engagement with the USO scheme overall.

2.76 We provide more detail below.

Pre-planning phase

2.77 Before Openreach starts any roll-out programme, either commercial or under BDUK, there is a set up period to get ready, which can vary between [3-6] months. At this point, a holistic business planning exercise is conducted across the whole programme. Specifically, for the purposes of the USO, Openreach will:

- Produce the modelled network design for the build and identify modelled costs.
- Identify relevant assumptions or adjustments that apply to the programme. This vary, and for USO it would include, for example, forecast demand assumptions and the £3,400 cost threshold.
- Negotiate and possibly agree third party supply contracts and costs for the build (for example, civils contractors). With the exception of work carried out at the exchange, all of Openreach's network labour is contracted to third parties and Openreach has a heavy reliance on suppliers being able to carry out work on its behalf. In order to deliver the USO programme we would need to agree a rate card with our contractors either as a new or as an existing supplier.
- Forecast and allocate any internal resource to ensure project delivery.

2.78 Much of this work is internal to Openreach and based on existing models and data about our network and build processes. In our experience, timescales for this stage are particularly dependent on securing external contractor resource for civils works. This may be exacerbated by the relative shortage of such resource in the UK currently, and the specific nature of many of these USO areas which are particularly hard to reach.

2.79 At the start of this stage, we would usually have a premises-level definition of what we are looking to model. It is important that we avoid including any competitor or publicly-funded network, but we do not have this visibility at present. Ofcom has indicated that it will supply bulk data (with the appropriate confidentiality protections). This pre-planning work would be helped if the data were to identify only those premises that do

not have access to a service meeting both the technical criteria and Ofcom's assessment of affordability.

2.80 The timeline from proposed designation to consumers having a right to place orders is just 5 months (+ 1 month draft notification to the European Commission). As explained above, this is less than the time we require to set up a programme of work. The earlier Ofcom can release the bulk data, the sooner we can start pre-planning for the programme. However, even if we can accelerate this process our implementation remains constrained by the speed at which we can set up the customer service point (as explained in our answer to Question 5).

2.81 One further issue that we mentioned in our response to Ofcom's call for expressions of interest,²⁵ relates to the risk of overlap and overbuild with Government support broadband build projects. We suggested there would be benefit in further coordination with Ofcom, Government and industry to better align the incentives of stakeholders who control key enablers of broadband delivery and avoid inefficient use of Government and industry resources.

Planning phase

- Planning usually takes Openreach [x<] months and includes:
- Planning of required spine fibre/route and headend capacity and associated requirements (typically [x<] weeks)
- Desktop planning work to identify likely build issues and requirements for the specific project area (typically [x<] weeks)
- Local survey work on the ground to walk the route and confirm desktop design is fit for purpose. Initiate and complete relevant re-planning if required (typically, up to [x<] weeks)
- Design and allocation of required Job packs to engineers and contractors to ensure delivery (typically [x<] weeks)

2.82 A number of issues can arise during this planning phase that may result in additional delay/rework and extension beyond the typical timescales. For example, the co-ordinates of the premises may be incorrect, or we may find walls or roads which are not reflected in Ordnance Survey (OS) data. We may also find we need to access private land to complete and confirm the design or subsequent wayleave activity. All of this may question the feasibility of the plan or require significant re-work.

Build phase

2.83 USO-eligible premises will be in some of the most challenging areas of the country, since they are the premises that have to date been deemed too expensive and most difficult to serve commercially or indeed through publicly-funded programmes. This build phase of the deployment typically takes [x<] months and includes the following key aspects:

- Physical build and deployment of new access network assets (fibre, cabinets etc.)

²⁵ See [BT's Response to Ofcom's request for expressions of interest](#)), p. 19 and 20

- Installation, deployment of new spine fibre and exchange/head end equipment and capacity
- Installation, repair, reinstatement of ducting, jointing and cabling equipment
- Testing and commissioning of new network equipment once built

2.84 If all these aspects go to plan, then [3<] months is achievable. However, there are many issues that can adversely impact the timescales for the build phase of the deployment. These include:

- The need to reactively repair blocked ducts/damaged civils (and associated street works which require permissions and traffic planning)
- The need to negotiate private wayleaves (with [3<]% typically taking > [3<] months to resolve)
- Traffic management/road closure notice periods variation (this requires [3<] weeks' notice in some areas)
- Restrictions on new works (e.g. no new works permitted for 1 – 5 years)²⁶
- Tree/branch clearing (typically [3<] month)
- Planning objections to new structures by local authority or landowner

2.85 We have analysed c.3k FTTP projects delivered from January 2017 to January 2019 to assess how long the build period typically takes. We found that c. [3<]% of FTTP projects completed the build stage (after the [3<] month planning stage) within [3<] months and around [3<]% completed within [3<] months. In this study [3<]% of the project were in rural exchanges whereas, in the case of USO [3<]% of the c40k²⁷ premises that would be eligible below the £3,400 threshold are in rural exchanges. We expect, therefore, that USO build will be more challenging.

