



Ebbfleet Fibre to the Home Pilot

Proposal to allow non-uniform pricing of telephony
services under Universal Service Condition 1

Consultation

Publication date:

9 June 2008

Closing Date for Responses:

10 July 2008

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Section 1

Summary

The Universal Service Conditions ensure that basic services are available across the UK at affordable prices

- 1.1 The Universal Service Conditions ('USCs') ensure that certain basic fixed line communications services are available at an affordable price to all citizens of the UK.
- 1.2 Currently BT and KCOM (formerly Kingston Communications) are designated as Universal Service Providers and consequently are required to provide a set of basic communications services in accordance with the terms specified by Ofcom in the USCs.

BT is required to provide fixed telephony services across the UK at uniform prices

- 1.3 Under the USCs BT is required to provide fixed telephony services in all areas of the UK excluding the Hull area in response to reasonable requests from end-users. BT must provide these services at a uniform price throughout the UK (again excluding the Hull area), unless Ofcom consents otherwise.

At a housing development in Ebbsfleet Kent, BT is planning to deliver services using next generation access network technology

- 1.4 Until now BT has connected homes to its network using conventional metallic cables. However at a large housing development at Ebbsfleet in Kent, BT intends to provide services using optical fibre cables. This technology is commonly known as Fibre to the Premises ('FTTP').
- 1.5 This is an example of Next Generation Access ('NGA') network technology which will support the delivery of broadband services with much greater bandwidth than conventional metallic cables. The optical fibre cables will also be used to deliver telephony services and may also be used to deliver TV services.

BT has asked for permission to discount its telephony services when it pilots FTTP technology at Ebbsfleet

- 1.6 BT plans to treat the first homes connected using this new method as a pilot ('the Ebbsfleet FTTP Pilot'). BT argues that discounts are a standard part of any pilot and has asked Ofcom for permission (under the USCs) to offer pilot customers discounts on connection and line rental charges for telephony services which may include offering connection and rental without charge.
- 1.7 BT is seeking permission to offer these discounts to no more than 300 homes at the Ebbsfleet development for the period August 2008 to December 2009.

Ofcom is proposing to consent to BT Request

- 1.8 Ofcom wishes to encourage deployment of NGA networks and therefore proposes to consent to BT's request in order to facilitate the Ebbsfleet FTTP Pilot. We think that allowing BT to discount telephony connection and line rental charges for the

Ebbsfleet FTTP Pilot would not undermine the overall effectiveness of the USCs because the consent would be restricted to 300 homes for a limited period only. Also BT would not be permitted to charge above its standard rates for the Ebbsfleet FTTP Pilot and the requirement for uniform pricing would continue to apply elsewhere in the UK. We have assessed the impact of consenting to the request and our initial view is that it would have a minimal impact.

We have published a separate consultation that looks at the wider issues for regulatory policy associated with new-build fibre networks

- 1.9 The deployment of optical fibre networks for new-build developments (such as housing estates) raises a range of issues for regulatory policy. We have limited the scope of this document to BT's request for the Ebbsfleet FTTP Pilot because we have already considered these wider issues in a separate consultation *Next Generation: New Build*¹ which was published on 16 April 2008. We are currently considering stakeholders responses to that consultation and expect to publish a policy statement shortly.

Next Steps

- 1.10 In this consultation we are asking for stakeholders views about:
- our proposal to consent to BT's request for non-uniform pricing under the USCs for the Ebbsfleet FTTP Pilot;
 - the specific terms of the consent and the legal notifications for this consent; and
 - our assessment of the impact of consenting to BT's request.
- 1.11 The closing date for responses is 10 July 2008. Guidance on how to respond is set out in Annex 1. Following receipt and consideration of the responses we will publish a policy statement setting our decision. We hope to publish our policy statement in July 2008.
- 1.12 If we do not make any significant changes to our proposals as a result of the responses, we envisage that our policy statement would contain the final notification granting the consent requested by BT.

