

## ACS response to the Ofcom Designing the Broadband Universal Service Obligation call for inputs

The Advisory Committee for Scotland (ACS) founds its views on the establishment of a Broadband Universal Service Obligation (USO) on the belief that such a service is fundamental to the life and well-being of citizens and communities, as fundamental as the provision of postal communications, telephonic communications, electricity, and clean water. As such, we believe that policy governing the proportion and reasonableness of the cost and efficiency of the USO must have an open and transparent bias towards the rights of access for individual citizens and communities, rather than the resulting costs to the industry or government as a whole.

**We consider that the Broadband USO has to be both universal in its application, and place an obligation on industry and government that is proportionate to such a fundamental right to the service, and to the benefits that will accrue from a genuinely universal service.**

**We consider this fundamental approach should be reflected in Ofcom's plans for the establishment of a USO, and in Government legislation giving legal effect to the USO.**

The technical specification of the service will vary over time as the technology itself develops. Therefore, while we agree with the specification in legislation of a minimum 10Mbps downlink level of service, this will have to remain subject to change by those administering the USO. In addition, we would urge the setting of a minimum uplink level of service. We would also suggest that in revising USO minimum levels, this should reflect upward shifts in the mean level of service received (or claimed) nationally. These points are of particular importance for SMEs and microbusinesses in their usage of broadband. Economic activity and growth, especially in socially deprived communities and geographic areas where such infrastructure has been lacking, relies increasingly upon access to cloud computing, video conferencing, collaborative working, and homeworking.

Alongside this important technical specification, we believe a wider duty should be applied to Ministers, to have regard to the economic and social well-being of customers or potential customers in rural and remote areas or other areas of economic and social disadvantage and to seek to minimise any disparity in service levels between those areas and service levels enjoyed generally. Reliable broadband is an increasingly essential tool in both delivering and supporting the delivery of public services across the UK and of particular advantage in rural, remote, and otherwise disadvantaged communities.

*We would make the following points in response to specific paragraphs of the consultation.*

**Paragraph 1.6** We believe that the USO should be common in its application across the whole of the UK and not subject to specific considerations or concerns in any of the UK's nations. All of the UK's nations have communities that vary in density of population and levels of economic activity and we believe it is these factors that are of importance in the application of the USO rather than matters of governance and sovereignty.

**Paragraphs 1.18, 1.19, 1.20 and 1.28** The ACS believes our earlier points on civic rights to access should be to the fore in determining policy on cost, where the burden of that cost should lie and the application of reasonableness in provision of the service.

**Paragraphs 1.18 and 1.19** We disagree with the assumptions of paragraphs 1.18 and 1.19, which take as their starting point cost reduction rather than the provision of a universal service. This approach undermines the USO from the outset. References to competition and the commercial market in this regard are quite out of place. It is well known from Ofcom's work in mobile telephony as well as broadband that in large parts of the UK, market forces and commercial competition cannot be relied upon to provide service or drive efficiency or technological advance. Proper service in those areas has only been achieved through direct and specific public policy intervention. In the establishment of something as fundamental as a USO in broadband, universal provision should be taken as the starting point with a reasonableness test placed on the USP to prove why any exception to the USO should be allowed for a particular consumer. This burden on the provider already applies in mail and telephony and we see no reason why it should not apply here. Where the cost of provision can be shown to fall outside the agreed reasonableness measure, we would again look to the current provisions elsewhere to provide an acceptable model to be applied. Further, where transparent and reasonable exceptions to a USO are identified, these should attract support from an industry funding scheme to assist a community to find a bespoke solution in those circumstances.

**Paragraph 1.28** The ACS considers that an industry funding scheme should be established to offset the cost burden placed on the USP. We consider that the extent of this offset should be tapered to need over time. We recognise that there is likely to be a greater cost associated with the initial physical provision of the USO service than there will be in maintaining and upgrading that service in future years. This is very different from the provision of the USO in postal services, where the transport, staff and resource costs have to be met at the same level each day the USO operates. In telephony and broadband, initial technical provision of the service in rural areas is considerably more costly than the day to day running costs. The structuring of an industry scheme and extent of government support for such a scheme should reflect that disproportionality. This said, previous governments have applied windfall tax arrangements in the sector, partially in response to the high profitability of service provision following the initial higher service start-up costs.

Similarly, such financial support for the establishment of a USO should be applied across the whole costs of the scheme. High population areas with a wide range of providers and services should be used to offset increased costs of provision elsewhere. Again reference to market distortion here is wrongly placed. The upgrading and extension of service likely to be associated with the proper provision of a USO across all of the UK will not be driven by market forces. It has been shown elsewhere that while healthy competition can be utilised in dense urban centres, more technically demanding and less dense areas will require a more specific and tailored approach with likely monopoly provision. It makes sense therefore that in establishing minimum rights of access and provision across all civic society in the UK we apply the shared burden approach as we do in taxation or in the provision of other fundamental services. Normal market and commercial considerations in high-density urban situations will be unaffected by such provisions as long as Ofcom ensures the fair and equitable application of such an USO 'levy' in that situation.