The parallel with BDUK is not an appropriate comparator for delivery

2.86 Ofcom notes that the Government has recognised that in the context of publicly funded roll-out schemes there are good policy reasons why consumers may need to wait to receive connections “*but this period has been limited to 12 months*” (para 7.12). Ofcom goes on to argue that it would be inconsistent with the terms of the Order if Ofcom were to proceed on the basis that consumers could be expected to wait longer.

2.87 However, we do not think that publicly-funded programmes (such as BDUK) are an appropriate comparator for the 12 month delivery element, because it ignores a number of factors that are relevant:

- BDUK projects are agreed in advance with significant modelling and pre-planning based on pro-active roll out. For this reason, they are designed on the basis of the

²⁶ Section 58 of the New Roads and Streetworks Act.

²⁷ This estimate will be reviewed and updated prior to actual delivery of the broadband USO, and will be based on Ofcom's estimate of premises eligible for the broadband USO. The c40k figure was based on initial modelling by BT Group (c40k number quoted in [BT's Response to Ofcom's request for expressions of interest](#)) and as we expect the actual number of premises that receive the USO to change from this initial estimate.

most efficient roll out possible. Ofcom's proposed timetable does not take the modelling and pre-planning into account.

- Typically BDUK contracts would be delivered over many years, rather than 12 months.
- BDUK contracts are contained within a geographically defined area, usually local councils or partnerships of adjacent councils. This means we are often negotiating with a single supplier for an area or council. By contrast, under USO we will need to work across all councils and suppliers which will have variances in their flexibility (for example, different permit schemes).
- Local authorities are also responsible for planning, street works and traffic management. This can help ensure that any obstacles in BDUK programmes are solved smoothly. Such a direct linkage is not immediately apparent in the case of USO deployments.
- BDUK projects contain contract mechanisms to adjust delivery timing, and survey assumptions and relief events to deal with the operational challenges identified above. By contrast, exceptions for USO timescales are proposed to be narrowly construed to "*exceptional circumstances*".

2.88 In summary, we do not believe that Ofcom's timescales for delivery are reasonable, achievable or supported by evidence from BDUK funded comparator projects. We understand the importance of delivering the USO quickly. However, even by incurring significant additional costs, we will not be able to meet these timescales. This risks disappointing large numbers of customers and undermining trust and engagement with the USO scheme overall. We urge Ofcom to re-consider this condition and propose a more realistic timescale. We are keen to continue to work with Ofcom to agree a framework that provides the necessary reassurance to Ofcom and Government that BT is committed to a timely USO build.

(iii) Alternative proposals

2.89 We recognise and support Ofcom's objectives to ensure that USO connections are delivered speedily and to all eligible premises (below the £3,400 threshold) and have therefore considered ways in which we can help achieve these objectives. We set out below proposals which we consider proportionate to achieving Ofcom's aims:

- 1) We will aim to deliver the majority of connections (excluding those subject to exceptional circumstances) within 12 months of a confirmed customer order;
- 2) In the event that an order cannot be met within 12 months, we will give reasons to the customer and provide an indication of the expected delivery date;
- 3) We will commit to deliver all connections (except those subject to exceptional circumstances) within 24 months;
- 4) Ofcom should also provide USPs with information on eligible premises that specifically identifies those premises that cannot receive an affordable product consistent with the technical criteria.

2.90 **We propose that** Ofcom amends draft condition C5 as follows:

“Unless Exceptional Circumstances have arisen, BT must provide a Broadband Service to an Eligible USO Customer who has placed a Confirmed Order as soon as reasonably practicable and, in any event, no later than the period of 24 months, from the date on which the Eligible USO Customer placed the Confirmed Order, with the majority of cases no later than the period of 12 months, from the date on which the Eligible USO Customer placed the Confirmed Order.”

Question 10: Do you agree with our proposals on how exceptional circumstances should be defined and operate?

2.91 BT will endeavour to minimise, anticipate and avoid delays in the delivery of the USO, but the reality is that these will be complex civil engineering projects. Ofcom proposes an exception to the timetable when there are exceptional circumstances outside the control of the USP. We find the definition set out in Schedule 1, Part 2,2.q too narrow and welcome further discussion of a workable approach to what such “exceptional circumstances” are likely to be in practice. Wayleaves is a case in point. Openreach data shows that out of a sample of 2002 wayleaves, only c. [3<] % were successfully granted, with around [3<] % of those taking longer than [3<] months.

2.92 We anticipate that USO will require build in hard to reach areas. Given the similarity in build environment between rural build contracts under BDUK and the USO, it is reasonable to expect that there will be at least as many issues with delivery in USO areas as in other funded areas. It is common to find that BDUK contracts change during the lifetime of a project. At the moment, [3<] % of current contracts have change requests in progress. This means that something material is going to change either as a result of high cost or delivery issues (Openreach would in such cases agree to postpone dates, remove premises, cancel projects, or include additional work).