¹ <http://www.ofcom.org.uk/consult/condocs/newbuild/>

Section 2

Introduction

Legal Framework for the Universal Service Conditions

- 2.1 The USCs ensure that certain basic fixed line services which are considered essential for everyone are available at affordable and uniform prices to all consumers in the UK. This especially assists consumers who live in areas of the UK where services are more expensive to provide (generally rural areas).
- 2.2 Requirements for universal services are set out in *Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services*², ('the Universal Services Directive'). The Universal Services Directive was implemented in the UK amongst others in the Communications Act 2003 ('the Act') and the Electronic Communications (Universal Service) Order 2003 ('the Order'). The Order specifies the services which must be provided throughout the UK. It also provides that such services ('USO Services') have to be offered at prices that are uniform throughout the UK unless Ofcom has determined there is clear justification not to do so.
- 2.3 The Order has been implemented by Ofcom through specific conditions (the USCs) which are applied to certain communications providers designated by Ofcom as Universal Service Providers. Currently these are BT and KCOM. BT is required to provide USO Services in all parts of the UK excluding the Hull area and KCOM is required to provide USO Services in the Hull area.
- 2.4 The USCs are specified in a Notification published on 21 July 2003 by the Director General on under Regulation 4 (10) of the Electronic Communications (Universal Service) Regulations 2003³. These automatically entered force by virtue of the transitional powers in the Act.
- 2.5 Under the USCs BT is required to provide fixed telephony services in all areas of the UK excluding the Hull area in response to reasonable requests from end-users. BT must provide these services at a uniform price throughout the UK (again excluding the Hull area) unless Ofcom consents otherwise. This requirement is specified in Condition 1 which states:

Condition 1: Provision of telephony services on request

1.1 At the reasonable request of any End-user, BT shall provide Telephony Services, including the ability to make and receive calls employing facsimile and data communications, at data rates that are sufficient to permit functional internet access, to that End-user at any place in the UK except for the Hull Area, and BT shall ensure that its Electronic Communications Networks are installed, kept installed and run for those purposes.

1.2 Unless the Director consents otherwise, BT shall provide the services referred to in paragraph 1.1 on the basis of uniform prices throughout the UK except for the Hull Area.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0051:0077:EN:PDF>

³ http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/uso0703.pdf

BT's Request

- 2.6 This consultation considers a request from BT dated 29 April 2008 which is reproduced in Annex 7.
- 2.7 Until now BT has connected homes to its network using conventional metallic cables. However at a large housing development at Ebbsfleet in Kent, BT intends to provide services using optical fibre cables. This technology is commonly known as Fibre to the Premises or FTTP.
- 2.8 This is an example of an NGA network technology which will support the delivery of broadband services with much greater bandwidth than conventional metallic cables. The optical fibre cables will also be used to deliver telephony services and may also be used to deliver TV services.
- 2.9 BT plans to treat the first homes connected using this new method as a pilot. BT argues that discounts are a standard part of any pilot and has asked Ofcom for permission (under the USCs) to offer pilot customers discounts on connection and line rental charges for fixed telephony services which may include offering connection and rental without charge.
- 2.10 BT's request does not include fixed telephony call charges so customers participating in the Ebbsfleet FTTP Pilot would pay the same call charges as BT customers in other parts of the UK.
- 2.11 BT is seeking permission to offer these discounts to no more than 300 customers connected using FTTP technology at the Ebbsfleet FTTP Pilot for the period from August 2008 to December 2009.

Section 3

Ofcom's proposed consent

3.1 Ofcom has considered BT's request and is proposing to consent to the request.

3.2 In making this proposal, Ofcom has taken into account the following factors.

Communications Act Tests

3.3 Ofcom regulates the communications sector under a framework established by the Act. The Act grants Ofcom the power, for the purposes of securing compliance with Community obligations in relation to universal services to designate undertakings as Universal Service Providers and to specify USCs with which designated undertakings must comply.

3.4 The tests that Ofcom must apply to give, modify or withdraw a direction, approval or consent are those specified in section 49(2) of the Act. Ofcom must also take account of its general duties in section 3 of the Act and the European Community requirements for regulation as specified in section 4 of the Act. Each of these requirements is considered in this section.

Requirement to publish a notification

3.5 Under section 49(4) of the Act, before a direction, approval or consent is given, modified or withdrawn, Ofcom is required to publish a notification:

- a) stating that there is a proposal to give, modify or withdraw it;
- b) identifying the person whose proposal it is;
- c) setting out the direction, approval or consent to which the proposal relates;
- d) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal;
- e) giving out the reasons for making this proposal; and
- f) specifying the period within which representations may be made about the proposal to the person whose proposal it is.

3.6 The consultation period must not be less than one month after the day of publication of the notification.

3.7 This consultation, in conjunction with the Impact Assessment sets out in detail the effects of the proposed consent and the reasons for the proposed consent.

