

## **Ofcom Consumer Panel response to the EU Review of the Scope of Universal Service**

1. The Ofcom Consumer Panel has been established to advise on the consumer interest in the markets regulated by the United Kingdom's communications regulator Ofcom. The Panel's existence is a statutory requirement of Section 16(2) of the UK Communications Act 2003. The Panel is independent of Ofcom and sets its own agenda. It has a responsibility to understand consumer issues and concerns related to the communications sector (other than those related to the content of programmes and advertising) and to help inform Ofcom's decision-making by raising specific issues relevant to the consumer interest.
2. In this response we address the question of the scope of European universal service and the questions that look at the future direction of the universal service directive (USD). We note that our 'forward looking' answers will feed into the 2006 review of the directive and its definition. Thus when answering these questions we will be putting down markers that we believe the Commission must acknowledge and act upon to ensure consumer and citizen detriment is minimised within the communications market. We begin from the position that the concept of universal service is the provision of a basic "safety net" of communications services at affordable prices. And that there must be real equality of access to the communication network for people regardless of who they are or where they live.
3. We recognise that today's communications market is in flux. We see traditional telecommunication companies adapting to an evolving and changing environment in which new entrants and technologies have unleashed new competitive forces. Historically the telecommunications sector regarded distance and time as determinants of price, and access to be at a fixed point - today people can be connected and inhabit an on-line, non-geographic, borderless, nomadic communications world for a fixed (and falling) cost. In the UK it is entirely feasible that by 2010 its citizens will be accessing a communications network that is predicated on Internet Protocols (IP) – with the current Public Switched Telephone Network (PSTN) consigned to the past.
4. We believe that it is imperative for the Commission to ensure, in this changing communication environment, that the USD does not concern itself with technology specific access or with the services that are offered by operators -

these will be myriad in form. What people will require is access to the communications network as a whole and for that access to be underpinned by a USD that promotes real equality of access to the communications network.

### **Should the Scope of the EU Directive be Widened to Include Mobile and Broadband Technology**

5. We maintain that the concept of universal service is a) the provision of a basic “safety net” of services at affordable prices and b) the delivery of real equality of access to the communication network for people regardless of who they are or where they live. This is central to a citizen and consumer centred approach to the communication market. Starting from this position and then reviewing the European Commission’s comprehensive analysis of the European mobile and broadband markets we agree with the Commission’s conclusion that, **for the moment at least**, the scope of the USD should remain unchanged.

6. We agree with the Commission’s analysis that the widespread ownership of a mobile phone in the UK and the EU demonstrates that vibrant competition in the mobile market is delivering tangible benefits for the consumer - specifically affordable access to telephony. This extensive mobile ownership means we do not perceive that a mobile universal service obligation (USO) is warranted and agree with the Commission that the mobile sector fails the following universal service inclusion test:

*“Inclusion of these services within the scope would convey a general net benefit to all consumers in case they are not provided to the public under normal commercial circumstances”<sup>1</sup>.*

7. However, we note that many EU citizens with disabilities particularly those with hearing, speech and dexterity impairments (a large proportion of whom are also elderly) are still unable to communicate effectively or at equivalent cost as a non-disabled person, when using existing mobile handsets or services. The outcome of this review and the 2006 review of the electronic communications regulatory framework must provide an environment which enables any remaining, or emerging, access issues for disabled consumers to be resolved. See our comments below on question (e) - services for disabled people.

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<sup>1</sup> Annex V of the Universal Service Directive 2002/22/EC

8. The Panel also accepts the Commission's conclusion that the low level of broadband take-up, 6.5%<sup>2</sup> of the EU's population means that, "*Broadband has not yet become necessary for normal participation in society, such that lack of access implies social exclusion. At the present time, therefore, the conditions for including broadband services within the scope of universal service (as set out in the Directive) are not fulfilled.*"<sup>3</sup> But, we do believe that the Commission should be alive to the fact that comparative communications markets of Member States will differ from each other. For example, it should be noted that broadband take-up in the UK, in the first quarter of 2005, stands at 30%<sup>4</sup> of households and that 99.6%<sup>5</sup> of the UK population will be able to access a fixed line high speed data connection from their household by the end of summer 2005. We accept availability does not necessarily translate into take-up due to a range of issues, e.g. the affordability of the line or terminal equipment, or simply down to an individual's personal interest - but it does place the UK market in a different position to that of some other EU Member States. For the UK the issues that face consumers going forward are likely to be those surrounding price inequality e.g. the cost of services between sparsely and heavily populated regions, or the access to next generation broadband services in these areas - rather than basic high-speed access inequality.
9. This is not to say we are complacent about the 'digital divide'. Nor do we disregard the issues around affordability that many people may have when contemplating the purchase of a broadband service. But for the majority, today's access to a high speed data network is still via a fixed line connection. Near-future technological advances may allow a nomadic connection to the network, advances that could lead to increased competition in the broadband market and lower the delivery costs to consumers. We therefore think it is sensible to allow the market to mature before taking a decision on whether USO should be imposed on broadband or not. It will only be at a later market stage that we will be in a position to confidently respond in terms of USO to the issues of affordability and exclusion from the network. However if services are increasingly delivered over high speed IP or datastreams (in particular government or other

