



Bringing it all together

BT Response to European Commission Consultation on Universal Service Obligation

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BT Comments on EU Universal Service Consultation

1. Introduction / Overview

Universal Service Obligation (USO) in telecoms was designed to prevent social exclusion, by ensuring the availability of a basic level of service in case the market did not provide this. Most of the assumptions underlying the original introduction of USO have since changed, in terms of technology, competition and consumer expectations. The deployment of new high-speed networks will change the picture even further, with substantially higher levels of public funding needed to bring these new networks to more remote regions. A wide-ranging review is therefore timely, bringing all these elements together in the broader, more strategic debate about 'Broadband for All' that the Commission is planning.

A first step is to re-evaluate the role of the specific aspects of the USO Directive in the light of technological change and competition. In most of the EU there is competition from fixed and mobile providing a high degree of availability, quality and affordability for the basic connection and services – the market now delivers and makes a separate USO requirement unnecessary. The inclusion of public payphones should be reviewed in the light of near ubiquitous mobile coverage. And the widespread use of web-based services brings the need for traditional directory services into question.

The funding method for USO needs revising. Any net costs need a realistic and transparent assessment, including so-called intangible benefits. Funding for USO should ideally be provided from general taxation; where industry funds are applied, it should be spread across a wide range of contributors benefitting from the availability of networks, not just from fixed telecoms providers.

Accessibility for people with disabilities should be addressed within a new and broader context including the 'design for all' approach based on general rights of equality (non-discrimination) that applies to all bodies delivering products and services, helped by demand stimulating measures

The traditional concept of USO cannot simply be transposed to broadband. The key challenge is around ensuring availability - "Broadband for all" - and should be discussed and solved within a wider debate. General objectives and delivery instruments could be framed at European level, but implementation and choices should be made at national level, given the important policy and financing implications and wide-spread national divergence.

Availability of first generation broadband (fixed or mobile) is high in many EU countries, and it is appropriate to set targets such as 2Mbps in the UK, France, Finland and others. New market, technology and regulatory developments will further contribute to this. Where there is no economic case for providing access to the relatively small percentage of households unable to access the target bandwidth level, then public funding is appropriate.

Availability of high-speed 'next generation' broadband, offering up to 100Mbps, is of course a greater challenge given the uncertainties of demand and the high investment costs. Again, the traditional concept of USO in this context would be completely impractical and disproportionate, as such networks are only just being deployed, and large scale public funding may be needed in the regions where there is likely to be no economic case.

BT is already fully engaged in delivering 'Broadband for all', with nearly 100% availability of first generation broadband and ambitious plans to make new high-speed networks available to 40% of UK households by 2012. By taking an open and competitive approach, encouraging service-based innovation and choice, we hope to increase the uptake of new services.

Governments and other stakeholders have an important role in funding availability in uneconomic areas, but also in addressing the factors which can encourage demand and take-up of broadband services. This aspect should also feature prominently in any EU strategy towards "Broadband for All".

2. Responses to Commission's Specific Questions

Question 1: In today's competitive environment, can the market be relied on to meet demand for basic e-communications services from all sections of society, thereby ensuring social inclusiveness?

Yes. BT believes the basic connection, as well as the provision of telephony and other necessary basic communications services, can in most Member States – and certainly in the UK - be regarded as adequately supplied by the market with no universal service obligations needed. Indeed a number of Member States including Germany, Luxemburg and Sweden do not have a designated universal service provider. BT also notes that the Commission has concluded that the market can be left to deliver mobile telephony services without the need for their inclusion within the scope of universal service even though their geographical availability is less than for fixed network services.

