

**CityFibre's response to Ofcom's
*"Proposals for designating
providers and applying conditions"*.**

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Introduction

CityFibre is the UK's leading alternative provider of wholesale full fibre network infrastructure. With major fibre infrastructure projects across 51 towns and cities throughout the UK, we provide a portfolio of active and dark fibre services to our customers which include service integrators, enterprise and consumer service providers, local authorities and mobile operators. CityFibre is making significant investments in a number of cities across the UK as we look to rapidly expand the number of homes and businesses which have access to full fibre.

CityFibre has recently partnered with Vodafone to bring ultrafast Gigabit-capable full fibre broadband to up to one million UK homes and businesses by 2021 and is targeting five million by 2024. This commitment has been reinforced by a £2.5bn investment programme which identifies towns and cities primed for FTTP expansion to reach nearly every home and business and build is underway.

CityFibre is based in London, United Kingdom, and is privately owned by a consortium of Antin Infrastructure Partners and West Street Infrastructure Partners.

Executive Summary

We at CityFibre welcome the opportunity to respond to Ofcom's proposals for designating providers and applying conditions to the Universal Service Obligation (USO).¹ CityFibre welcomes the opportunity to discuss the USO and the eventual role of the Universal Service Provider (USP), acknowledging the importance of the USO in the future of the UK's digital infrastructure and its place in a digital world. CityFibre shares Government and Ofcom's concern that certain parts of the country are being left behind by sub-standard digital infrastructure and supports the intent to adapt and extend the USO mechanism.

CityFibre, as a wholesale provider of full fibre products and services, has a range of full fibre products tailored to different types of consumers and their respective needs. The product portfolio ranges from: dark fibre and metro services for businesses, CP's and public organisations to active FTTP lines for business and residential consumers². Due to CityFibre's business model, and the commercial viability of some areas, the majority of CityFibre's existing network infrastructure is concentrated into urban-metro areas. However, CityFibre have recently been able to expand their coverage to more rural communities using public subsidies like the Government's LFFN stimulus programme. On the 31st May last year, CityFibre were awarded the first contract under the LFFN programme to provide gigabit connectivity to nine communities in West Sussex.³

Whilst CityFibre acknowledges the broadband-inclusive expansion of the USO is a step-forward towards greater digital connectivity, CityFibre believes the safety net ambitions of the USO must not delay and/or impede the market towards full fibre rollout. On this point we consider the market context for implementation should be given due regard, and therefore we encourage Ofcom ensure, through regulatory oversight that the market conditions allow for *effective* competition, promoting widescale rollout of full fibre infrastructure, subsequently reducing the need for and use of a USO safety net.

This document will begin below by re-iterating Government and Ofcom's current position on full fibre rollout and in turn provide our views and recommendations on the latest consultation.

¹Ofcom. (2019) "Delivering the Broadband Universal Service – Proposals for designating providers and applying conditions". See: https://www.ofcom.org.uk/data/assets/pdf_file/0024/129408/Consultation-Delivering-the-Broadband-Universal-Service.pdf

² In a joint venture with Vodafone, CityFibre has agreed to facilitate the provision of full-fibre services to 1 million premises by 2021 and a further optional 5 million by 2024. See: <https://www.cityfibre.com/news/milton-keynes-ftth-announcement/>

³See: <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/CITY/13660688.html>;
Since then, see also: <https://www.ispreview.co.uk/index.php/2018/12/cityfibre-win-contract-to-build-gigabit-fibre-network-in-suffolk-uk.html>;

National ambitions for full fibre rollout

Whilst the current state of the UK's digital infrastructure is still not where we would all like and need it to be, we have seen significant changes in the past few years, driven by a combination of: market competition, regulatory interventionism and political impetus. Full fibre rollout has now become top priority for DCMS, affirming this last year in their Future Telecoms Infrastructure Review (FTIR)⁴ and Ofcom supporting in its own corresponding statement on "Regulatory Certainty to Support Investment in Full Fibre Broadband" (IFFB)⁵. Both documents go to great lengths to highlight the importance of full fibre broadband for the future of the UK's digital infrastructure and both have set themselves goals and targets to realise this intent.

