

A6. Draft reporting direction

NOTIFICATION OF OFCOM'S PROPOSALS TO GIVE DIRECTIONS UNDER SECTIONS 49, 49A(6) AND 49C(2) OF THE COMMUNICATIONS ACT 2003 AND UNIVERSAL SERVICE CONDITIONS F.3 OF SCHEDULES 1 AND 3 OF THE 2019 NOTIFICATION

Background

1. Under section 65(1) of the Communications Act 2003 (the “Act”), the Secretary of State must by order set out the extent to which one or more of the things specified in section 65(2)¹ must be provided, made available or supplied throughout the United Kingdom for the purpose of securing the United Kingdom’s compliance with the obligations for the time being in force as set out in the Universal Service Directive.²
2. To date, the Secretary of State has made the following orders:
 - a. The Electronic Communications (Universal Service) Order 2003 (the “**2003 Order**”)³ which set out that publicly available telephone services and other specified services (together the “**Telephony Universal Service**”) must be provided, made available or supplied throughout the United Kingdom; and
 - b. The Electronic Communications (Universal Service) (Broadband) Order 2018 (the “**2018 Order**”)⁴ which set out that broadband connections and services of specified quality (together the “**Broadband Universal Service**”) must be provided, made available or supplied throughout the United Kingdom.
3. The 2003 Order and the 2018 Order have been implemented as follows:
 - a. by designating, pursuant to The Electronic Communications (Universal Service) Regulations 2003, BT and KCOM as the Universal Service Providers and by imposing on them universal service conditions requiring them to provide the Telephony Universal Service;⁵ and
 - b. by designating, pursuant to section 66 of the Act and The Electronic Communications (Universal Service) Regulations 2018, BT and KCOM as the Universal Service Providers and imposing on them universal service conditions requiring them to provide the Broadband Universal Service (the “**2019 Notification**”).⁶

¹ The following things are specified in section 65(2) of the Act: (a) electronic communications networks and electronic communications services; (b) facilities capable of being made available as part of or in connection with an electronic communications service; (c) particular methods of billing for electronic communications services or of accepting payment for them; (d) directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and (e) directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.

² Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services as amended by Directive 2009/136/EC.

³ The 2003 Order is available at: <http://www.legislation.gov.uk/uksi/2003/1904/contents/made>.

⁴ The 2018 Order is available at <http://www.legislation.gov.uk/uksi/2018/445/contents/made>.

⁵ The 2003 Notification in respect of the Telephony Universal Service is available at: https://webarchive.nationalarchives.gov.uk/20080712143755/http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/uso0703.pdf.

⁶ The 2019 Notification in respect of the Broadband Universal Service is available at: https://www.ofcom.org.uk/data/assets/pdf_file/0019/151273/annex-1-legal-instruments.pdf.

4. In relation to the provision of the Broadband Universal Service:
 - a. Universal service conditions F.1 of Schedules 1 and 3 of the 2019 Notification provide that BT and KCOM must maintain records for a period of 6 years from the date on which those records have been created, which must be sufficient to: (i) demonstrate their compliance with the universal service conditions imposed on them; and (ii) provide adequate evidence and explanations in support of any potential request made by them for compensation for complying in relation to any one or more of the universal service conditions applied to them.
 - b. Universal service conditions F.3 of Schedules 1 and 3 of the 2019 Notification provide that BT and KCOM must comply with all such reporting requirements as Ofcom may from time to time direct under those universal service conditions.
5. Under section 71 of the Act, Ofcom may make provision by regulations for the sharing of any unfair burden for a particular Universal Service Provider of complying in relation to any one or more of the universal service conditions applied to him. Pursuant to sections 71(4), 71(5), 71(7) and 403(7) of the Act, Ofcom is now making proposals for The Electronic Communications (Universal Service) (Costs) Regulations [2020]. These proposals are set out in a consultation which accompanies this Notification.