Taking the key features of universal service in turn:

- **Connection, and services over the connection**, can be left to the market. Fixed, mobile and satellite networks are all capable of meeting requirements. There is widespread competitive supply of services.
- **Directories.** The Commission proposed in 2006¹ to remove directories and directory enquiry services from the scope of universal service on the grounds that the market was delivering. It is now time to act on that proposal. Annex 1 contains more detailed comments.
- **The costs of both fixed and mobile services have fallen significantly** over the last few years and this, coupled with the availability of "Pay as You Go" mobile tariffs that are very economical for occasional use, means that affordability is being delivered by the market.
- **Payphones.** As a consequence of the adoption of mobile handsets, huge numbers of Payphones are unused for months or years at a time. The market will provide them in busy areas but it is a waste of resources to continue supplying and maintaining facilities that will rarely if ever be used. Payphones should no longer be a universal service requirement.
- **Accessibility** measures for disabled end-users are best dealt with in the context of the users' rights section of the Directive. Design for All methods, European standards, and government procurement of appropriate services and equipment all have roles to play. Furthermore, the expectation of innovation and competitive supply of accessibility services suggests that a single designated provider is inappropriate.

¹ SEC(2006)816

In the context of this question BT would welcome more clarity from the Commission on the definition of “basic e-communications services”. It is not clear whether this includes connection to a network, telephony, or is just sub-2Mbit/s data service for a range of applications.

Question 2: If not, what is the best policy to allow disabled consumers, those on low incomes and those living in geographically remote or isolated areas to access and use basic e-communications services?

As described above, BT believes the market can generally be left to deliver basic e-communications services. If a mechanism is required to address a perceived gap or market failure then some residual universal service obligation powers for NRAs could remain. But there should be a presumption that the market is delivering and an NRA should be required to demonstrate not only the need for a limited USO but also that no alternative method of delivery by commercial means would be suitable.

Question 3: Broadband for all is a widely-stated policy objective at national and European level. What role if any should universal service play in meeting this objective?

For a traditional universal service policy to be appropriate a number of conditions need to be met:

- The service should be reasonably mature so that market failure is clear.
- The gap between current coverage and/or take-up and the maximum realistically achievable should be small – perhaps no more than 10-15%.
- It should be recognised that there may be areas of a country that are so expensive to service, that commercial markets will not provide a solution without additional contribution, whether from the government or the individuals and organisations affected.
- There should be a recognition that there will always be a number of people who choose not to take a communications service, even though it may be part of a universal service obligation.
- The service element of the universal service obligation should be defined at an appropriate performance level. The default assumption should be that the market will deliver to minimise the distortion effects of a universal service obligation.
- Funding for universal service costs should have regard to the externality factors when additional users are brought into the service. This means that contributions should principally be raised from the groups – including local and central government departments - that benefit from being able to reach these users. If universal service is seen mainly as a social welfare benefit then the case for central government funding is even stronger.

If broadband, even at a basic service level, is assessed against these criteria it will be clear that it is still too soon for a traditional universal service approach to be appropriate. The UK approach of a universal service commitment outside the USO may be a better way forward but the speed chosen must be realistic in light of current usage and incremental costs, and there must be a good understanding of the various factors impacting the end-user experience.

If nevertheless a universal service instrument were to be used for broadband it would be important to ensure that a number of changes or clarifications were made:

- Funding must be raised from a broad range of contributors. The types of contributors will depend on where the benefits from expanding the take-up of broadband will accrue – and will probably include government and content/application providers. The funding burden must not be limited to providers of electronic communications services.
- The speed, or other QoS/service, requirements within any broadband USO should be no more than the minimum needed to prevent social exclusion.
- The coverage requirement should be limited to “reasonable” requests for service – and thus there should be an expectation that users in exceptionally remote areas will make a significant contribution to the costs of their connection.

Question 4: What impacts could an extension of the role of universal service to advance broadband development have in relation to other EU and national policies and measures to achieve full broadband coverage in the EU? What other impacts would be likely to arise regarding competition, the single market, competitiveness, investment, innovation, employment and the environment?

There is a general consensus that broadband does have a positive impact on innovation and employment. The availability of broadband across the EU would encourage new opportunities to be spawned irrespective of geographic location.