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<sup>2</sup> Commission Communication: On the Review of the Scope of Universal Service in Accordance with Article 15 of Directive 2002/22/EC

<sup>3</sup> Commission Communication: On the Review of the Scope of Universal Service in Accordance with Article 15 of Directive 2002/22/EC

<sup>4</sup> Sourced from Ofcom, the UK communications regulator and UK telecoms operator statistics

<sup>5</sup> <http://www.btplc.com/News/Articles/Showarticle.cfm?ArticleID=7e104b8e-30dd-48a1-a724-88808aa98ba4>

public services) the Commission must ensure that the USD contains an element of flexibility that permits a Member State to rectify a market failure if it is inhibiting its citizen's connectivity, e.g. allowing public funding to upgrade exchanges in uneconomic areas. This issue of connectivity is one to which the Panel attaches the utmost importance and will be key to determining future decisions about the extension of a universal service obligation.

10. Whilst we agree that the scope of the USD should not be widened to include broadband and mobile technology, we do think that a future USD must move away from one that is about services and fixed lines. The USD must become technology neutral and have real equality of access to the communications network at its core. In particular, we draw attention to the potential broadband has to deliver flexible voice, text, video and relay services that could help meet the communications requirements of disabled people. The effect of a technology neutral USD would be to concentrate on what is right for a citizen centred approach to the communications market - and it will ensure that the approach reflects the communication reality of today and tomorrow.

**(a) Taking into account existing and expected technological developments, should universal service at some point in future separate the access to infrastructure element from the service provision element and address only access to the communications infrastructure, on the grounds that competitive provision of services, (e.g., telephone service provided using Voice over IP) will ensure their availability and affordability?**

11. As we have discussed above the USD should be about access to the communications infrastructure and not service provision and we stress that universal service must be about real equality of access. We recognise that in today's world there are numerous service providers offering a connection to the voice network be they fixed, mobile or 'new' VoIP companies. This vibrant competition between providers and the services that are offered to consumers means that consumers can now decide how they will access the communications network. The old premise of being 'given' a service by a single USO provider is over. Therefore, because the USD must be about access to the communications infrastructure it follows that the Commission must ensure that the USD is technology neutral. The Directives neutrality will also ensure that it is not only future-proof but as we comment on later, will allow Member States to provide 'access' solutions for their citizens.

12. We feel it is important to acknowledge that this world of converging communications and markets is not yet fully upon us. Additionally there is a risk of some consumers being left behind – possibly because they lack knowledge of the technological changes or simply because they have a lack of confidence in their own skills to utilise the new technology. Our own research shows that only two out five people in the UK over 65 own a mobile phone compared with ownership levels of at least four out of five for people below the age of 65. Further, only one in five people in the UK over the age of 65 have access to the internet<sup>6</sup>. It is therefore essential that the Commission ensures that consumer safeguards are not dismantled until it is clear that their removal would not cause consumer detriment for those sections of society who are unable to make effective choices during this transitional phase of the communications market.

**(b) In as much as consumers are increasingly mobile while using communications services, should universal service continue to address access at a fixed location, or should it address access at any location (including access while on the move)?**

13. We think that if the USD is to offer real equality of access to the communications network then the USD will not be concerned about fixed or nomadic access, but will address access at any location. The majority of people are already accessing the communications network nomadically and the introduction of future wireless technologies will only complement this social and technological trend. If the USD becomes truly technology neutral, as we believe it should be, it will not be concerned about how or where people access the communications network. Instead the directive will focus on ‘**access**’ itself. This is essential for a citizen centred approach to the communications market.

14. We note that in respect to mobile coverage, Member States have required mobile operators to achieve 95% spectrum coverage of their population. We accept that there will inevitably be limitations to universal spectrum coverage - much in the same way as the provision of a fixed line for a consumer is dependent upon a reasonable request. It is manifestly unfair to mandate mobile phone operators to cover 100% of the population if the cost to complete the last 5% coverage is, for example, more in total than the cost of constructing its entire mobile phone network. However, what we look for from the Commission is regulatory flexibility

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<sup>6</sup> Ofcom Consumer Panel, Consumers and the Communications Market: Where are We Now, 2005  
<http://www.ofcomconsumerpanel.org.uk/publications.htm>

that would allow a Member State, if it so wished, the opportunity to enforce the closure of its network gaps to strengthen coverage in sparsely populated areas.

15. We are concerned that for geographically remote or sparsely populated areas market economics may mean that a mobile signal or a fixed line is unavailable to people. It is essential that any USD does not discriminate against or exclude people from the communications network because of where they happen to live - the USD should incorporate provisions to protect them. The Commission therefore must ensure that the USD permits Member States the flexibility to provide connectivity solutions for people who reside in uneconomic market areas. One example maybe that a Member State imposes a requirement on a single network operator to provide a person's access to the communication network.