3.8 Annex 6 contains the notification of the proposed consent.

3.9 Ofcom is inviting written views and comments by 5pm on 10 July 2008 on the proposed modifications.

3.10 Details of how to respond can be found at Annexes 1, 2 and 3.

- 3.11 Ofcom will give careful consideration to all comments received during the consultation period and in light of the comments received may give effect to the proposals set out in this document, with or without modification, by publication of a Notification and explanatory statement. Ofcom aims to publish this document in July 2008.

Impact Assessment

- 3.12 Under section 7 of the Act, Ofcom has a duty to undertake impact assessments when it proposes to do anything in connection with carrying out its functions and it considers that its proposals are important. Ofcom's Impact Assessment for the proposed consent is in Annex 5 of this document.

Test for granting consent

- 3.13 As set out under section 49 of the Act, when granting consent, Ofcom must be satisfied that the test set out under section 49(2) has been met. The test is that the granting of the consent is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - b) not unduly discriminatory against particular persons or against a particular description of persons;
 - c) proportionate to what it is intended to achieve; and
 - d) transparent in relation to what it is intended to achieve.
- 3.14 Ofcom considers that the proposed consent meets the test set out in section 49 being:
- a) **Objectively justifiable:** in that the proposed consent:
 - i) is consistent with Ofcom's general duties in that it supports the objectives of encouraging investment and innovation and encouraging the availability of high speed data transfer services;
 - ii) would facilitate the Ebbsfleet FTTP Pilot without undermining the overall effectiveness of the USCs, (the purpose of which is to ensure that consumers are able to obtain certain basic fixed line services at affordable and uniform prices throughout the UK) since the proposed consent:
 - o relaxes the uniform-pricing requirement only to the extent strictly necessary for the Ebbsfleet FTTP Pilot and is therefore restricted to no more than 300 households for a limited period only; and
 - o requires BT to charge pilot customers no more than standard rates for fixed telephony connection and line rental;
 - iii) would permit BT to offer fixed telephony services to pilot customers at reduced prices in recognition that services may be delivered and operate differently from standard fixed telephony services and that customers may be asked to provide BT with feedback about the services.

b) **Not unduly discriminatory** in that:

- communications providers not designated as Universal Service Providers have the commercial flexibility to charge non-uniform prices when piloting new access network technologies and the effect of the proposed consent would be to permit BT a similar flexibility for the Ebbsfleet FTTP Pilot; and
- the proposed consent for non-uniform pricing for the Ebbsfleet FTTP Pilot is in recognition that services may be delivered and operate differently from standard fixed telephony services and that customers may be asked to provide BT with feedback about the services.

c) **Proportionate** in that:

- i) the proposed consent relaxes the uniform-pricing requirement under the USCs only to the extent strictly necessary for the Ebbsfleet FTTP Pilot whilst maintaining the uniform pricing obligation elsewhere in the UK;
 - ii) the proposed consent relates to a small number of homes for a limited time period only (no more than 300 homes in Ebbsfleet for the period between 1 August 2008 and 31 December 2009);
 - iii) Ofcom's impact assessment demonstrates that the proposed consent would facilitate the Ebbsfleet FTTP Pilot whilst having little other impact; and
 - iv) Ofcom has the power to modify or withdraw the consent at any time should it consider it appropriate.
- d) **Transparent** insofar as the nature and obligations of proposed consent as well as the reason and effects of the proposal are clearly set out in this consultation document.

Ofcom's general duties

3.15 Section 3(1) of the Act sets out the principal duty of Ofcom. That duty is to:

- a) further the interests of citizens in relation to communications matters; and
- b) further the interests of consumers in relevant markets, where appropriate by promoting competition.

3.16 Section 3 (2) of the Act further states that in fulfilling the principal duty specified in section 3 (1) Ofcom is required to secure the availability throughout the UK of a wide range of electronic communications services.

3.17 Section 3(3) of the Act requires Ofcom, when performing its duties, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and any other principles appearing to Ofcom to represent the best regulatory practice.

3.18 Ofcom considers that the proposed consent would be in accordance with these duties and principles because facilitating BT's pilot deployment of NGA network technology at the Ebbsfleet FTTP Pilot would:

- further the interests of consumers and the aim of securing the availability of a wide range of electronic communications services by encouraging the development and deployment of NGA network technology which supports higher bandwidth broadband services than are available on conventional copper networks; and
- further the interests of customers who live in the Ebbsfleet FTTP Pilot area and who will have to participate in the pilot if they purchase fixed telephony services from BT during the pilot period.