2.93 For these reasons, and as each project is unique, it is very difficult to establish at a specific project level what a reasonable timeline would be, and to define what is “exceptional”. The only certainty is that the more remote the build, the more complexity we are likely to encounter and the longer it can take.

2.94 Having said this, BDUK is the best comparator to agree exceptions to the timetable. In particular, we consider that the experience Openreach, local authorities and DCMS and BDUK have gained with the concept of “relief events” for BDUK builds is helpful when considering unexpected or unplanned delays in similar build projects under USO and could be a useful starting point. Although each sub-set of a USO project will be smaller in total volume than a typical BDUK contract (as projects will be geographically spread throughout the UK) they will still face all of the potential challenges described above that a commercial roll out or an equivalent BDUK bid would face – causing delays to even the smallest of sub-projects.

What happens if delivery turns out to be excessively costly or not possible?

2.95 Ofcom notes that even in those limited exceptional circumstances, the USP should still be subject to a requirement to deliver USO connections within a set time to ensure that

consumers do not wait indefinitely, and that they are kept regularly informed of progress.

2.96 As we noted in our response to Question 5, there may be some cases which end in deadlock and where the only option is to cease the project. This could be either because of excessive costs or unavoidable barriers that were unforeseen at the point where an initial assessment of eligibility was made on the basis of a cost estimate. Taking each of these in turn, and building on our experience with BDUK roll out:

- Excessive costs: these usually occur due to the need to carry out additional civils, complex power or traffic management.
- Unavoidable barriers: these are wayleaves that are not resolved, finding that there is nowhere to site the equipment (e.g., in the case of FTTC we need to place the fibre cabinet within 100 metres of existing copper cabinet, but if there is no location due to, for instance, shallow utilities, the solution is technically not deliverable against the plan).

2.97 We expect these to be rare.²⁸ That said, we expect such cases to occur and Ofcom needs to account for this eventuality and allow for some break out clauses. We propose using current BDUK contract clauses as a template.

2.98 Alternatively, as a minimum, we propose that Ofcom changes the proposed definition as follows:

“Exceptional Circumstances means any environmental or other factor, restriction to street access, or customer or third party wayleave process which has the following characteristics: (i) it is beyond BT’s control; (ii) it has a significant impact on either access or existing infrastructure that causes prolonged delay to the delivery of Broadband Services; and (iii) it is critical to the delivery of Broadband Services”

²⁸ For example, between October 2018 and January 2019 Openreach recorded [3<] publicly funded projects where they agreed with funding partners to cancel work either because of excessive costs or unavoidable barriers.

Question 11: Do you agree with our overall approach to ensuring USO connections and services are affordable, specifically on:

a) our proposal to introduce a two-part obligation imposing (i) an equivalent pricing requirement, and (ii) a safeguard cap; and

b) setting the level of a safeguard cap at £45 per month (including VAT, averaged over the fixed commitment period, including any upfront connection charges, monthly payments and other broadband charges)?

2.99 [See answer to Question 4 above]

Question 12: Do you agree with our proposal to ensure that USO customers receive at least the same quality of service as non-USO customers?

2.100 Yes, we agree with the principle that USO customers should receive the same quality of service as non-USO customers, but we find the requirement in C.8 of the Legal Instrument²⁹ is unnecessary.

2.101 Our solution plans to deliver fixed broadband services within the broadband USO that will use standard Openreach products. Broadband circuits used to deliver the USO will be therefore indistinguishable from any other broadband service once installed, and have the same quality of service as non-USO products. These Openreach products already have published KPIs which are designed to allow transparent monitoring of quality of service that are set as part of the WLA market review (and FTTC products in addition also have SLAs and SLGs).³⁰ Hence all broadband USO services will have the same quality of service that Openreach currently deliver to all of their CPs. Indeed USO customers will be distributed all over the UK but will be a small sample size relative to the rest of the broadband base. Although we understand that Ofcom wants to ensure compliance, we do not see the need to monitor specifically the quality of service, fault repair or missed appointments of broadband USO services separately from non-USO services.

2.102 The specific reporting requirements in Part 3: Direction 1.c. iv and v and Direction 2, including Annex 1, are also unnecessary as these relate to standard provision and fault repair timelines.³¹ This is not in line with the USO requirements, which are broken down into network build and then normal provision and repair processes. The reporting on the latter will be the same as standard products and it will be measured separately by Openreach.

2.103 Finally, the voluntary auto-compensation scheme applies to fixed broadband products and will also be triggered by services within the USO in the same way as it currently does throughout the UK i.e. once the fixed broadband network is built the provision and

²⁹ Delivering the Broadband Universal Service, Proposal for designating providers and applying conditions, A6. Legal Instruments, Schedule 1, Part 3: Conditions.

³⁰ Ofcom Quality of Service for WLR, MPF and GEA: Statement, Statement on quality of service remedies https://www.ofcom.org.uk/_data/assets/pdf_file/0007/112210/statement-qos-wlr-mpf-gea2.pdf

³¹ Delivering the Broadband Universal Service, Proposal for designating providers and applying conditions, A6. Legal Instruments, Schedule 2, Part 3: Direction, 1.c, iv and v.

service journeys for USO/non-USO broadband services are indistinguishable and so auto-compensation will apply in the normal way.