The challenges however are: how can people be encouraged to use broadband and what speeds are necessary? The latest Eurobarometer survey reported at the Commission’s USO Workshop on March 30th indicated that of the households without broadband, only 25% gave lack of infrastructure as a reason but 58% said they were not interested in it. We note also that there will always be a “digital divide” tension between any basic universal service obligation or commitment (at say 1Mbit/s) and the sorts of speeds available in densely populated urban areas. The solution to this problem is not clear, but it is not feasible for the universal service ‘target’ to continually play ‘catch-up’.

It would seem to us that universal service instruments are not best suited to an immature and evolving technology like broadband. BT believes that a mixed approach is best – balancing normal commercial deployments of basic and next generation broadband in large parts of a Member State territory, a carefully defined basic universal service commitment to deal with very rural areas and areas with long line lengths, and targeted state aid subsidies for next generation broadband in areas that would otherwise not receive it for a long time. BT’s response to this questionnaire is on the basis that the UK’s “Universal Service Commitment” is not being delivered as a universal service obligation under the Universal Service Directive.

Question 5: If universal service obligations should prove necessary to achieve the policy objective of broadband for all, at what level (EU or national) should such obligations be defined, taking into account the different levels of market development across the current Union of 27 Member States?

BT believes the different levels of market development across the current Union and potential accession countries mean that if universal service obligations are needed they should be defined at national level. There may however be a role for the Commission to make appropriate Harmonising Recommendations in due course.

Question 6: If a common harmonised universal service needs to be defined at EU level, should a mechanism be put in place to balance the need for national flexibility and a coherent and coordinated approach in the EU?

As above, it may be appropriate for the Commission to make Harmonising Recommendations in due course – but these should receive the maximum possible scrutiny from the Communications Committee and the European Parliament to ensure that an appropriate outcome is achieved that makes a positive contribution to all stakeholders.

Question 7: Irrespective of the scope of universal service, are mechanisms whereby funding is provided by the sector appropriate in the context of a regulatory environment that seeks to eliminate distortions of competition and promote market entry?

Regardless of scope there are very serious problems with the current funding methodology. The BEREC speaker at the Commission USO workshop, reporting on its survey of NRAs, observed inter alia that intangible benefits are hard to quantify, that there is no common understanding of what constitutes an “unfair burden” (though it seems to be linked to the degree of competition), that there is no clarity over whether there can be an ex-post adjustment of costs reached after an auction process, and that there is no common understanding of whether a reasonable rate of return can be included. BT urges BEREC to publish that survey as soon as possible as it is likely to provide significant inputs to the debate.

BT’s view is that there should be a presumption that intangible benefits are negligible, and that in today’s competitive markets any net cost is an unfair burden on the undertaking having to incur it. Funding of any net cost should come from central government. Any attempt to recover the cost from the sector will inevitably distort choice between services and suppliers because those contributing will tend to have higher prices. There may also be disincentives to growth when an undertaking is approaching a threshold for universal service contributions. Finally, in most European markets the universal service provider is also the largest undertaking and hence “compensates” itself for its costs.

Another factor is that in order to facilitate retail competition the supply chain has become fragmented. In a functional separation model, a retail operator will purchase wholesale inputs needed from upstream to deliver service. The non-discriminatory price of these wholesale inputs will include a contribution to the joint/common costs of the wholesale supplier. This implies a violation of the Universal Service Directive where the retail and wholesale operators are part of the same vertically integrated company; and possibly even where they are not. Given that Functional Separation is now an explicit part of the new Access and Interconnection Directive, this issue needs to be thought through in detail.

The Commission therefore needs to revisit the entire issue of funding.

Question 8: In the context of the roll-out of broadband in Europe, is it still appropriate to limit the financial arrangements of universal service to market players in the e-communications sector, while this provision would have wide-ranging benefits outside the sector, for instance, the delivery of information society services and digital content? Are other means of financing more appropriate?