3.19 Ofcom also considers that the proposed consent would be consistent with these duties and principles because:

- i) the proposed consent supports the Ebbsfleet FTTP Pilot without compromising the overall effectiveness of USCs (the purpose of which is to ensure that consumers are able to obtain certain basic fixed line services at affordable and uniform prices throughout the UK) since the proposed consent:
 - relaxes the uniform-pricing requirement only to the extent strictly necessary for the Ebbsfleet FTTP Pilot and is therefore restricted to no more than 300 households for a limited period only; and
 - requires BT to charge pilot customers no more than standard rates for fixed telephony connection and line rental;
- Ofcom's Impact Assessment demonstrates that the proposed consent would be likely to have a minimal impact; and
- the proposed consent would be proportionate in that it would deliver the minimum necessary additional regulation to achieve the policy objectives.

3.20 Section 3 (4) of the Act lists further factors that Ofcom must take into account to the extent they are relevant in each particular case when fulfilling its functions. Ofcom considers that the following are relevant to these proposals:

- the desirability of promoting competition in relevant markets;
- the desirability of encouraging investment and innovation in relevant markets; and
- the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom.

3.21 Ofcom has taken these factors into account in developing its proposals and considers they are consistent with these considerations. Ofcom considers that the following factors are relevant in this case:

- **Promoting competition:** Ofcom considers that the proposed consent would be likely to have a minimal, if any impact on competition (see Ofcom's impact assessment in annex 5 for more detailed consideration).
- **Encouraging investment and innovation in markets:** Ofcom considers that the proposed consent furthers this objective by facilitating BT's pilot deployment of an NGA network for the delivery of fixed telephony, broadband and other services.

- **Encouraging availability of high speed data transfer services:** Ofcom considers the proposed consent furthers this objective by facilitating BT's pilot deployment of an NGA network that will support the delivery of high bandwidth broadband services.

European Community requirements for regulation

- 3.22 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation, including the requirement to promote the interests of all persons who are citizens of the European Union. In summary, these requirements are to:
- a) promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
 - b) contribute to the development of the European internal market;
 - c) promote the interests of all persons who are citizens of the European Union;
 - d) not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
 - e) encourage the provision of network access and service interoperability for the purpose of securing:
 - i) efficient and sustainable competition; and
 - ii) the maximum benefit for customers of CPs; and
 - f) encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of CPs.
- 3.23 In doing so, Ofcom has to read these requirements in accordance with the requirements of article 8 of the Framework Directive (Directive 2002/21/EC). These include, in particular, the obligation to:
- a) ensure that users, including disabled users, derive maximum benefit in terms of choice, price and quality (Article 8(2)(a));
 - b) ensure a high level of protection for consumers in their dealings with suppliers (Article 8(4)(b)); and
 - c) promote the provision of clear information, in particular requiring transparency on tariffs and conditions for using publicly available electronic communications services.
- 3.24 Ofcom considers that the proposed consent is consistent with these objectives in so far as they are relevant in this case.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 10 July 2008**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at http://www.ofcom.org.uk/consult/condocs/ebbsfleet_fibre/howtorespond/, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email clive.hillier@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Clive Hillier
Floor 4
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 783 4103
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex X. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Clive Hillier on 020 7783 4674.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in July 2008.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is as easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:
- A1.16 Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW
- Tel: 0141 229 7401
Fax: 0141 229 7433
- Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

- A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

- A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

- A2.3 We will be clear about who we are consulting, why, on what questions and for how long.
- A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A2.5 Under Ofcom's recently revised consultation guidelines⁴ we have classified this consultation as a Category 3 consultation and are therefore allowing one month for responses.
- A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.
- A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

- A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

⁴ http://www.ofcom.org.uk/consult/consult_method/ofcom_consult_guide

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Ebbsfleet Fibre to the Home Pilot

To (Ofcom contact): Clive Hillier

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)

Annex 4

Consultation questions

Question 1: Do you agree with Ofcom's proposal to consent to BT's request for permission under Universal Service Condition 1 to charge non-uniform prices for the Ebbsfleet FTTP Pilot?

Question 2: Do you have any comments about the proposed wording of the draft consent specified in the schedule to Annex 6?