Proposals

6. In addition to making proposals for The Electronic Communications (Universal Service) (Costs) Regulations [2020], Ofcom is proposing to give the following directions under condition F.3:
 - a. a direction set out in Schedule 1 of this Direction under universal service condition F.3 of Schedule 1 of the 2019 Notification to be applied to BT to the extent specified in Schedule 1 of this Direction; and
 - b. a direction set out in Schedule 2 of this Direction under universal service condition F.3 of Schedule 3 of the 2019 Notification to be applied to KCOM to the extent specified in Schedule 2 of this Direction.
7. The proposed directions specify certain information that must be provided by BT and KCOM as part of the reporting of information made in support of any request for compensation for complying in relation to any one or more of the universal service conditions which require them to provide the Broadband Universal Service.

Ofcom's duties and legal tests

8. In making these proposals for the directions, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act. In addition, Ofcom has considered the requirements of sections 49, 49A and 49C of the Act.

Making representations

9. 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 7 January 2020.

10. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with section 49C(1) of the Act.

Interpretation

11. For the purpose of interpreting this Notification:

- a. except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act, the 2003 Order or the 2018 Order;
- b. words in the singular shall include the plural, and in the plural shall include the singular;
- c. headings and titles shall be disregarded;
- d. expressions which are cognate with those referred to in this Notification shall be construed accordingly; and
- e. the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.

12. In this Notification:

- f. **"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;
- g. **"KCOM"** means KCOM Group plc, whose registered company number is 02150618, defined as "Kingston" in the 2003 Notification (as amended) and the universal service conditions requiring it to provide the Telephony Universal Service, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;
- h. **"United Kingdom"** has the meaning given to it in the Interpretation Act 1978 (c. 30);
- i. **"Universal Service Provider"** is a person to whom universal service conditions under sections 45 to 47, 48A, 48C, 49, 49A, 49C, 67 and 68(3) and (4) of the Act are applicable.

13. Schedules to this Notification shall form part of this Notification.



Selina Chadha (Consumer Policy Director), Ofcom

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

5 November 2019

SCHEDULE 1

DIRECTION UNDER CONDITION F.3 OF SCHEDULE 1 OF THE 2019 NOTIFICATION TO BT

Part 1: Application

1. The Direction in Part 3 of this Schedule 1 shall:
 - a. apply to BT in the Rest of the UK; and
 - b. come into force on [insert the date of Ofcom's statement containing Ofcom's decisions on the direction].

Part 2: Definitions and interpretation

2. For the purpose of interpreting this Schedule 1:
 - a. except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Schedule 1, and otherwise any word or expression shall have the same meaning as it has in the Act or the 2018 Order;
 - b. words in the singular shall include the plural, and in the plural shall include the singular;
 - c. headings and titles shall be disregarded;
 - d. expressions which are cognate with those referred to in this Schedule 1 shall be construed accordingly; and
 - e. the Interpretation Act 1978 (c. 30) shall apply as if this Schedule 1 were an Act of Parliament.
3. In this Schedule 1:
 - a. **"2018 Order"** means The Electronic Communications (Universal Service) (Broadband) Order 2018;
 - b. **"2019 Notification"** means the Notification dated 6 June 2019 of Ofcom's decisions to: (i) designate Universal Service Providers under Regulation 3(7) of The Electronic Communications (Universal Service) Regulations 2018 and sections 66(8) of the Act; (ii) set, modify and revoke Conditions under sections 48(1), 48A(6), 48C(2), 67, 68(3) and (4) of the Act; and (iii) give Directions and approval under sections 49, 49A(6) and 49C(2) of the Act and Conditions F.3 and I.1 of Schedules 1 and 3 of the 2019 Notification;
 - c. **"Act"** means the Communications Act 2003 (c. 21);
 - d. **"Broadband Universal Service"** means the provision of broadband connections and services of specified quality as required under the 2018 Order;
 - e. **"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;
 - f. **"Condition"** means any of the universal service conditions imposed by Ofcom on BT under sections 45 to 47, 67 and 68(3) and (4) of the Act requiring the provision of the Broadband Universal Service;
 - g. **"Direction"** means the direction given under section 49, 49A(6) and 49C(2) of the Act and Condition F.3 of Schedule 1 of the 2019 Notification;
 - h. **"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;