No – it is not appropriate to limit the financial arrangements to market players in the e-communications sector. As described above, there are numerous market distortions involved and in most cases the undertaking incurring the costs is in effect expected to compensate itself.

At a minimum the range of contributors should be expanded to include government and content/application providers. Ideally the entire cost should be funded by central government because it confers social welfare and general economic benefits at a national level.

There are general economic and social welfare benefits to more widespread access to broadband, however there will always be individuals and geographic areas that can not be serviced by existing commercial models. Technology and traditional cost improvement curves will improve the economics of broadband access, but external funding will increase the rate at which universal broadband coverage becomes available.

Externalities must also be taken into account. The key question is who benefits from the addition of another broadband user. The benefits do not fall on existing broadband users – but on government, businesses, and content/application providers. They should, therefore, contribute to the costs.

Question 9: Respondents are invited to raise any other issues they might want to address in this consultation.

BT suggests that the Commission should

- Establish a rebuttable presumption that the basic connection and telephone call service will be supplied competitively and affordably without the need for designated providers.
- Establish a rebuttable presumption that online and paper directory services are available on a competitive basis without the need for designated providers (as the Commission originally proposed).
- Establish a rebuttable presumption that there is no longer a requirement for Payphone provision given the extremely high penetration of mobile handsets.
- Establish a rebuttable presumption that the highly competitive EU market is delivering affordable services without the need for designated providers.
- Take steps to ensure that accessibility is addressed through standards and a design for all approach as far as possible.
- Allow the Consumer Rights Directive to govern all contract issues relating to the supply of telecommunications services.
- Where/if net cost is to be determined, require NRAs to demonstrate (without imposing substantial disproportionate additional market research costs in the process) the magnitude of any intangible benefits from being a USO provider in the context of today's highly competitive retail markets. There should be a rebuttable presumption that intangible benefits are negligible.
- Widen the pool of potential contributors to universal service funds to include content providers and government, given where the benefits from broadband deployment will fall.
- Remove the concept of the European Telephony Numbering Space from the Directives.
- Amend the Directive to clearly provide a realistic amount of time for number portability transfers where visits to distant exchanges are needed.

Please see Annex 1 for a more detailed response on these points.

ANNEX 1 - BT COMMENTS ON UNIVERSAL SERVICE ISSUES

BT's response to the Commission's consultation questions explains why we feel a wide-ranging review of USO is necessary, and what the key changes should be. This annex provides further detail on some of these issues, including funding, payphones, affordability, directories, users' rights and net neutrality.

We note that revisions to a number of elements of the Universal Service Directive were made as part of the "2006 Review" process but it would appear that no Regulatory Impact Assessment has been carried out on the texts that emerged from the co-decision process. BT believes that such RIAs should now be undertaken and the results should guide proposals for further change.

Funding

There are very serious problems with the current funding methodology. The BEREK speaker at the Commission USO workshop on March 30th, reporting on a survey of NRAs, observed that intangible benefits are hard to quantify, that there is no common understanding of what constitutes an "unfair burden" (though it seems to be linked to the degree of competition), that there is no clarity over whether there can be an ex-post adjustment of costs reached after an auction process, and that there is no common understanding of whether a reasonable rate of return can be included. In BT's view the system is clearly not working.

It is particularly important to ensure that NRAs undertake a realistic assessment of the net cost of the obligation(s). Although the actual costs can be measured with some degree of confidence, the alleged intangible benefits have often been, at best, a subjective estimate unsupported by good quality evidence. The Commission should sponsor detailed research on the brand and advertising benefits allegedly derived from universal service obligations in current competitive markets – paying particular attention to the inclusion of only the activities undertaken as a result of the USO. For example, the advertising value of commercially justified payphones which would be supplied in the absence of a USO should not be taken into account.