Question 3: Do you have any comments on Ofcom's impact assessment for the proposed consent as set out in Annex 5?

Question 4: Do you have any other comments?

Annex 5

Impact Assessment

Introduction

- A5.1 The analysis presented in this annex represents an impact assessment, as defined in section 7 of the Act.
- A5.2 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- A5.3 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

The citizen and/or consumer interest

- A5.4 The USCs ensure that certain basic fixed line services which are considered essential for everyone are available at affordable and uniform prices to all consumers in the UK. This assists consumers who live in areas of the UK where services are more expensive to provide (generally rural areas).
- A5.5 Until now BT has connected homes to its network using conventional metallic cables. However at a large housing development at Ebbsfleet in Kent, BT intends to provide services using optical fibre cables. This technology is commonly known as FTTP.
- A5.6 This is an example of an NGA network technology which will support the delivery of broadband services with much greater bandwidth than conventional metallic cables. Conventional fixed telephony services and TV services will also be delivered over the same optical fibre cables.
- A5.7 BT plans to treat the first homes connected using this new method as a pilot and has asked Ofcom for permission (under the USCs) to offer pilot customers discounts on connection and line rental charges for fixed telephony services which may include offering connection and rental without charge. BT's request does not include fixed telephony call charges so customers participating in the Ebbsfleet FTTP Pilot would pay the same call charges as BT customers in other parts of the UK.
- A5.8 BT is seeking permission to offer these discounts to no more than 300 customers connected using FTTP technology at the Ebbsfleet FTTP Pilot for the period 1 August 2008 to 31 December 2009.

A5.9 Ofcom is proposing to consent to BT's request.

A5.10 There are three aspects to citizen/consumer interests associated with these proposals.

5.10.1 The USCs ensure that fixed telephony services are available to everyone at affordable and uniform prices throughout the UK. It is in consumers interests that the effectiveness of the USCs in this respect is not undermined by the proposed consent;

5.10.2 Encouraging the development and deployment of NGA network technologies that would support high bandwidth broadband services would be in the interests of consumers and citizens generally;

5.10.3 Consumers that purchase fixed telephony services from BT at Ebbsfleet during the pilot period will have to participate in the pilot and it would be in their interests that BT be given the flexibility to offer discounts on fixed telephony line connection and rental in recognition that those services may be delivered and operated differently from conventional fixed telephony services and that customers may be asked to provide BT with feedback about the services.

Ofcom's policy objectives

A5.11 In considering whether to grant BT's request Ofcom has sought to achieve a balance between two policy objectives:

- maintaining the effectiveness of the USCs which ensures that certain basic fixed line services are available at affordable and uniform prices (upon reasonable request) to all citizens and throughout the UK; and
- encouraging investment and innovation in NGA networks.

Options considered

A5.12 Ofcom has considered two options:

- To consent to BT's request for non-uniform charging for the Ebbsfleet FTTP Pilot; and
- To refuse BT's request for non-uniform charging for the Ebbsfleet FTTP Pilot.

Analysis of the different options

To consent to non-uniform charging for the Ebbsfleet FTTP Pilot

A5.13 Consenting to BT's request would facilitate BT's pilot deployment of NGA network by allowing BT to set fixed telephony connection and line rental charges for Ebbsfleet FTTP Pilot customers at rates below its standard charges. BT would be permitted to apply the discounts to no more than 300 homes participating in the Ebbsfleet pilot for the period from 1 August 2008 to 31 December 2009.

A5.14 Ofcom's assessment of granting the request is set out below.

Impact on BT

- A5.15 Granting the request would facilitate BT's pilot deployment of an NGA network by allowing BT to offer consumers participating in the Ebbsfleet FTTP Pilot fixed telephony connection and line rental at rates below the standard rates offered to BT customers elsewhere in the UK. This would allow BT:
- to vary prices to reflect differences in the way that services are delivered and operate compared with standard fixed telephony services; and
 - to encourage pilot customers to provide BT with feedback on the pilot services.

Impact on Consumers

- A5.16 The impact on consumers would be limited to those households that participate in the Ebbsfleet pilot. BT would be able to pilot NGA network technology to deliver fixed telephony and other services at Ebbsfleet and would be able to offer fixed telephony connection and line rental at rates below the standard rates offered to BT customers elsewhere in the UK.

