

Broadband Stakeholder Group Submission to the  
Digital Economy Public Bill Committee



October 2016

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The [Broadband Stakeholder Group](#) (BSG) is the UK Government's leading advisory group on broadband. It provides a neutral forum for organisations across the converging broadband value-chain to discuss and resolve key policy, regulatory and commercial issues, with the ultimate aim of helping to create a strong and competitive UK knowledge economy.

We note that the Department of Culture, Media and Sport are a member of the BSG and have been given the opportunity to view and comment on this response.

The BSG welcomes the opportunity to comment on the Digital Economy Bill presented to Parliament on 5 July 2016 and debated at a Second Reading on 13 September 2016. The Bill includes a number of measures which will have a significant impact on the Broadband Stakeholder Group sponsors' operations. Our input below is predominantly restricted to proposals for the implementation of a reformed Electronic Communication Code (Part 2 – Digital Infrastructure – 4. The electronic communications code), the removal of the sunset provision from the Growth and Infrastructure Act 2013 and the proposals to introduce a Broadband Universal Service Obligation (Part 1 – Access to Digital Services – 1. Universal service broadband obligations).

The BSG strongly supports the overall policy objective of the Bill to make the UK “a world leader in digital provision - a place where technology continually transforms the economy, society and government.”<sup>1</sup>

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<sup>1</sup> DCMS, [Digital Economy Bill Fact Sheet](#)

We are currently witnessing incredible advances in artificial intelligence, miniaturisation, computing power and storage that have the potential to dramatically change how we live and work. Most of the advances lie ahead of us; in the next two years we will create more computer power than we have in all previous history combined. Ensuring that we are leaders in both the adoption and creation of the devices and services that this will create is a complex policy challenge. But the first step is in creating the underlying connectivity that will underpin our economy.

The BSG's members are responsible for the research and development of new telecoms technology, deploying it and providing the content that passes over it. We believe that this Bill includes important measures to lower the cost of network deployment which we ask the Committee to support.

### **Proposals to implement the reformed Electronic Communications Code**

The commercial case for investing in communication networks will always be stronger in some parts of the country than others, but it is essential that the barriers to, and cost of, investment, are as low as possible to ensure that private sector investment goes as far as possible in delivering local, regional and national communications needs.

It is essential that the regulatory framework supports the deployment of digital infrastructure and better connectivity. As noted in the Digital Communications Infrastructure Strategy published in March 2015, a strong independent and stable regulatory regime helps both investors and consumers to predict regulatory decisions and reduce risk.

In our report [“Out-of-home use of the internet”](#) published in September 2014, the BSG highlighted the importance of expanding cellular networks to provide ubiquitous mobile coverage across the UK and meet customers' growing demand and expectations. In order to achieve this, the BSG called for Government to reform the Code to provide greater certainty to industry and lower the cost of land rental over time.

Reform of the Electronic Communications Code has been in progress for over 5 years. We believe that the overarching policy objective should be how to best bring land into the sector. This naturally

involves a wide range of interests including landowners, fixed broadband networks, wholesale infrastructure providers and mobile network operators.

A key issue with the current Code and how the market currently operates in certain areas is due to its lack of clarity; the present Code is not well understood. A clearer Code would drive better behaviour between site providers, developers and other interested parties throughout the market and remove uncertainties.

We believe that the reformed Electronic Communications Code strikes a fair balance between the interests of all parties covered by the rules. The additional Codes of Practice currently being drafted by Ofcom with input from stakeholders will contribute to remove uncertainties about the relationship between landowners and Code operators. It is essential that we retain the support of the land sector in rolling out new coverage and we believe that the new Code and complementary self-regulatory rules will allow for a faster deployment and upgrade of digital infrastructure.

### **Proposal to remove the sunset clause in the Growth and Infrastructure Act 2013 from the Communications Act 2003**

The BSG notes that sunset clauses are an effective legislative mechanism which we generally welcome. In this instance, we believe that the sunset clause in the Growth and Infrastructure Act 2013 fulfilled its purpose as concerns over the need to protect the environment were addressed in the Cabinet Siting and Pole siting Code of Practice published in June 2013. In addition, the resulting balance between benefits and costs is already clear with these changes spurring further network deployment.

