

A6. Proposed modifications under sections 45 to 48 and 48A of the Communications Act 2003 of Universal Service Conditions contained in Ofcom’s notification of 6 June 2019

Background

- 1) On 28 March 2018, the Secretary of State made secondary legislation¹ to extend the universal service to broadband connections and services.² Ofcom designated BT and KCOM as broadband universal service providers on 6 June 2019, and imposed universal service conditions (the “**Conditions**”) on them to secure the implementation of the universal service.³ On 20 March 2020, the broadband universal service was launched, and the Conditions, which require BT and KCOM to deliver the connections and services under the Conditions (“**USO connections and services**”) to eligible consumers, came into force. Since this date, customers have been able to request a USO connection and service from BT and KCOM if they cannot receive affordable broadband services with speeds of at least 10 Mbit/s and upload speeds of at least 1 Mbit/s (among other technical parameters).
- 2) Since the Conditions came into force, Ofcom has become aware of the evidence which shows that where the cost of a USO connection is very high, and excess costs of providing that connection by BT are more than £5,000 excluding VAT above the reasonable cost threshold of £3,400, there is a risk of there being a disproportionate impact on the costs of funding of the broadband universal service. Ofcom is therefore proposing to make some small, technical modifications to the Conditions imposed on BT in order to mitigate the identified risk.

Proposals to modify certain Conditions and definitions

- 3) Ofcom is giving notice of its proposals, in accordance with section 48A of the Act, to modify Condition B.11 imposed on BT and the definitions used for the purposes of this Condition. The proposed modifications, and the justification for them, are set out in a consultation document entitled “Approach to excess costs under the broadband universal service; Proposed modification to the Universal Service Conditions” which accompanies this notification.

¹ The Electronic Communications (Universal Service) (Broadband) Order came into force on 23 April 2018.

² In 2003, the Secretary of State also made an Order under section 65, the Electronic Communications (Universal Service) Order 2003. That Order set out that publicly available telephone services and other specified services must be provided, made available or supplied throughout the UK.

³ Ofcom designated two universal service providers: KCOM for the area of Hull; and BT for the rest of the UK. This is set out in the Notification of the Designation of BT and KCOM as Universal Service Providers and the imposition of the specific universal service conditions.

- 4) The proposed modifications are set out in the Schedule to this notification. If adopted, these modifications would replace the corresponding provisions set out in the 2019 Notification. It is proposed that the modifications take effect from the date of any notification under section 48(1) of the Act adopting the proposals set out in this notification.

Making representations

- 5) Representations may be made to Ofcom about any of the proposals set out in this notification and the accompanying consultation document by no later than 10 September 2021.

Ofcom's duties and legal tests

- 6) Ofcom considers that the proposed modifications set out in this notification meet the tests contained in sections 47(2) of the Act in that they are objectively justifiable, not unduly discriminatory, proportionate and transparent.
- 7) In making the proposals referred to in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six requirements in section 4 of the Act.
- 8) In making the proposals referred to in this notification, Ofcom has also had regard to the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services designated by the Secretary of State for Digital, Culture, Media and Sport for the purposes of section 2A of the Communications Act 2003 on 29 October 2019.
- 9) A copy of this notification has been sent to the Secretary of State under section 48C(1) of the Act.

Interpretation

- 10) For the purpose of interpreting this notification:
 - a) except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 11 below, and otherwise any word or expression has the same meaning as it has in the Act;
 - b) headings and titles shall be disregarded;
 - c) expressions cognate with those referred to in this notification shall be construed accordingly; and
 - d) the Interpretation Act 1978 shall apply as if this notification were an Act of Parliament.
- 11) In this notification:

- a) **“2019 Notification”** means the Notification dated 6 June 2019 of Ofcom’s decisions to: designate universal service providers under Regulation 3(7) of the Electronic Communications (Universal Service) Regulations 2018 and section 66(8) of the Act; set, modify and revoke universal service conditions under 48(1), 48A(6), 48C(2), 67, 68(3) and (4) of the Act; and give directions and approval under sections 49, 49A(6) AND 49C(2) of the Act and universal service conditions F.3 and I.1 of Schedules 1 and 3;
- b) **“Act”** means the Communications Act 2003 (2003 c. 21);
- c) **“BT”** means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006; and
- d) **“Ofcom”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (2002 c. 11).