Question 13: Do you agree with our proposed approach to complaints handling and dispute resolution?

2.104 We agree that normal complaint handling and dispute resolution processes should apply.

2.105 We note though that the USO service environment is new, unknown, and includes several steps, each of which could be challenged by customers. We also recognise that a significant proportion of customers may not be able to get service under the cost threshold, which risks generating a large number of complaints due to disappointment and misunderstanding of the complexity of the broadband USO scheme.

2.106 We want to ensure a satisfactory experience and plan to provide the UBSG with clear guidance on when to reject customer enquiries and when to refer them to the ADR process. At the moment the consultation only envisages disputes when the consumer challenges BT, but this could be on the basis of data that Ofcom has provided. It does not seem appropriate for BT to defend Ofcom's data as part of an ADR process. These cases should go back to Ofcom.

2.107 Given this will be a new service environment, we consider that it is appropriate for complaints to be recorded separately and outside of our main business units (we already record BT, EE, and Plusnet complaints separately), and for these to be reported separately to Ofcom. This will assist Ofcom in ongoing monitoring of the USO and will also help focus on specific issues relating to USO complaints, which would otherwise be lost in an aggregated view. We ask Ofcom to treat these also separately from their quarterly publication.

Question 14: Do you agree with our proposal to approve the two Alternative Dispute Resolution schemes currently approved under the General Conditions (Ombudsman Services: Communications and the Internet Services Adjudication Scheme) for resolving disputes in relation to the USO?

2.108 Yes, we agree.

Question 15: Do you agree with our proposed approach to how the Universal Service Providers should report on their performance and maintain records?

2.109 We agree that the USP should report on its performance and maintain records. However, we consider that the current proposals, in particular those in the Direction in Schedule 2 of the draft legal instruments, are unnecessarily detailed.³²

2.110 We are still in the process of designing our database and systems for the UBSG, which involves new steps and interfaces and are still considering the specifics of how the

³² For example, the obligation to provide "the number of Broadband Services delivered in each month within the following periods from the dates on which Confirmed Orders were placed: 0 up to and including 3 months; more than 3 months up to

broadband USO process could be delivered. This on-going development, and any final designation proposals, may bring about different aspects of monitoring and reporting. The design and operation of the scheme will take time, and it is premature to over prescribe performance and record keeping obligations at this stage.

2.111 We agree that a general requirement is appropriate but a detailed, and prescriptive approach is unnecessary and risks setting in place obligations which are not needed. The proposals, if accepted in their current form, would lack flexibility to allow BT to reflect such developments, and may require another consultation. Moreover, the more granular the requirements, the greater the resources we expect may be needed to build and maintain our systems and processes. For example, keeping customer records for 6 years is beyond BT's standard retention period (2 years).

2.112 We therefore suggest that at this stage, Ofcom sets out more limited reporting requirements, at a less granular level, leaving any further detailed reporting requirements for later. Preferably we propose that Ofcom should exclude the draft Direction in Schedule 2 from the final statement, or alternatively set it out as guidelines.

2.113 Should Ofcom decide to keep Schedule 2, then we propose that the Direction in Schedule 2 is amended to (i) limit it to the key requirements necessary to achieve Ofcom's objectives and (ii) to allow for a transition period of 12 months.

2.114 At a minimum we consider that the draft Direction in Schedule 2 should be amended as follows:

- Paragraph 1(c)(ii) should be deleted as the requirement is covered by 1(c)(i) together with 1(c)(iii)
- Paragraphs 1(c)(iv) and 1(c)(v) should be deleted as the requirements are covered by Openreach KPIs as explained above
- Paragraph 2 and Annex 1 to schedule 2 should be deleted as the proscribed format is unnecessary for BT to provide this information
- Paragraph 3 should be amended so that it only takes effect after a transition period of 12 months and that the specific requirements will be agreed with Ofcom prior to it taking effect
- Paragraph 4 should be amended to reflect the transition period mentioned above

and including 6 months; more than 6 months up to and including 9 months; more than 9 months up to and including 12 months; more than 12 months up to and including 18 months; more than 18 months up to and including 24 months; and more than 24 months;" Delivering the Broadband Universal Service, Proposal for designating providers and applying conditions, A6. Legal Instruments, Schedule 2, Part 3: Direction, paragraph (1)(c)(ii). Or the requirement that *"Provision of information to Ofcom under paragraph 3 of this Direction shall be effected by sending an email to a person designated by Ofcom, in the form notified by Ofcom from time to time."* Delivering the Broadband Universal Service, Proposal for designating providers and applying conditions, A6. Legal Instruments, Schedule 2, Part 3: Direction, paragraph 6.

Question 16: Do you agree with our approach to how Ofcom should report and monitor delivery of the USO?

2.115 We agree that 6 monthly reporting, as proposed by Ofcom, provides the right balance between administrative efficiency and delivering timely and quality insight into USO performance.