BT has survey evidence that a majority of its customers are unaware that it has a universal service obligation, and believes that in the current highly competitive environment, consumers who are aware would be more likely to take this as an indication of potentially higher prices than as a reason to choose BT. In an increasingly competitive and transparent market, where consumers can compare tariffs and switch providers very easily, it seems unreasonable to assume that awareness of a USO is a relevant factor. It is important that NRAs do not impose an unreasonably high standard of proof (in terms of sample size and polling frequency) for the rebuttal of presumed brand benefits as the costs of obtaining the data could easily exceed the value of the benefit being measured.

If as seems likely the intangible benefits from the USO are minimal or impossible to objectively or unambiguously value with reasonable accuracy then they should be excluded and only tangible benefits should be taken into account. This is an area where the Commission should update its advice to NRAs.

BT believes there is considerable merit in separating the funding arrangements for the different elements of universal service. Not only might different companies accept obligations for the different

elements of service but there might be different sources of funding for each element. For example certain accessibility requirements could be funded by government (or business where businesses benefit from access to additional customers) whilst universal broadband might be funded from a levy on narrowband landlines and mobile operators and/or a broadly based set of contributors including the content industry. This approach requires a separate unfair burden assessment for each element. But the current Universal Service Directive leaves it unclear at best whether separate assessments would be permissible. Unless there is a radical pruning of required service elements, the next revision of the Directive must make it clear that the use of separate assessments is a permitted approach.

The Universal Service Directive should be amended to allow funding contributions from a wider range of sources than providers of electronic communications networks and services.

Payphones

In the current environment of nearly ubiquitous mobile usage and coverage the case for providing uneconomic payphones is extremely weak. In the UK there are 17500 payphones which register less than 1 call per day. Of those, 1500 payphones register no calls in a 12 month period. Yet the annual average cost of a payphone is around £1000. Clearly this policy area needs to be rethought as a matter of urgency. Not only should there be no ongoing requirement for universal service payphones but Member States should be required to ensure that those which fail to cover their costs can be removed or decommissioned.

Affordability

Telecommunications prices have fallen substantially over the last 10-15 years and there seems to be little justification now for maintaining special tariffs. Mobile handsets and Pay-As-You-Go tariffs are a reasonable solution for the light voice user and broadband is a highly competitive marketplace. Affordability requirements should no longer feature in the Directive.

With increasing use of call allowances rather than per-call charging there is no longer a need to stipulate the free of charge provision of itemised bills. NRAs should be free to impose requirements which assist users to control their bills only where necessary and technically feasible,

In this context it is worth noting that intrusive and prescriptive net neutrality regulation could threaten the availability of low priced broadband offers (if for example usage caps and restricted peak-hour download speeds were forbidden). Similarly, a ban on charging content providers for enhanced delivery could also work against the end-users' interests.

Directories

Obligations linked to provision of directory services are spread between the universal service and users rights sections of the current Directive. Under the universal service provisions, Member States must ensure availability of at least one comprehensive directory (paper or electronic) and one directory enquiry service. Under the users' rights provisions, PATS subscribers have the right to an entry in the directory referenced under universal service, and undertakings assigning telephone numbers are required to make them available for the provision of directory and directory enquiry services on fair, objective, cost-oriented and non-discriminatory terms.

The increasing complexity of numbering, naming and addressing for Information Society services suggests that the area of directory services needs a complete re-think. Increasingly IP addresses, email addresses, domain names, other identifiers (e.g. on Twitter and Facebook), and mobile numbers are becoming as significant as fixed line numbers. Moreover, the number of communications service providers involved in issuing these identifiers is increasing exponentially. Often the service providers will have no idea who is actually using the identifier (e.g. PAYG mobile phones). There is no clarity about what is meant by “telephone number” (particularly in the context of large organisations which manage their own internal networks) and no understanding of the types of organisations entitled to claim regulated access to such numbers. There is even concern that the Universal Service Directive is not the correct legal vehicle to mandate wholesale information access obligations.

The ubiquity of the Internet and the increasing number of commercial directory and directory enquiry services suggest that this is an area that can now be safely left to the market. BT would like the commercial freedom to decide whether to produce paper directories or to use another format entirely. Online information services, search engines, and possibly ENUM will all represent different solutions to the problem.