Impact on Competition

- A5.17 The direct effect of the proposed consent would be to allow BT to set charges for fixed telephony line connection and rental for the Ebbsfleet pilot at rates below its standard rates offered to BT customers elsewhere in the UK under the USCs. The proposed consent is intended to encourage innovation in NGA networks by ensuring that the USCs do not present a barrier to BT's proposed pilot deployment of this technology. Such innovation may in the longer run be beneficial to competition by demonstrating the technical and commercial potential for new services and encouraging other providers to deploy similar networks and services.
- A5.18 Given the limited scale and duration of the proposed consent Ofcom's initial view is that the impact on competition of any discounts (to fixed telephony connection and line rental charges) that BT might offer to Ebbsfleet customers would be minimal. Ofcom estimates that the total value of the discounts that BT may offer to Ebbsfleet FTTP Pilot customers would not exceed £83,000 assuming current connection and line rental prices. In practice the value of the discounts may be less since the number of homes built at Ebbsfleet is unlikely to reach 300 until towards the end of the period of the requested consent.
- A5.19 However, Ofcom notes that fixed telephony services fall within the market for Fixed Narrowband Retail Services⁵ and that Ofcom has concluded that BT has Significant Market Power in the provision of those services. BT will continue to be subject to the SMP conditions determined by Ofcom as remedies to BT's SMP in this market. These remedies include a requirement not to unduly discriminate between retail customers.

To refuse BT's request for non-uniform charging for the Ebbsfleet FTTP Pilot

- A5.20 Refusing BT's request would prevent BT from setting fixed telephony connection and line rental charges for Ebbsfleet pilot customers at rates below its standard charges. BT would therefore have to apply its standard charges for fixed telephony connection and line rental for Ebbsfleet pilot customers.

⁵ http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/uso0703.pdf

A5.21 Ofcom's assessment of not granting the request is set out below.

Impact on BT

A5.22 If Ofcom refused the request, BT would still be able to deploy an optical fibre access network at Ebbsfleet and treat the first 300 homes connected using this technology as a pilot. However, refusing the request would prevent BT offering fixed telephony services (connection and line rental) at a discount. The inability to offer discounts might make it more difficult for BT to persuade pilot customers to provide feedback on the pilot services.

Impact on Consumers

A5.23 The impact on consumers would be limited to those households that participate in the Ebbsfleet pilot. BT would pilot the use of NGA technology to deliver fixed telephony services and connection and line rental would be charged at standard rates. This may mean that pilot customers would not be compensated for any differences in the way their services are ordered and delivered.

Impact on Competition

A5.24 Ofcom's initial view is that refusing the request would not have any impact on competition because refusal of the request would maintain the USCs in full.

The preferred option

A5.25 Ofcom proposes to consent to BT's request for permission under the USCs to be allowed non-uniform charging for its Ebbsfleet FTTP Pilot. Ofcom considers that granting the request is justified because it would not undermine the overall effectiveness of the USCs and by facilitating BT's pilot deployment of NGA network technology would further Ofcom's policy objective of encouraging innovation by and investment in NGA networks.

Notification of proposals under section 49(4) of the Communications Act 2003

Proposals for giving Consent to BT pursuant to section 49 of the Communications Act 2003 ('the Act') and the Universal Service Condition 1.2 which is set out in the Schedule to the Notification published by the Director General on 21 July 2003 under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003

Whereas

1. Ofcom hereby makes, in accordance with section 49 of the Act, the following proposal for Consent to be given to BT under section 49 of the Act and Universal Service Condition 1.2, which is set out in the Schedule to the Notification published by the Director General on 21 July 2003 pursuant to Regulation 4(10) of the Electronic Communications Regulations 2003.
2. The draft Consent is set out in the Schedule to this notification.
3. The effect of the draft Consent and the reasons for making the proposal are set out in the accompanying consultation document.
4. Representations may be made to Ofcom about the draft Consent by 5pm on 10 July 2008.
5. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with section 50(1) (a) of the Act.
6. For the purposes of this notification:

"Act" means the Communications Act 2003;

"BT" means British Telecommunications plc, whose registered company numbers is 1800000, and any subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985 as amended by the Companies Act 1989 and the Companies Act 2006;

"Director General" means the Director General of Telecommunications;

"Ofcom" means the Office of Communications; and

"Universal Service Conditions" means the conditions set out in the Schedule to the Notification published by the Director General on 21 July 2003 pursuant to Regulation 4(10) of the Electronic Communications Regulations 2003.