Question 17: Do you agree with our proposed approach to require Universal Service Providers to maintain accounting records?

2.116 We agree with Ofcom that it is important that USP's records are complete so that verification by Ofcom can be swift. We would like to discuss with Ofcom the exact records to be kept for this purpose and the form of auditable trail between source documentation (invoices, timesheets, vouchers etc.) and the costs claimed, to ensure that records are limited to what is necessary for the purpose of demonstrating BT's compliance with the Conditions and supporting any BT's request for compensation.

2.117 We have three particular concerns:

- 1) Ofcom proposes that the USP must record costs on a historical cost accounting ("HCA") basis (draft Condition F.2) because this is "*a more transparent and easier way to understand the calculations within a net cost claim and to carry out a verification exercise against invoices and source documentation*" (paragraph 9.28(c)). However, the recording of the incurred costs themselves does not require the specification of any specific accounting convention. HCA and CCA (the alternative accounting convention) differ in how they depreciate costs over time, which is a different issue to verification against invoices and source documentation. As set out in Section 3 below, we do not think Ofcom needs to become involved in depreciating assets to implement a fund.
- 2) Ofcom expects that "*As a minimum...such records should be sufficient to demonstrate that...c) such costs were incurred efficiently.*" (9.43(c)). Records will not by themselves confirm that such costs have been incurred efficiently, and we do not agree that our record keeping can itself confirm this. BT does accept, however, that Ofcom will need to ensure that BT has addressed the USO obligation in an efficient manner and that confirmation of this will be needed. We are happy to discuss this further with Ofcom.
- 3) Ofcom also states they expect BT "*to record information about counterfactual scenarios*" (9.53). We would like to understand exactly what Ofcom means by this and what is expected of BT as we do not record the costs and revenues of an alternative business.

2.118 We would propose that cash costs should be the basis used for measuring USO costs and that these are submitted every 6 months from date of designation.

3 Additional Observations on Cost Recovery

Introduction

3.1 As Ofcom sets out in paragraph 9.21 the key funding principles are that:

- only the net cost of providing the USO can be compensated;
- for a net cost to be compensated, Ofcom must decide that it is an unfair burden on the Universal Service Providers;
- if an unfair net cost burden exists, Ofcom is required to set up an industry fund to compensate the Universal Service Providers for that unfair burden; and
- compensation from an industry fund would be retrospective.

3.2 We note in addition that:

- under the USD it is for Ofcom to calculate the net cost and finance the net cost of universal service obligations where they can only be provided at a loss or at a net cost which falls outside normal commercial standards, not just to decide if it represents an unfair burden on the Universal Service Providers;
- where universal service obligations can only be provided at a loss or at a net cost falling below normal commercial standards, the net cost burden will be unfair;
- the USD provides for the net cost of the universal service obligation to include a reasonable profit;
- Ofcom has discretion over the timing of payments from a fund (i.e. the extent of retrospectivity); and
- the legislation does not specify any specific design of a funding mechanism (except that it respects the principles of transparency, least market distortion, non-discrimination and proportionality).

We need confidence in the arrangements for cost recovery before we can commit funds to prepare for the USO

3.3 BT has already explained to Ofcom that, as the proposed designated provider, our ability to commit resources sooner rather than later to ensure smooth and speedy implementation and delivery of a broadband USO critically depends on having more certainty about the arrangements for cost recovery. We think this is also important to ensure clarity for other communications providers that will be expected to contribute to the funding of USO.³³

3.4 In response to Ofcom's call for expression of interest, BT sought clarity from Ofcom in particular on:

- (i) which costs would be included in the £3,400 cost threshold
- (ii) whether the USP could presume a net cost burden

³³ We recognise that BT is a significant industry player and will of course need to contribute a fair share

- (iii) when the USP would receive payments from the fund; and
 - (iv) whether the USP would be compensated for premises that are not in the Ofcom database or that are subsequently revised to have coverage from a third party.
- 3.5 In its designation proposals, Ofcom provides some clarification on the costs that it believes need to be included in the calculation of the £3,400 per premise threshold. As explained in our response to questions 5 and 6 we have some outstanding concerns with the narrow interpretation of the USO Order adopted by Ofcom. Ofcom also sets out its view on the direct costs categories and we provide our views on this in response to Question 17. It is important that the USP and Ofcom agree these in advance of designation.
- 3.6 Ofcom also confirms that the USP needs to bear the upfront costs of delivering USO, and that any compensation would occur retrospectively. BT understands this. BT also welcomes Ofcom's recognition that the USP should receive appropriate compensation to reflect the time value of money for the delay between the costs being incurred and when the USO fund reimbursement is paid.
- 3.7 However, we disagree with Ofcom's view that it is constrained in the level of certainty that it can provide in relation to whether the cost would be net burden, and the fact that this should be deemed unfair, on the grounds that the quantification of the net burden is yet to will be determined by factors that remain uncertain.
- 3.8 There is nothing to prevent Ofcom, using information provided by the USP, building a high level broadband universal service business case based on estimated forecast wholesale input costs, other avoidable downstream costs and end-user revenues to estimate in advance the net cost burden, taking into account a reasonable profit, of providing the service.
- 3.9 The net cost calculation is for Ofcom to conduct, and whilst a firm decision to implement a cost sharing scheme may not be possible at this time, Ofcom should nevertheless signal its likely course of action based on information it already has and clarify what principles it will use and how it will determine reasonable assumptions to assess the net burden.
- 3.10 It is clear BT will incur significant capital expenditure in the delivery of USO, with limited potential revenue.
- 3.11 Our investment in USO covers fixed network build and the set-up and running costs of the Universal Broadband Support Group is likely to be in excess of £[3<].³⁴ We see limited potential for revenue benefit from this investment.
- 3.12 First, the up-front cost is offset by the net value of supplying extra USO customers. The following elements must be considered when quantifying this:
- (i) BT is only guaranteed a contract for the initial contractual period of the USO customers