- i. **“Net Present Value Calculation”** means the calculation specified in paragraphs 1 and 2 of Part 3 of this Schedule 1;
- j. **“Ofcom”** means the Office of Communications as established under section 1 of the Office of Communications Act 2002;
- k. **“Relevant Date”** means the date which: (i) is as close as reasonably practicable to the date of BT’s request for compensation for complying with any one or more of the Conditions; and (ii) enables BT to use the most up-to-date actual figures for costs, revenues and other benefits;
- l. **“Rest of the UK”** means the area consisting of the United Kingdom excluding the Hull Area;
- m. **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (c. 30); and
- n. **“Universal Service Provider”** is a person to whom Conditions under sections 45 to 47, 48A, 48C, 49, 49A, 49C, 67 and 68(3) and (4) of the Act are applicable.

Part 3: Direction

1. BT must provide a Net Present Value Calculation to Ofcom where it is reporting information in support of any request for compensation for complying with any one or more of the Conditions which relate to BT's provision of the Broadband Universal Service.
2. A Net Present Value Calculation referred to in paragraph 1 of Part 3 of this Schedule 1 must contain:
 - a. a total amount of all costs incurred and any costs avoided in complying with the Conditions to which BT's request relates, including without limitation:
 - i. actual costs incurred and any costs avoided up to and including the Relevant Date;
 - ii. an estimate of costs incurred and any costs avoided from the Relevant Date;
 - b. a total amount of all revenues and any other direct and indirect benefits received and/or foregone in complying with the Conditions to which BT's request relates, including without limitation:
 - i. actual revenues and any other direct and indirect benefits received and/or foregone up to and including the Relevant Date; and
 - ii. an estimate of revenues and any other direct and indirect benefits received and/or foregone from the Relevant Date.
3. A Net Present Value Calculation and specified information, which are referred to in paragraphs 1 and 2 of Part 3 of this Schedule 1 respectively, must be provided to Ofcom:
 - a. in the form specified in Annex 1 to this Schedule 1 except in so far as Ofcom may consent otherwise in writing; and
 - b. at the same time as the request for compensation, which that Net Present Value Calculation and that specified information are seeking to support, is made by BT.
4. The information referred to in paragraphs 1 to 3 of Part 3 of this Schedule 1 shall be provided to Ofcom in electronic form as notified by Ofcom from time to time.
5. The requirements contained in Part 3 of this Schedule 1 are without prejudice to any additional obligations which may require BT either now or in future to provide further, specified information, including the obligations under The Electronic Communications (Universal Service) (Costs) Regulations [2020] and/or Conditions F.1 to F.3 of Schedule 1 of the 2019 Notification.

ANNEX 1

The form, in which a Net Present Value Calculation and the information specified in paragraphs 1 and 2 of Part 3 of this Schedule 1 must be provided, is [available on the Ofcom website](#).

The form is entitled “Proposed Template for the Universal Service Provider to complete when making a net cost claim”.

SCHEDULE 2

DIRECTION UNDER CONDITION F.3 OF SCHEDULE 3 OF THE 2019 NOTIFICATION TO KCOM

Part 1: Application

1. The Direction in Part 3 of this Schedule 2 shall:
 - a. apply to KCOM in the Hull Area; and
 - b. come into force on [insert the date of Ofcom's statement containing Ofcom's decisions on the direction].