12) The Schedule to this notification shall form part of this notification.

Signed



Selina Chadha

Director of Connectivity

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

16 July 2021

Schedule

Proposed modifications to the Conditions contained in Schedule 1 to the 2019 Notification

Paragraph 2 of Part 2 of Schedule 1 to the 2019 Notification is proposed to be replaced by the following:

2) In this Schedule 1:

- a. **“2003 Notification”** means the Notification dated 21 July 2003 made under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 (as amended);
- b. **“Act”** means the Communications Act 2003 (c. 21);
- c. **“Alternative Broadband Services”** means either or both a connection and a service provided either on a commercial basis or through a publicly-funded intervention, each of which meets the Technical Specification;
- d. **“Alternative Dispute Resolution Scheme”** or **“ADR Scheme”** means any dispute procedures for which Ofcom gives its approval for the resolution of disputes in relation to any Complaints between BT and USO Customers;
- e. **“Bill”** means the information issued or made available by BT to an Eligible USO Customer about the charges levied and due for payment, or the debits and credits applied to the Eligible USO Customer’s account;
- f. **“Broadband Connection”** means a connection provided by BT to an Eligible USO Customer under these Conditions which meets the Technical Specification;
- g. **“Broadband Services”** means both a Broadband Connection and a service provided by BT to an Eligible USO Customer under these Conditions, each of which meets the Technical Specification;
- h. **“BT”** means British Telecommunications plc, whose registered company number is 01800000, and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined in section 1159 of the Companies Act 2006;
- i. **“Bulk Data”** means information provided by Ofcom to BT setting out a list of fixed locations in the Rest of the UK which meet the following criteria: (i) Alternative Broadband Services are not available to those locations; and (ii) Alternative Broadband Services are not forecast to be made available to those locations through a publicly-funded intervention within the period of one year;
- j. **“Cluster”** means a set of two or more eligible Premises which can be served by Broadband Connections which will use all the same shared infrastructure;
- k. **“Cluster Excess Costs”** means the sum of all of the Excess Costs for each eligible Premises in a Cluster;
- l. **“Complaint”** means: (a) an expression of dissatisfaction made by a USO Customer to BT related to either: (i) matters relating to BT’s obligations under these Conditions; (ii) the complaint-handling process itself; or (iii) the level of customer service experienced by the USO Customer; and (b) where a response or resolution is explicitly or implicitly expected;
- m. **“Condition”** means any of the universal service conditions imposed by Ofcom under sections 45 to 47, 48A, 48C, 67 and 68(3) and (4) of the Act and set out in this Schedule 1;

- n. **“Confirmed Order”** means an order for a Broadband Service made by an Eligible USO Customer which is communicated to BT by any method of communication, including by telephone, letter, email or webchat;
- o. **“Consumer Prices Index”** means the index of prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a governmental department (which is the Office for National Statistics at the time of publication of this Notification) from time to time in respect of all items;
- p. **“Cost of Provision of Infrastructure”** means the costs directly attributable to the provision of a Broadband Connection, inclusive of relevant labour, capital and project management costs, and excluding any customer services equipment costs associated with that individual Premises;
- q. **“Customer Complaints Code”** means a code of practice containing relevant information about how Complaints from USO Customers are handled and how and when USO Customers can take their unresolved Complaints to an ADR Scheme;
- r. **“Eligibility Threshold”** means:
 - i. In the First Relevant Year, the amount of £46.10⁴ per month, which is inclusive of VAT and calculated as a monthly average payment over the fixed commitment period inclusive of any charges for a connection, monthly payments and any other relevant payments for Alternative Broadband Services;
 - ii. In Subsequent Relevant Years, the amount calculated as:

$$P_t = P_{t-1} * (1 + \Delta CPI_t)$$

which is inclusive of VAT and calculated as a monthly average payment over the fixed commitment period inclusive of any charges for a connection, monthly payments and any other relevant payments for Alternative Broadband Services rounded to the nearest £0.10;