³⁴ Excludes FWA investment as this is outside of the USO on a commercial basis. As per our consultation response based on [3<] % take up

- (ii) Up-front retail costs are incurred to supply service to new broadband customers:
 - a) cablelinks from the Openreach network
 - b) connection cost from the distribution point to the customer premises (equivalent to the drop wire or underground cable in the copper network) to the extent not included in the network build costs
 - c) Customer Premises Equipment such as a home hub

3.13 These upfront costs should be included in Ofcom's calculations and are likely to mean the first year retail value, in cash terms, is likely to be small. After the first year, the USO customers are free to migrate to other broadband suppliers (a benefit to CPs which should be taken into account when fund contributions are set). Whilst BT will have continued benefit at the Openreach layer of an additional wholesale customer, these services are largely provided on regulated prices so the margin at the access level is small.

3.14 Second, the customer base is small (we estimate that fewer than c40k³⁵ premises will get service through USO). Ofcom's proposed approach to demand aggregation assumes a 70% take-up and in many cases we are likely to extend our network well before this demand has materialised. Our experience in BDUK roll out suggests a take up curve of [30-40]% over 5 years. In some cases, take-up will never reach the expected level. This will expose BT to significant up-front costs and any associated revenues could take several years to build up.

3.15 We note also that all CPs will gain from being able to sell to extra customers and all retail suppliers be able to position themselves as providing universal coverage. The USO does not give BT a unique market presence.

3.16 Overall, we consider the market benefits from serving additional customers are likely to be a small percentage of the costs incurred once the up-front costs are taken into account and the fact that customers are free to choose suppliers other than BT after the initial contract period.

There are no intangible benefits

3.17 We have also considered whether there may be any indirect benefits (e.g. brand benefits) that need to be taken into account when the net burden is assessed. This approach was used in the past for the telephony USO. We have undertaken some market research on the potential impact on BT brand as being the Universal Service Provider and shared this with Ofcom. It shows no difference in the perception of the brand as a result of the USO. Further, we do not consider it plausible that non-USO

³⁵ This estimate will be reviewed and updated prior to actual delivery of the broadband USO, and will be based on Ofcom's estimate of premises eligible for the broadband USO. The c40k figure was based on initial modelling by BT Group (c40k number quoted in [BT's Response to Ofcom's request for expressions of interest](#)) and as we expect the actual number of premises that receive the USO to change from this initial estimate.

customers will change their behaviour, to BT's gain, because BT has been designated a USO provider.³⁶

3.18 With the broadband USO we want to ensure a positive consumer experience for eligible customers during the order journey. As explained in our response to Question 8, it will be far more effective to raise awareness with targeted marketing, with a focus on eligible consumers and to manage the expectations and volumes of calls of those who do not qualify for the USO. We therefore expect any indirect benefits from the marketing of the USO will be minimal.

3.19 Rather, we see considerable brand risks from being the Universal Service Provider. The long lead times associated with network build may lead to negative publicity – reinforcing the importance of communications by Ofcom and/or Government – and possibly the loss of customers through direct referral to competitors.

Cost recovery over time: the net cost calculation should be truncated

3.20 A key further issue is how costs are to be recovered over time. BT suggests that net costs are recovered on a cash accounting basis so there is not a long delay between costs being incurred and recovered by those obligations designated as fulfilling government policy. This would also ease the administrative burden on Ofcom as explained below.

3.21 One way the scheme could work is via an annual assessment of the USO net costs, as set out schematically in the table below (which assumes all capital costs are incurred by Year 4). Among other things, this requires Ofcom to determine a depreciation methodology for the assets; to set a ROCE; to opine on efficiency; to confirm in-year opex and the margin on services supplied as well as any "*intangible benefit*".

³⁶ We note further that, under a funding regime, suppliers who pay into the fund will be able to supply new customers, earning for themselves some offset against their fund contributions.