BT notes that in SEC(2006)816 on the review of the regulatory framework for electronic communications, the Commission services wrote:

“With an increasingly competitive market for the provision of directory inquiry services, and the development of internet-based directories, it is proposed to remove the provision of directories and directory inquiry services from the scope of universal service and leave the market to meet demand for these services. The wholesale obligations on network operators to make directory data available to third parties would remain in force. This will ensure that providers of directories and directory services obtain essential subscriber data while leaving the right of subscribers to “opt into” directory listings unaffected.”

BT fully agrees with that original proposal to leave the market to meet demand but suggests clarifying both the types of providers of directory services able to take advantage of regulated wholesale access and the information to be made available.

One suggestion for revision of Article 25.2 is given below. BT will be supplying more detailed information to the Commission in due course:

‘2. Member States shall ensure that all undertakings which assign telephone numbers to subscribers meet all reasonable demands to make available to third parties for the sole purpose of the **direct** provision of publicly available **universal** directory enquiry services and directories referred to in Article 5(1) (a) and Art 5(1) (b), the name, address and phone numbers of its subscribers in an agreed format on terms which are fair, objective, cost oriented and non-discriminatory.’

Users’ Rights

Some universal service obligations which are capable of being dealt with as a basic requirement on all communications service providers should be dealt with as a user’s right. This is particularly true

of basic accessibility requirements which can be implemented on a Design for All² basis. Even where Design for All cannot be relied on exclusively and must be supplemented with additional obligations, these should where possible be imposed on all relevant suppliers.

Other aspects of users' rights should perhaps now be left to the market. Communications provision is no longer a monopoly activity so the rationale for specifying users' rights is unclear.

EU legislation in this area has to an extent become over-intrusive and over-prescriptive by inter alia:

- Compelling Member States to adopt 116 numbers for services that in many cases were already offered and promoted on a national basis under different well-known numbers.
- Maintaining a potentially very costly requirement to cater for calls to the "European Telephony Numbering Space" despite extensive evidence that there is no demand for this concept or service, and despite initial proposals from the Commission³ in the 2006 Review to drop the concept.
- Requiring communication companies to provide information about copyright issues.
- Adding additional contract requirements which exceed the requirements in the horizontal consumer contracts Directive (which was originally intended in any case to be a maximum harmonisation Directive).
- Requiring timescales for number portability that are not possible to meet for all combinations of transfer types and which make it difficult to implement consumer protection measures to prevent a customer being switched between suppliers without his knowledge.
- Adding poorly defined and un-costed accessibility requirements.

Net Neutrality

BT believes that no further measures on net neutrality are required at this time. The new Directives already contain provisions for promotion of net freedoms and give NRAs the power to set minimum QoS levels. These new provisions should be implemented and assessed before any further measures are contemplated.

² Design for All is a process whereby designers, manufacturers and service providers ensure that their products and environments address users irrespective of their age or ability. It aims to include the needs of people who are currently excluded or marginalised by mainstream design practices and links directly to the concept of an inclusive society. A key feature of design for all is the emphasis placed on working with user groups representing the true diversity of users as a route to innovation and new product development.

³ BT notes that the Commission's original proposal for the 2006 Review SEC(2006)816 contains the following statement: "Despite the provisions of the Universal Service Directive supporting the introduction of the European Telephony Numbering Space (ETNS), implementation of the scheme has failed to take place, primarily because no clear business case has emerged that would secure the participation of incumbent network operators. The ETNS concept which was designed to support the introduction of pan-European services is now over 10 years old and technology has advanced substantially since that time. Other methods of meeting consumers needs have also substantially reduced interest in the ETNS. This situation should be recognised and the Article in the Universal Service and Users Rights Directive should be formally withdrawn." BT fully agrees with this proposal and suggests withdrawal of the ETNS provisions.