The FTIR, states Government's intent for full fibre coverage is to have 15 million premises covered by 2025 and for nationwide coverage to be achieved by 2033. The FTIR highlights the best way to do this is to incentivise infrastructure competition via an easing of access to passive telecoms infrastructure (unrestricted duct and pole access), long-term regulatory certainty, and the gradual removal of the existing legacy copper networks.⁶ In relation to rural coverage the FTIR outlines an "outside-in" approach to deployment. Although the details still remain in development, we assume this will mean a focus on public subsidy of full fibre deployments in rural areas. No timescales are outlined for this in the FTIR but self-evidently to complete nationwide coverage of full fibre by 2033 would require that such an intervention programme is commenced as soon as possible. Hence, there is an awkward interplay between Ofcom's focus on short-term measures to promote broadband USO and the prospect of a full fibre intervention in rural areas which also commences imminently.

In Ofcom's IFFB statement the tone was similar to the FTIR. It echoes the need for full fibre broadband across the UK and realises the ambition of the Government to have nationwide coverage by 2033. It re-iterates the general mechanisms for incentivising investment, further elaborating on the need for unrestricted duct and pole access (DPA), long-term regulatory certainty and the transition from older copper networks to fibre.⁷

Both statements make a brief note of the existence of the USO framework, stating it may have a "complementary" role, but both however fail to specify exactly how this complementarity will be achieved and the mechanical aspects of its role in the context of full fibre rollout.⁸ It continues to be CityFibre's opinion that in order to achieve national full fibre coverage, the USO must not conflict in any way with this intent and where it does so it should be subject to reasonable change, amendments and/or clarification that recognises the primacy of the full fibre goals in both Government and Ofcom's strategy.

⁴ Department for Digital, Culture, Media and Sport. (2018) "Future Telecoms Infrastructure Review". 23rd July 2018. Find at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727889/Future_Telecoms_Infrastructure_Review.pdf

⁵ Ofcom. (2018) "Regulatory certainty to support investment in full-fibre broadband". 24th July 2018. Find at:

https://www.ofcom.org.uk/data/assets/pdf_file/0025/116539/investment-full-fibre-broadband.pdf

⁶ *Supra note 4.*

Duct and Pole access: *Page 6; Section 2.5.1, Paragraphs 67-68, Page 32; Section 4.2.3, Paragraph 242, Page 71.*

Regulatory Certainty: *Section 2.6.1, Paragraphs 93-94, Pages 37-38.*

Outside-in Approach: *Page 8; Section 2.3.3, Paragraphs 44(4), Page 28; Section 2.7.2, Paragraphs 129-135, Pages 44-45.*

Legacy Network Removal: *Page 8; Section 2.8, Page's 46-47.*

⁷ *Supra note 5.*

Duct and Pole access: *Paragraph 1.16, Page 7; Paragraph 3.16, Page 19; Paragraph 4.20, Page 24.*

Regulatory Certainty: *Paragraph 1.34, Page 10; Paragraphs 2.19-2.20 Page 17; Paragraph 2.24 Page 17.*

Legacy Network Removal: *Paragraph 5.3, Page 29; Page 30.*

⁸ *Supra note 4.* Paragraph 133, Page 45; Page 75.

CityFibre has previously highlighted its concerns that the current framework provides an excessive focus on the “safety net ambitions”⁹ of the USO, which has meant the current framework detracts from Government and Ofcom’s primary ambitions for full fibre rollout. This stopgap means of dealing with the UK’s issues with broadband coverage and quality are a concern, as whilst acknowledging in and of itself the USO is not a broadband rollout programme, it encourages rollout of the most minimum of standards. It is our view that there should be a clear hierarchy of regulatory intervention which ensures this safety net is less likely to be needed.

⁹ Ofcom. (2018) *Implementing the Broadband Universal Service Obligation – Request for expression of interest in serving as Universal Service Provider for broadband*. 19th June 2018. Find at: <https://www.ofcom.org.uk/consultations-and-statements/category-2/implementing-broadband-uso>
Paragraph 1.3 Page 3; Paragraph 2.4, Page 6

Market Context for the implementation of the broadband universal service

With regards to this point in Ofcom's document we acknowledge and accept the fact the USO is not a mechanism for broadband rollout but is a safety net for effective digital connectivity. However, as Ofcom have themselves acknowledged in this section the UK is currently undergoing significant changes in its digital infrastructure.¹⁰

As highlighted earlier, we at CityFibre have recently partnered with Vodafone to bring ultrafast Gigabit-capable full fibre broadband to up to one million UK homes and businesses by 2021 and are targeting five million by 2024. This commitment has been reinforced by a £2.5bn investment programme which identifies towns and cities primed for FTTP expansion to reach nearly every home and business and build is underway. As Ofcom highlight in their consultation, USO eligible areas have been falling over the years as a fibre overhaul of the UK's digital infrastructure takes place, with USO eligible premises dropping from 15% in 2014 to 3% in May 2018.¹¹ We are in further agreement with Ofcom's trajectory of estimates, suggesting the number of premises is likely to decrease as a result of these expansion efforts by the time the USO is implemented in 2019.¹²