### **Proposals for a Universal Service Obligation**

The BSG supports the goal of universally available good quality broadband access in the UK, at a price that allows everyone to connect to the internet and access the range of services enabled by digital connectivity.

In considering a USO, it is essential that Government is clear on the objective that it is seeking to bring about and retains an open mind as to its implementation and whether a USO should be the sole mechanism to achieve good quality broadband access in the UK.

Any intervention creates the potential for unintended consequences and distortions to the market. For instance a USO for broadband on a substantial scale could risk being so complicated and onerous so as to potentially result in fewer people being online. One way that this could occur is that the cost of a USO for a large number of premises is borne directly by 'industry'. This would be passed onto current users. Whilst the cost per individual would likely appear to be small it could have an impact on those users who are price-sensitive, and risk fewer people being online as consequence. Indeed 15% of those who do not have a home broadband connection already cite cost as one of the reasons for not doing so<sup>2</sup>.

Failure of the market to deliver connectivity in the some areas in the UK is an economic issue, therefore Government intervention should seek to address the economic issues preventing deployment in these areas. In approaching how best to achieve the goal of universally available good quality broadband access (accessible at competitive prices), we believe that Government must concentrate on removing barriers so that commercial investments become viable and ensure that current BDUK schemes bring about the greatest expansion of superfast broadband coverage possible which is why we strongly support the other measures in this briefing. It should also seriously question the circumstances in which it is appropriate for industry to fund the hardest to reach premises, and those in which it may be appropriate to consider whether some form of Government subsidy is required.

Once these avenues have been exhausted then we believe that there may be an argument to make for a USO that acts as a safety net to allow the essential participation of citizens living in areas where they cannot access broadband services, for example because it is extremely difficult and costly to deploy infrastructure. This is consistent with the principle of the Universal Service Directive, which is designed to provide a minimum 'floor', rather than be a mechanism to deliver more advanced services

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<sup>2</sup> Ofcom, [Communications Market Report, 2016](#)

that risk more significant market disruption. A USO in this instance would then serve to empower consumers who are in areas of explicit market failure.

This also aligns with the European Commission proposals for a USO Directive within the larger package of the European Electronic Communications Code.

#### *Download speed and other characteristics*

We agree that USO characteristics, if they are required, should not be specified in primary legislation, as there is a balance to be struck in ensuring that any legislation is not overly prescriptive.

With regards to the characteristics of the proposed USO, speed is clearly one of the factors in achieving good quality of experience for the end-user, and is likely to be the dominant factor. However, Government must ensure that it analyses other quality metrics when defining the scope of the universal service.

Ofcom is currently doing some detailed work around how such an intervention would work in practice and it is right that Government retains the flexibility to enact the outcome of this work within secondary legislation. Such flexibility should include the ability to adjust download speeds and other characteristics in line with consumer needs.

#### **Online pornography – Age verification proposals**

It is right for Government to explore what more can be done to protect children as they spend an increasing amount of time online. However, we do not believe that Internet Service Provider (ISP) blocking of infringing content would be an appropriate measure.

UK ISPs have developed over the years world-leading family-friendly filtering tools to enable consumers to filter at network level content which is harmful or inappropriate for children. ISPs are keen to continue deploying these tools and this commitment was reflected in the revised BSG Open

Internet Code of Practice<sup>3</sup>, signed by all major UK ISPs, representing over 90% of UK subscribers on both fixed and mobile contracts and following consultation with Government, Ofcom, content providers and other stakeholders.

These tools are welcomed by consumers, as they have the ability to make informed choices about the lawful content they would like to have access to.

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<sup>3</sup> Broadband Stakeholder Group Open Internet Code of Practice - 8 June 2016 - <http://www.broadbanduk.org/wp-content/uploads/2016/06/BSG-Open-Internet-Code-2016.pdf>