Schematic of USO funding on an annualised cost basis

Year	Capital costs	Depreciation	ROCE	Opex	Service Margin	Intangible Benefit	Net Cost
	A	B	C	D	E	F	B+C+D-E-F
0	£X	£X	£X	£X	£X	£X	B+C+D-E-F
1	£X	£X	£X	£X	£X	£X	B+C+D-E-F
2	£X	£X	£X	£X	£X	£X	B+C+D-E-F
3	£X	£X	£X	£X	£X	£X	B+C+D-E-F
4	£X	£X	£X	£X	£X	£X	B+C+D-E-F
5	0	£X	£X	£X	£X	£X	B+C+D-E-F
6	0	£X	£X	£X	£X	£X	B+C+D-E-F
7	0	£X	£X	£X	£X	£X	B+C+D-E-F
8	0	£X	£X	£X	£X	£X	B+C+D-E-F
9	0	£X	£X	£X	£X	£X	B+C+D-E-F
10	0	£X	£X	£X	£X	£X	B+C+D-E-F
11	0	£X	£X	£X	£X	£X	B+C+D-E-F
12	0	£X	£X	£X	£X	£X	B+C+D-E-F
13	0	£X	£X	£X	£X	£X	B+C+D-E-F
14	0	£X	£X	£X	£X	£X	B+C+D-E-F
15	0	£X	£X	£X	£X	£X	B+C+D-E-F
16	0	£X	£X	£X	£X	£X	B+C+D-E-F
17	0	£X	£X	£X	£X	£X	B+C+D-E-F
18	0	£X	£X	£X	£X	£X	B+C+D-E-F
19	0	£X	£X	£X	£X	£X	B+C+D-E-F
20	0	£X	£X	£X	£X	£X	B+C+D-E-F
21	0	£X	£X	£X	£X	£X	B+C+D-E-F
22	0	£X	£X	£X	£X	£X	B+C+D-E-F
23	0	£X	£X	£X	£X	£X	B+C+D-E-F
24	0	£X	£X	£X	£X	£X	B+C+D-E-F
25	0	£X	£X	£X	£X	£X	B+C+D-E-F

3.22 We believe this approach would be excessively complex and onerous and would create a long term and potentially bureaucratic burden to implement. The USO is to be delivered relatively quickly and the nearly all the costs incurred at the scheme outset, and this does not justify such long term (and potentially complex) regulation. Instead, funding could be recovered over the next 3-4 years, on a cash cost accounting basis ('Pay as you have Built'). This requires much less information as in the schematic table below. Such cost recovery will have a 'true-up' in Year 4 representing a final settlement based on a calculation of the residual of on-going revenues and costs from USO customers (i.e. a terminal value for on-going benefits).

Schematic of USO funding on a cash accounting basis

Year	Capital costs	Depreciation	ROCE	Opex	Service Margin	Intangible Benefit	Net Cost
	A	B	C	D	E	F	A+D-E-F
0	£X			£X	£X	£X	A+D-E-F
1	£X			£X	£X	£X	A+D-E-F
2	£X			£X	£X	£X	A+D-E-F
3	£X			£X	£X	£X	A+D-E-F
4	£X			truncated	truncated	truncated	A+D-E-F

3.23 This approach is much simpler and ensures reimbursement to BT over a much shorter timeframe. The delay between BT spend and USO fund reimbursement should attract interest, with the rate set by Ofcom. Prompt reimbursement will align the operation of a USO fund with the BDUK regime where costs are reimbursed immediately after being incurred (taking into account the right for the subsidised operator to make a reasonable profit). USO capital assets would thus be recovered directly, and then kept separate from future Market Reviews and any price controls (although uniform prices would continue to apply). As a small number of premises might be connected outside the cost sharing period (five years in the example), Ofcom could keep a small reserve in the fund to cover costs falling outside the period.

3.24 This approach simplifies the main issues to be addressed down to (i) the level of service margin and the assessment of the truncated value (the estimated future value of on-going margins on a Present Value basis) and (ii) the intangible benefit to be assumed i.e. columns D-F (which, under the USD, Ofcom are required to assess). We provide some brief comments on these issues below. Our suggested methodology is, we believe, consistent with the USD and forthcoming EEC Code. The truncated values of the table above will be small and any imprecision will be due to the assumptions made. The use of assumptions as a basis for regulatory decision-making is, and has been, widespread and would not be unusual in any way.

We need confirmation from Ofcom that costs in the range of £[<] - £[<] will be deemed unfair

3.25 Ofcom can already express a view of the level of net cost that would constitute an unfair burden on BT. We suggest a total threshold of £[<] and above. It would be helpful if Ofcom could give guidance on this. Indeed, the Government's expectation is that delivery would be an unfair burden:

“Government has already committed considerable public spending on superfast broadband and improving connectivity, and an industry fund would ensure that the USO would be financed in the absence of additional public funding to support it.” [...] “Given continued pressures on public funding, and the substantial investments to date and committed in future, the Government remains of the view that the USO should be funded by industry. The cost-sharing mechanism which is to be designed by Ofcom should

*provide sufficient funding without overly burdening industry or any single provider (emphasis added).”*³⁷