Where:

P_t means the Eligibility Threshold for the Relevant Year;

P_{t-1} means the Eligibility Threshold for the Prior Year;

ΔCPI_t means the change in the Consumer Prices Index in the 12 months ending 3 months immediately before the beginning of the Relevant Year expressed as a percentage;

- s. **“Eligible USO Customer”** means a USO Customer whose Request for a Broadband Service meets the criteria in Condition A.3;
- t. **“Excess Costs”** means any costs of providing a Broadband Connection attributable to an individual Premises which are more than £3,400 excluding VAT calculated in accordance with Conditions A.3(c) and B.8;
- u. **“First Relevant Year”** means a period which starts on 20 March 2020 and ends on 19 March 2021 (inclusive);
- v. **“Hull Area”** means the area defined as the “Licensed Area” in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;

⁴ As set out in paragraph 5.59(a) of the statement which accompanies this Notification, the amount of £46.10 is set by reference to prices which prevailed as at November 2018, adjusted by Consumer Prices Index.

- w. **“Information Sharing Statement”** means the statement which BT is required to prepare and provide to Ofcom under Condition G.5;
- x. **“Ofcom”** means the Office of Communications as established under section 1 of the Office of Communications Act 2002;
- y. **“Ofcom Approved Complaints Code”** means the code of practice, as amended from time to time, annexed to Ofcom’s General Condition of Entitlement C4⁵ and entitled *“Ofcom approved complaints code of practice for customer service and complaints handling”*; except that references to the definitions used in that code shall be treated as references to the definitions and terms used in these Conditions as follows:
 - i. references to the Complaints Handling Procedures shall be treated as references to procedures for the handling of Complaints as defined in these Conditions that BT must have and comply with pursuant to Condition E.1(a);
 - ii. references to the Regulated Provider shall be treated as references to BT;
 - iii. references to a Complaint shall be treated as references to a Complaint as defined in these Conditions;
 - iv. references to a Relevant Customer shall be treated as references to a USO Customer;
 - v. references to a Complainant shall be treated as references to a USO Customer who makes a Complaint as defined in these Conditions to BT;
 - vi. references to a Customer Complaints Code shall be treated as references to a code of practice containing relevant information about how Complaints as defined in these Conditions from USO Customers are handled and how, and when, USO Customers can take their unresolved Complaints to an ADR Scheme as defined in these Conditions;
 - vii. references to an ADR Scheme shall be treated as references to an ADR Scheme as defined in these Conditions;
 - viii. references to an ADR Letter shall be treated as references to a notification issued from BT to a USO Customer concerning the USO Customer’s right to take their Complaint to an ADR Scheme as defined in these Conditions; and
 - ix. references to a Bill shall be treated as references to a Bill as defined in these Conditions;
- z. **“Ofcom Information”** means information provided by Ofcom to BT under these Conditions, including the Bulk Data and the USO API;
- aa. **“Openreach”** means Openreach Limited, whose registered company number is 10690039, and any subsidiary of Openreach Limited as defined in section 1159 of the Companies Act 2006;
- bb. **“Order”** means The Electronic Communications (Universal Service) (Broadband) Order 2018;
- cc. **“Ordnance Survey’s AddressBase Product”** means the most up-to-date versions of: (a) Ordnance Survey’s AddressBase Premium dataset for the United Kingdom except Northern Ireland; and (b) Ordnance Survey’s AddressBase Islands dataset for Northern Ireland;⁶
- dd. **“Premises”** means either a USO Customer’s residence or place of business;
- ee. **“Prior Year”** means the 12 months ending on 19 March before the commencement of each Relevant Year;

⁵ The current unofficial consolidated version of Ofcom’s General Conditions of Entitlement is available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf

⁶ The information concerning the Ordnance Survey’s AddressBase Product is available at: <https://www.ordnancesurvey.co.uk/business-and-government/products/addressbase-products.html>