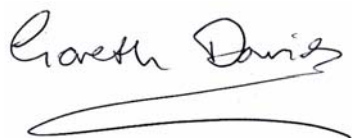
7. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the meaning as it has in the Universal Service Conditions and otherwise any word or expression shall have the same meaning as it has in the Act.

8. For the purposes of interpreting this Notification:

- i. Headings and titles shall be disregarded; and
- ii. The Interpretation Act 1989 shall apply as if this Notification were an Act of Parliament.

9. The Schedule to this Notification shall form part of this Notification.

Signed by

A handwritten signature in black ink, appearing to read 'Gareth Davies', with a long horizontal flourish underneath.

Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

9 June 2008

Schedule

Consent to be given to BT under section 49 of the Communications Act 2003 ('the Act') and the Universal Service Condition 1.2 which is set out in the Schedule to the Notification published by the Director General on 21 July 2003 under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003

Whereas

1. On 21 July 2003, the Director General published a Notification under Regulation 4 (10) of the Electronic Communications (Universal Service) Regulations 2003 setting out his proposals for the designation of universal service providers and the setting of Universal Service Conditions, including Universal Service Condition 1, that he intended to be given effect upon the coming into force of any enactment which implemented the Universal Service Directive 2002/22/EC;
2. The proposals set out in the Notification dated 21 July 2003 under Regulation 4 (10) of the Electronic Communications (Universal Service) Regulations 2003 automatically entered into force by virtue of the transitional provisions in the Act;
3. The Consent concerns matters to which Universal Service Condition 1 relates, in particular the requirement for BT to provide the Telephony Services referred to in Universal Service Condition 1 on the basis of uniform prices in the UK except for the Hull area (as defined in those conditions);
4. For the reasons set out in the Statement accompanying this Consent, Ofcom is satisfied that, in accordance with section 49 (2) of the Act, this Consent is:
 - a. Objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - b. Not such as to discriminate unduly against particular persons or against a particular description of persons;
 - c. Proportionate to what it is intended to achieve; and
 - d. In relation to what it is intended to achieve, transparent;
5. for the reasons set out in the Statement accompanying this Consent, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act;
6. a notification of a proposal to give this Consent was given under section 49 (4) of the Act on 9 June 2008 ('the Notification')
7. a copy of the Notification and accompanying consultation document was sent to the Secretary of State in accordance with section 50(1)(b) of the Act;
8. in the Notification and accompanying consultation document Ofcom invited representations about any of the proposals therein by 5pm on 10 July 2008;
9. by virtue of section 49(9) of the Act; Ofcom may give effect the proposal set out in the Notification, with or without modification, only if-

- they have considered every representation about the proposal that is made to them within the period specified in the Notification; and
 - they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
10. [Ofcom received responses to the Notification and have considered every such representation made to them within the period specified in the Notification and accompanying consultation document and these representations are discussed in section x of the Statement accompanying this Consent; and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose];

NOW THEREFORE PURSUANT TO SECTION 49 OF THE ACT AND UNIVERSAL SERVICE CONDITION 1.2 OFCOM GIVES THE FOLLOWING CONSENT:

1. The obligation on BT in Universal Service Condition 1.2 to provide Telephony Services on the basis of uniform prices throughout the UK (except in the Hull Area) shall not apply in respect of connection and rental charges for Telephony Services for the Ebbsfleet Pilot with the proviso that:
 - a. connection and rental charges for Telephony Services for the Ebbsfleet Pilot shall not exceed those charged by BT on the basis of uniform prices elsewhere in the UK; and
 - b. BT shall record and retain such records as is necessary to prove that it has complied with the terms of this consent;
2. For the avoidance of doubt, the consent specified in paragraph 1. does not include Telephony call charges.
3. Ofcom may, pursuant to section 49 of the Act at any time during the period of this Consent modify or withdraw the Consent.
4. For the purposes of interpreting this Consent (including the recitals above), the following definitions shall apply:

“Act” means the Communications Act 2003;

“BT” means British Telecommunications plc, whose registered company number is 1800000, and any subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985 as amended by the Companies Act 1989 and the Companies Act 2006;

“Director General” means the Director General of Telecommunications;

“Ebbsfleet Pilot” means Telephony Services delivered over optical fibre cables to no more than 300 homes in Ebbsfleet Kent for a period from 1 August 2008 to 31 December 2009;

“Ofcom” means the Office of Communications;

“Telephony Services” means as set out in the Schedule to the Notification published by the Director General on 21 July 2003 pursuant to Regulation 4(10) of the Electronic Communications Regulations 2003; and

“Universal Service Conditions” means as set out in the Schedule to the Notification published by the Director General on 21 July 2003 pursuant to Regulation 4(10) of the Electronic Communications Regulations 2003.