- 3.26 BT’s estimate is that the USO will involve capital costs of circa £[<] - £[<]. This is commensurate to the cost of a large BDUK programme and BT was not expected to deliver such programmes without government funding. Ofcom has already set out the considerations about how a funding scheme could work over 2 years ago in its December 2016 “*Technical advice to UK Government on broadband universal service.*”³⁸ Whatever the exact net cost, we consider it evident that the USO will impose an unfair burden on BT and that the lack of a fund would entail market distortion and discrimination (the absence of a fund is, in effect, an implicit fund which BT contributes 100%).
- 3.27 For this reason, BT seeks confirmation from Ofcom that costs of circa £[<] - £[<] will be deemed to be an unfair burden on BT and that a funding mechanism should be implemented now which sets out how USO costs will be shared with other industry participants. Ofcom could also clarify that fund payments should be based on cash cost accounting, as already used by BDUK programmes, with the size of the reimbursement determined following verification by Ofcom of actual costs incurred.

Ofcom is best placed to raise fees and administer the cost recovery scheme

- 3.28 There are a range of ways in which a cost-sharing mechanism might be implemented in terms of raising revenue. Ofcom should set out now how such a mechanism will work assuming that there is found to be a net cost. Ofcom has experience in such matters in setting fees payable by Communications Providers to cover its own costs (including, we note, increases to cover the incremental costs to Ofcom of the Broadband Universal Service Obligation).
- 3.29 In conclusion, BT considers that Ofcom is already aware of the approximate cost of the USO on BT. Given that there are only limited market and intangible benefits, Ofcom could give an indicative assessment on whether there is likely to be an unfair burden on BT, subject to full verification of recorded spend and estimates of future benefits. It is also opportune for Ofcom to set out how such a cost would be recovered. We urge Ofcom to provide clarity on how it envisages the operation of the cost recovery mechanism in practice, as soon as possible, and ideally in conjunction with the statement on designation this summer. As part of this, we would like Ofcom to set out the expected timing of when reimbursement might commence.

³⁷ DCMS “*A new broadband Universal Service Obligation: Government’s response to consultation on design*” 28 March 2018 pages 52 and 54.

³⁸ “*Achieving decent broadband connectivity for everyone: Technical advice to UK Government on broadband universal service.*” Ofcom statement December 2016
https://www.ofcom.org.uk/_data/assets/pdf_file/0028/95581/final-report.pdf

4 Other Issues

4.1 The following table addresses the issues we have identified in the legal instruments that we have not addressed earlier in our response document.

Legal Instrument - Schedule 1

Ofcom Proposal	BT Proposed Changes	BT Comments
Part 2: Definitions and Interpretations		
Part 2 (2) (ee): <i>“Telephony Service” means either or both a connection at a fixed location to the Public Communications Network and access to Publicly Available Telephone Services, including the ability to make and receive calls and facsimile;</i>	Delete the words “and facsimile” at the end: <i>“Telephony Service” means either or both a connection at a fixed location to the Public Communications Network and access to Publicly Available Telephone Services, including the ability to make and receive calls and facsimile;</i> Or, alternatively add the words <u>“where feasible”</u> at the end: <i>“Telephony Service” means either or both a connection at a fixed location to the Public Communications Network and access to Publicly Available Telephone Services, including the ability to make and receive calls and facsimile <u>where feasible</u>;</i>	This definition is relevant to draft Condition A.2 (following revocation of Telephony Condition 1.1 applied to BT as set out in Part 2 of the 2003 Notification). We consider Ofcom should update the definition by removing facsimile. The extension to fax is no longer justified in light of the availability of additional ways for sharing documents since the 2003 Notification, and is disproportionate in the context of IP voice services
Part 2 (2) (gg): <i>“USO Customer” means an End-user who has requested a Broadband Service from BT including Eligible USO Customers;</i>	Definition of ‘End-User’ required.	USO customer clause refers to an end-user but there is no definition of an End-user in the Definitions section.
Part 3: Conditions		
Part 3 (section 2) (G1): <i>In respect of any information which is either provided by Ofcom to BT for the purpose of performing its obligations under these Conditions or</i>	<i>Amend the clause as follows:</i> <i>In respect of any information which is either provided by Ofcom to BT for the purpose of performing its obligations under these Conditions or</i>	The restriction on BT using our own information is wrong and should be removed

<p><i>otherwise collected by BT in connection with performing its obligations under these Conditions, BT must:</i></p> <p><i>a) ensure that such information is used only for the purpose of performing its obligations under these Conditions; and</i></p> <p><i>b) put in place measures to prevent access to such information by any employee or agent of BT who is not directly involved in any matters relating to BT's obligations under these Conditions.</i></p>	<p><i>otherwise collected by BT in connection with performing its obligations under these Conditions, BT must:</i></p> <p><i>a) ensure that such information is used only for the purpose of performing its obligations under these Conditions; and</i></p> <p><i>b) put in place measures to prevent access to such information by any employee or agent of BT who is not directly involved in any matters relating to BT's obligations under these Conditions.</i></p>	
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