We see the priority therefore as being the regulatory initiatives which would assist alternative network providers like ours in maximising our rollout, ensuring consumers receive a connection superior to that currently guaranteed by the USO. This includes ensuring the current duct and pole access (DPA) product Ofcom as mandated in its *Wholesale Local Access Market Review 2018* (WLAMR)¹³ allows network providers an operational and commercially viable product which ensures widescale use and subsequently is likely to decrease the number of premises eligible for USO by the time of implementation even further.

As Ofcom have also highlighted in its latest consultation, the USO will also have to take consideration of publicly-funded rollout programmes. One such initiative Ofcom itself notes is the 'outside-in' approach as outlined in the FTIR. CityFibre have previously encouraged Ofcom to consider the 'outside-in' approach, which would account for rural areas in pursuit of full fibre rollout and the convergence of these geographical areas with the USO.¹⁴ CityFibre encouraged Ofcom to consider the implications of the cross-over, so as to ensure no end-user would lose out on full-fibre, in place of a quick USO fix.¹⁵ Drawing on our own success with the LFFN programme, we highlighted the benefit of allowing these schemes to flourish in potential USO intervention areas.¹⁶ Publicly available information from the Government on how the LFFN programme will evolve to meeting the 'outside-in' objective remains scanty, but we expect that Ofcom is being more closely informed of DCMS's emerging thinking.

Ofcom has also highlighted the convergence of the USO with other publicly-funded schemes and state aid projects. With regards to this specific point, CityFibre argued for regulatory forbearance where crossovers arose. CityFibre's concern was (and is) in an eagerness to implement the USO, the USO areas would lose out on the more long-term and higher quality provision of full fibre

¹⁰ *Supra* note 1. Pages 16-18.

¹¹ *Supra* note 1. Paragraph 3.3. Page 16.

¹² *Supra* note 1. Paragraph 3.6. Page 17.

¹³ Ofcom. (2018) "*Wholesale Local Access Market Review*". Vol.3. Find at: <https://www.ofcom.org.uk/consultations-and-statements/category-1/wholesale-local-access-market-review>

¹⁴ CityFibre. (August 2018) "*CityFibre's response to Ofcom's request for "interest in serving as Universal Service Provider for broadband"*". https://www.ofcom.org.uk/data/assets/pdf_file/0037/119989/CityFibre.pdf Page 6 & 7.

¹⁵ *Ibid*. Page 7.

¹⁶ *Ibid*. Page 7.

services.¹⁷ Where these conflicts arose, we recommended the USO framework include a mechanism so as to allow the primacy of these projects to take place and/or the use of the infrastructure which has won the state aid contract.¹⁸ CityFibre raised concerns that the USO could be unfairly leveraged as means of overbuilding areas which are undergoing full-fibre rollout, with a lower quality copper-based connection.¹⁹

Ofcom also note the technological evolutions in fixed wireless connections in delivering broadband. As highlighted in our August 2018 submission, we urged Ofcom to reconsider the significance of wireless networks serving the more hard-to-reach rural areas covered within the remit of the USO.²⁰ We acknowledged the fact that the FTIR mentions the significance of 5G technology in serving these areas when applying the proposed outside-in approach.²¹ We also acknowledged there would be a small number of rural deployment scenarios where a wireless solution will be the only practicable means of delivering adequate broadband services however we noted that any such deployment should be selected after following a hierarchy of: 1) full fibre where practicable; 2) high-specification wireless where full fibre is impractical; 3) FTTC only where neither of the other options are practicable.²² We noted that this was consistent with the general approach set out in the FTIR and would make the USO intervention less likely to lead to deployment of obsolescent technology that cuts across the full fibre and 5G objectives of both the Government and Ofcom.²³

In furtherance to this, and similarly relevant to the point made earlier in this section, it is key Ofcom's regulatory requirements align so as to ensure market conditions provide an *effectively* competitive landscape to facilitate the provision and development of 5G networks. With direct relevance to this, in our recent *Business Connectivity Market Review* (BCMR) submission we highlighted the importance of ensuring a level playing field in the *Mobile Backhaul* (MB) product market, raising specific concerns with BT's apparent contractual behaviour in said market. In addition, in our recent *Physical Infrastructure Market Review* (PIMR) submission we highlighted the critical nature of DPA becoming unrestricted so as not distort investment incentives between the WLA and BC markets (which includes MB).