Annex 7

BT's request for consent under Universal Condition 1



Stuart McIntosh
Competition Partner
Ofcom
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

29th April 2008

Dear Stuart

Ebbsfleet Trail – Consent request: Universal Service Condition 1.2

BT seeks consent from Ofcom under section 49 of the Communications Act 2003 (the Act) and Universal Service Condition 1.2 to provide fibre-based telephony services at Ebbsfleet at non-uniform prices under the terms and condition set out below. BT understands that in carrying out its general duties Ofcom may at any time pursuant to section 49(2) of the Act and following consultation under section 49(4) of the Act withdraw this consent *inter alia* if it considers that continuation of the proposed discounted tariffs might harm the interests of consumers. Furthermore, BT is aware that the consent sought by Ofcom only relates to BT's obligations under Universal Service Condition 1.2 and in no way affects other obligations imposed upon BT under regulation or competition law.

BT seeks such consent under the following terms and conditions:

- To offer retail access services (connection and line rental) below equivalent published tariffs, including free of charge, at the Fibre to the Premises (FTTP) pilot site in Ebbsfleet for a maximum of 300 customers.
- To be implemented from August 2008 until the end of December 2009.

No consent is requested for retail voice calls which will remain under the Uniform Pricing obligation.

BT understand the need to have USO obligations in the UK but we believe that our request to vary prices as part of a limited pilot will benefit customers in Ebbsfleet and ultimately throughout the rest of the country.

BT wishes to vary our pricing because BT Retail plans to treat the first few customers at Ebbsfleet as part of a pilot. Ofcom consent to vary pricing is sought only because of the USO Uniform Pricing obligation would otherwise prevent BT Retail varying prices.

BT's initial Retail services at Ebbsfleet will be provided as a pilot and the ability to vary prices is a standard part of any pilot. At Ebbsfleet BT is using new and innovative services over a totally new underlying technology. To date the USO has only been used for traditional services in the UK over a known and established copper network. This is clearly not the case at Ebbsfleet where FTTP is being used exclusively.

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Registered in England no. 1800000
BT is an ISO 9001 Registered Company
www.bt.com

Fundamental to our request to charge lower prices via a pilot for the first few customers at Ebbsfleet is that our customers experience will be different. Our customers will be able to take advantage of new services that are not available nationally. However we also recognise that some services are not available over fibre and there may be some difference in the way services are ordered, billed and indeed the totality of the way that our customers will interact with us. The use of a pilot, with lower prices, is a common commercial response to such circumstances.

Another important element of a pilot is to capture feedback. BT wishes to capture how our customers view the new experience in a fibre world, in comparison to their previous telephony service(s) delivered via copper. During this initial pilot period we aim to request this small group of customers to participate in focus groups, provide us with regular feedback to capture data on their experience when they interact with our new processes (billing, customer service, provisioning, etc.). To encourage our customers to provide this valuable feedback we need to have an incentive of some sort and the usual business approach is to provide some form of discount on the initial price of the service.

BT does not believe that consumers participating in this trial or consumers outside the trial location will be disadvantaged by this proposal. USC 1 provides a safety net that ensures basic fixed line services are available at an affordable price upon reasonable request to all citizens and consumers across the UK. Please note that customers outside of Ebbsfleet will continue to receive services at uniform published prices. Therefore, all consumers in the UK will continue to have basic telephony services available to them at affordable prices consistent with USC 1.

Consistent with section 49(2) of the Act, BT considers that granting consent for non-uniform prices in these circumstances would be proportionate, objectively justifiable and transparent since it would enable BT Retail to manage the potential risks of offering, and customers' receiving, a brand new service and BT will be asking customer to provide valuable data as part of the trial to improve the customer experience.

Consent for non-uniform prices would also not be unduly discriminatory as the differential charging would only apply for a very small and specific set of customers, over a very specific and limited timescale, in a new and unusual set of circumstances.

Yours sincerely



Gordon Moir
General Counsel BT Retail