Part 2: Definitions and interpretation

2. For the purpose of interpreting this Schedule 2:
 - a. except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Schedule 2, and otherwise any word or expression shall have the same meaning as it has in the Act or the 2018 Order;
 - b. words in the singular shall include the plural, and in the plural shall include the singular;
 - c. headings and titles shall be disregarded;
 - d. expressions which are cognate with those referred to in this Schedule 2 shall be construed accordingly; and
 - e. the Interpretation Act 1978 (c. 30) shall apply as if this Schedule 2 were an Act of Parliament.
3. In this Schedule 2:
 - a. **"2018 Order"** means The Electronic Communications (Universal Service) (Broadband) Order 2018;
 - b. **"2019 Notification"** means the Notification dated 6 June 2019 of Ofcom's decisions to: (i) designate Universal Service Providers under Regulation 3(7) of The Electronic Communications (Universal Service) Regulations 2018 and sections 66(8) of the Act; (ii) set, modify and revoke Conditions under sections 48(1), 48A(6), 48C(2), 67, 68(3) and (4) of the Act; and (iii) give Directions and approval under sections 49, 49A(6) and 49C(2) of the Act and Conditions F.3 and I.1 of Schedules 1 and 3 of the 2019 Notification;
 - c. **"Act"** means the Communications Act 2003 (c. 21);
 - d. **"Broadband Universal Service"** means the provision of broadband connections and services of specified quality as required under the 2018 Order;
 - e. **"Condition"** means any of the universal service conditions imposed by Ofcom on KCOM under sections 45 to 47, 67 and 68(3) and (4) of the Act requiring the provision of the Broadband Universal Service;
 - f. **"Direction"** means the direction given under section 49, 49A(6) and 49C(2) of the Act and Condition F.3 of Schedule 3 of the 2019 Notification;
 - g. **"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;
 - h. **"KCOM"** means KCOM Group plc, whose registered company number is 02150618, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;

- i. **“Net Present Value Calculation”** means the calculation specified in paragraphs 1 and 2 of Part 3 of this Schedule 2;
- j. **“Ofcom”** means the Office of Communications as established under section 1 of the Office of Communications Act 2002;
- k. **“Relevant Date”** means the date which: (i) is as close as reasonably practicable to the date of KCOM’s request for compensation for complying with any one or more of the Conditions; and (ii) enables KCOM to use the most up-to-date actual figures for costs, revenues and other benefits; and
- l. **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (c. 30); and
- m. **“Universal Service Provider”** is a person to whom Conditions under sections 45 to 47, 48A, 48C, 49, 49A, 49C, 67 and 68(3) and (4) of the Act are applicable.

Part 3: Direction

1. KCOM must provide a Net Present Value Calculation to Ofcom where it is reporting information in support of any request for compensation for complying with any one or more of the Conditions which relate to KCOM's provision of the Broadband Universal Service.
2. A Net Present Value Calculation referred to in paragraph 1 of Part 3 of this Schedule 2 must contain:
 - a. a total amount of all costs incurred and any costs avoided in complying with the Conditions to which KCOM's request relates, including without limitation:
 - i. actual costs incurred and any costs avoided up to and including the Relevant Date;
 - ii. an estimate of costs incurred and any costs avoided from the Relevant Date;
 - b. a total amount of all revenues and any other direct and indirect benefits received and/or foregone in complying with the Conditions to which KCOM's request relates, including without limitation:
 - i. actual revenues and any other direct and indirect benefits received and/or foregone up to and including the Relevant Date; and
 - ii. an estimate of revenues and any other direct and indirect benefits received and/or foregone from the Relevant Date.
3. A Net Present Value Calculation and specified information, which are referred to in paragraphs 1 and 2 of Part 3 of this Schedule 2 respectively, must be provided to Ofcom:
 - a. in the form specified in Annex 1 to this Schedule 2 except in so far as Ofcom may consent otherwise in writing; and
 - b. at the same time as the request for compensation, which that Net Present Value Calculation and that specified information are seeking to support, is made by KCOM.
4. The information referred to in paragraphs 1 to 3 of Part 3 of this Schedule 2 shall be provided to Ofcom in electronic form as notified by Ofcom from time to time.
5. The requirements contained in Part 3 of this Schedule 2 are without prejudice to any additional obligations which may require KCOM either now or in future to provide further, specified information, including the obligations under The Electronic Communications (Universal Service) (Costs) Regulations [2020] and/or Conditions F.1 to F.3 of Schedule 3 of the 2019 Notification.

ANNEX 1

The form, in which a Net Present Value Calculation and the information specified in paragraphs 1 and 2 of Part 3 of this Schedule 2 must be provided, is [available on the Ofcom website](#).

The form is entitled “Proposed Template for the Universal Service Provider to complete when making a net cost claim”.