¹⁷ *Ibid* Page 7.

¹⁸ *Ibid* Page 7.

¹⁹ *Ibid* Page 7.

²⁰ *Ibid* Page 4.

²¹ *Ibid* Page 4.

²² *Ibid* Page 4.

²³ *Ibid* Page 4.

Funding and Costing

As Ofcom have stated in this consultation, its vitally important when assigning USP status to a provider that they show they can adequately finance the delivery of the service.²⁴ In its assessment Ofcom highlights it has considered the provider's likely capex requirements for USO infrastructure and plans to fund this capex²⁵. We wish to state that its of paramount importance any fund pool used for the purposes of reimbursing an "unfair burden" takes due regard of this capex. In particular we support Ofcom's proposal for an obligation on the USP to maintain account records relating to information necessary for calculation of: direct costs, direct benefits and indirect benefits.²⁶

In terms of Ofcom's proposed process for calculating shared infrastructure costs, we agree with the general principle that any derived cost per connection should only relate and arise directly from connecting USO premises and exclude those costs that would already exist in the network.²⁷ Furthermore, we agree with Ofcom on the fact that the estimated cost for a given premise takes full account of all premises in the USP's designated area that may share relevant network assets with the premises in question.²⁸

As Ofcom acknowledge in this consultation, the cost of contributing to the fund may be passed downstream onto customers²⁹, as such it is vital the definition of said fund and access to it remains clearly defined, and only applicable in very strict exceptional cases to avoid consumers in all parts of the country, bearing the burden of maintaining and prolonging the continued existence of a legacy copper network. Where the USO rolls out to a particular area with a full fibre connection, it is crucial such fund is narrowly defined so as to avoid the fund becoming a secondary source of commercial funding for the USP's full fibre build.

Network Plans

In terms of Ofcom's proposal to share information collected from its Connected Nations Report, we acknowledge the need for the USP to inform a customer if they have a network nearby which indeed provides network coverage³⁰ however we wish to stress the need for confidentiality safeguards to be in place to ensure the USP does not misuse or exploit the Ofcom-based system to their commercial advantage. We would encourage Ofcom to consider that one of the safeguards which can be in place is for the USP to provide and maintain a record of the evidence of a request from a consumer, when identifying the eligibility of a postcode, and that this be presented to Ofcom upon access to the Ofcom-based information and upon an audit by the respective monitoring unit.

We welcome the intention to not share information with the USP on other providers' national network coverage footprint, supporting their emphasis on the risk from the USP gaining an unfair competitive advantage.³¹

²⁴ *Supra note 1*. Paragraph 5.32. Page 36

²⁵ *Supra note 1*. Paragraph 5.33. Page 36

²⁶ *Supra note 1*. Pages 103-112.

²⁷ *Supra note 1*. Paragraph 6.72. Page 59.

²⁸ *Supra note 1*. Page 59.

²⁹ *Supra note 1*. Paragraph 6.63 (b). Page 57.

³⁰ *Supra note 1*. Page 52.

³¹ *Supra note 1*. Paragraph 6.78. Page 61.

Technologies used to deliver the USO

We welcome Ofcom's acknowledgement and analysis on our issues with the technological specification prescribed (and omitted prescription) by the process. We also welcome Ofcom's inclusion of efficient technologies when assessing net cost, and the requirement for the potential USP to demonstrate that the costs which were incurred in providing said connections were efficient.³² Furthermore, we support Ofcom's decision to include within their assessment of any unfair net cost claim, an examination of different technologies, and an assessment of operating costs of the technology deployed, not just capital costs.³³

Use of third-party networks to deliver the USO

We welcome Ofcom's acknowledgement and analysis on our proposal for the use of third-party networks to deliver the USO. We also welcome Ofcom's inclusion on delivery of said third-party network infrastructure, in its analysis of an unfair burden.³⁴ Furthermore, we support Ofcom's conclusion on our issue of unilaterality in this proposed process by stating any such agreements would be the result of commercial negotiation rather than on the basis of regulatory obligation.³⁵

³² *Supra note 1*. Paragraph 7.37. Page 79.

³³ *Supra note 1*. Paragraph 7.37. Page 79.

³⁴ *Supra note 1*. Paragraph 7.41. Page 80

³⁵ *Supra note 1*. Paragraph 7.43. Page 80

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