**(c) With widespread affordable access to mobile communications, the demand for public payphones is declining. Is it still appropriate to include provisions on public payphones, and as they are currently conceived, within the scope of universal service?**

16. We believe it is still appropriate to include universal service provisions on public payphones within the scope of the directive. We recognise that the demand or need for public payphones is declining, that there is a fall in revenue for public call box (PCB) providers and that PCB network provision may in future become an unfair regulatory burden for the network providers. However, we believe that the PCB networks in the UK and Member States still provide a vital public service to certain sections of society who would otherwise be unable to access the communications network. In our view, therefore, the decline of PCBs should be managed by Member States. It is Member States that have the local knowledge to conclude whether or not there is a social need for PCBs to remain in their locality. Paragraphs one and two of Article 6 of the USD ensure that Member States will be able to successfully manage any decline or the actual removal of its PCBs. Consequently, we do not consider that there is any need to change the USD provisions in regards to PCBs now or in the future.

**(d) In view of the competitive provision of directory enquiry services in many countries, for how long will there be a need to keep directories and directory enquiry services within the scope of universal service?**

17. We do not believe that there is a need to keep directories or directory enquiry services within the scope of universal service. In the UK there are numerous companies competing with each other to provide telephone directories or directory enquiry services to consumers and in many formats e.g. on-line, in 'hard copy', or by voice. The commercial returns that are being generated by companies that provide such services are guaranteeing the provision of these directories and directory enquiries services. We would add however that the removal of directories and directory enquiries services from the scope of the universal service **should not remove** obligations on network operators that are found in Article Seven of the USD. It is essential that people with a disability have access to directories or directory enquiries in a form that is '**accessible**' to them.

**(e) Taking into account the complexity of the ever evolving communications environment and noting the challenges presented to date for existing universal service provision, it is likely that advanced services will bring both benefits and new difficulties for users with disabilities. Should special measures for such users in the context of universal service provision be further harmonised at EU level?**

18. We believe that access for all to the communications network is paramount in today's connected society. We also think that broadband has the potential to deliver innovative and advanced services to people with a disability and that these services will provide tangible benefits in terms of inclusion for the end user. Thus when the Commission reviews the USD in 2006 it must ensure that at the core of the directive is the principle of real equality of access to the communications network for all people. We also agree with the Commission that advanced services will bring both benefits and new difficulties for users with disabilities. Therefore we think that the USD must provide the necessary regulatory flexibility that allows Member States to introduce its own specific measures to ensure that for people with a disability this access is achieved. We take the position that regulatory flexibility is required because Member States are in the best position to a) understand what its local social needs are and b) they are able to respond effectively to these needs by understanding what the local market can deliver. Further, allowing Member States the flexibility to react and change the measures that are required to meet local needs will prevent the

possibility that measures prescribed by a USD for people with a disability become obsolete within a couple of years.

19. There is a much more important social debate to be had that is about how people with a disability can achieve real equality of access to the communications network. We urge the Commission to look at this issue when it begins the directive review next year. People with a disability face additional barriers, other than cost, when accessing the communications network. Some of these barriers can be removed by service specific answers e.g. a text or video relay service for deaf or hard of hearing people - but other barriers remain. For example, the lack of usable equipment for people with a disability is undermining their ability to take full advantage of the benefits of being connected that are enjoyed by the majority of people. We note that the Federal Communications Commission (FCC) in the US mandated in 2003 that mobile operators (not manufacturers) must ensure that a proportion of the mobile handsets that they provide to consumers must be compatible with hearing aids and cochlear implants. Thus, the FCC by regulation met the needs of a section of consumers who, due to their lack of economic power, would otherwise have been overlooked by manufacturers and providers. It is essential that the Commission thinks about and examines how it can harness the purchasing power and economies of scale of the EU market to ensure that affordable products required by people with a disability are available in the market place.
20. Finally, we would like to rise to the challenge posed in the first section of the Commission's Communication, "to launch a broader policy debate on universal service provision" by inviting the Commission to think much more innovatively and imaginatively about 'universal service' when it reviews the Directive in its entirety in 2006. Essentially the universal service concept in telecommunications is simply a carry-over from other utility industries like water, gas and electricity, but telecommunications is a much more differentiated service than these others. The technology of telecommunications is developing much more rapidly than in these other industries, and the consumer and citizen implications of non-participation in the newer technologies and services have, as we have noted at paragraph 9, profound implications for individual consumers and citizens and – because of the externalities of communications networks – society as a whole.
21. We suggest that the Commission consider a more sophisticated approach for telecommunications. Currently a service cannot even be considered for inclusion

in the universal service obligation until it is already used by a majority of subscribers (see Articles 4.2 & 15). This is too slow and too blunt an approach for telecommunications. We would invite the Commission to think more flexibly about the benchmark for universal service in telecommunications, so that issues about connectivity and social exclusion can be considered alongside issues such as availability and take up.

22. As a consequence of this more flexible approach to “when” a universal service obligation might be triggered we would also suggest that the Commission should be prepared to have a full debate about what are the appropriate methods of funding the delivery of such an obligation.