- ff. **“Public Communications Network”** has the same meaning as in the 2003 Notification;
- gg. **“Publicly Available Telephone Service”** has the same meaning as in the 2003 Notification;
- hh. **“Relevant Year”** means the First Relevant Year and each Subsequent Relevant Year;
- ii. **“Request”** means the point of first contact by a USO Customer with BT to enquire about a Broadband Service pursuant to Condition A.1(b);
- jj. **“Rest of the UK”** means the area consisting of the United Kingdom excluding the Hull Area;
- kk. **“Subsequent Relevant Year”** means a period of 12 months subsequent to the First Relevant Year, the first of which starts on 20 March 2021 and ends on 19 March 2022, repeating thereafter for periods of 12 months from 20 March to 19 March (inclusive);
- ll. **“Technical Specification”** means, in relation to each form of broadband technology, all of the following characteristics specified in the Order: (a) a download sync speed of at least 10 megabits per second; (b) an upload sync speed of at least 1 megabit per second; (c) a contention ratio of no higher than 50:1; (d) latency which is capable of allowing the End-user to make and receive voice calls over the connection effectively; (e) the capability to allow data usage of at least 100 gigabytes per month;
- mm. **“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;
- nn. **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (c. 30);
- oo. **“USO API”** means information provided by Ofcom to BT for the purpose of assessing whether the criteria under Conditions A.3 and B.1 to B.11 (inclusive) are met through the application programming interface or other system which may be made available by Ofcom from time to time;
- pp. **“USO Customer”** means an End-user who has requested a Broadband Service from BT including Eligible USO Customers; and
- qq. **“VAT”** means value added tax chargeable under or pursuant to the Value Added Tax Act 1994, including any amendment to, or replacement of, the Value Added Tax Act 1994, and/or any similar tax.

Condition B.11 contained in Section 1 of Part 3 of Schedule 1 to the 2019 Notification is proposed to be replaced by the following:

- B.11 Where in accordance with the assessment carried out under Conditions B.8 and B.9, BT concludes that the provision of the Broadband Connection requested will cost more than £3,400 excluding VAT (the “Conclusion” for the purposes of this Condition B.11), BT must:
- a) inform the USO Customer of the Conclusion and provide its best estimate of the range of the Excess Costs;
 - b) inform the USO Customer that he or she has the right to request a full quotation of the Excess Costs to be provided with the timescales specified in Condition B.11(c);
 - c) if the USO Customer requests a full quotation of the Excess Costs, prepare and provide that full quotation to the USO Customer together with an explanation of the nature of the costs involved and the circumstances under which BT is required to provide a Broadband Service under Condition B.11(d) below as soon as reasonably practicable and, in any event, no later

than 60 calendar days beginning with the date on which the USO Customer requested that full quotation;

- d) provide a Broadband Service to the USO Customer if the USO Customer reaches an appropriate agreement with BT in respect of payment of the sum of the Excess Costs or the Cluster Excess Costs under that full quotation; and VAT on those costs as applicable in accordance with the following:
 - (i) where costs that are attributed to the individual Premises as calculated in accordance with Conditions A.3(c) and B.8 are no more than £8,400 excluding VAT, BT is required to provide a Broadband Service if the USO Customer reaches an appropriate agreement with BT in respect of payment of the Excess Costs and VAT on the amount of Excess Costs; and
 - (ii) where costs that are attributed to the individual Premises as calculated in accordance with Conditions A.3(c) and B.8 are more than £8,400 excluding VAT, BT is required to provide a Broadband Service if the USO Customer reaches an appropriate agreement with BT in respect of payment of:
 - a. in relation to an individual Premises which does not form part of a Cluster, the Excess Costs and VAT on the amount of Excess Costs;
 - b. in relation to an individual Premises which forms part of a Cluster:
 - i. the Cluster Excess Costs and VAT on the amount of Cluster Excess Costs; or
 - ii. an appropriate share of the Cluster Excess Costs and VAT on that share of Cluster Excess Costs, provided that the Cluster Excess Costs are agreed to be cumulatively paid by the USO Customer and other USO Customers of eligible Premises in the Cluster.
- e) if the USO Customer does not agree to pay the relevant sum referred to in Condition B.11(d), inform the USO Customer that the costs of the provision of the Broadband Connection may change over time and that the USO Customer has the right to contact BT at a later date to request a Broadband Service.