

Broadband Stakeholder Group Response to the
DCMS Consultation on Proposals
to Ensure Tenants' Access to
Gigabit-Capable Connections



December 2018

Broadband Stakeholder Group

Response to the Ensuring tenant's access to gigabit-capable connections Consultation

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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.

The Broadband Stakeholder Group (BSG) welcomes the opportunity to respond to the DCMS consultation on proposals to ensure tenants' access to gigabit-capable connections. Individual sponsors of the BSG will be submitting their own responses to the Consultation.

Executive summary

The Government's stated aim - as set out in the Future Telecoms Infrastructure Review – is to make full fibre available to 15 million premises by 2025 and attain nationwide coverage by 2033. These targets, by the Government's own admission, are ambitious. With full fibre rates standing at only 1.4 million (around 5% total premises) as of May 2018¹ a step change in the legislative and regulatory environment will be fundamental+ in enabling industry to deploy at the necessary pace and scale.

The barriers to roll out have been well publicised and the BSG welcomes the efforts of Government to address and remedy these road blocks to extending the reach of digital communications infrastructure. As such we firmly support the intention of this consultation to ease the ability of tenants to benefit from gigabit-capable broadband where landlords are absent or otherwise not engaging.

The scale of the problem of unresponsive landlords – estimated at between 25-40% of cases in this consultation – has massive implications on an operator's road map, resulting in premises and areas being left behind in the roll out program where a landlord cannot be reached, or an operator being forced to re-route adding extra cost and complication. As the pace of deployment steps up, as it must if the UK is to stand a chance of reaching the goals of nationwide fibre coverage by 2033, premises being left out could become a bigger issue than areas being left behind.

And yet, whilst the underlying intention to resolve the flaws of the current system and enable operators to access properties is something that urgently needs addressing, the obligation on landlords should cover the full operator/ landlord engagement scenarios.

If Government is to properly enable a mass deployment program of FTTP that is delivering at scale, operators must be allowed to proactively build out FTTP across a whole area rather than waiting for a

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0019/122194/connected-nations-october-2018.pdf

tenant to ask, then attempt to locate a landlord, then wait two months to see if the landlord will engage. At this point, the build will have moved on.

Additionally, this consultation is limited in scope to where landlords can be contacted, but are non-responsive. This does not fully reflect the realities of deploying telecoms infrastructure at scale and tackle the issue where operators are unable in the first instance to identify who the landlord is let alone how to contact them. This is where a solution would add real value to operators – and efforts by operators to identify landlords would be greatly helped by a centralised register with up to date contact details of landlords across the nations.

Just as we welcome the ambitions of Government policy in setting stretch targets for full fibre and 5G deployment, we would welcome equally ambitious legal underpinning to truly aid communications providers in making these goals achievable. The answers below will highlight where amending the Code would bring real benefit to operators and in turn enable the UK to benefit sooner from the advantages afforded by faster, better broadband.

Q1 Would the placing of an obligation on landlords in the manner proposed encourage more landlords to respond to requests sent by operators?

A landlord may be considered absent for a variety of reasons. It may be that they are unidentifiable and as such unlocatable or it may be that they are actively choosing not to engage with operators. Placing an obligation on landlords to facilitate the deployment of digital infrastructure would in itself provide for the greatest relief for operators to reach negotiated agreements with landlords. Caveating the request with the proviso that a request for service having to be first made by the tenant however risks adding a layer of complication that would fail to reflect the industry business model nor address the needs of operators.

Infrastructure deployment has now evolved so that services are not sold to premises until wayleaves and access agreements are in place. This can be attributed to the consequences that operators face if an order is placed and installation targets aren't met. This is one example of where the intention of the amendment would, in its current format, fail to meet the needs of the operators.

Another problem for operators with non-responsive landlords is where the infrastructure is being laid on property that hasn't necessarily requested the service – for example backhaul cutting across farm land. A farmer may never respond to the operators requests to engage and as such rather than delay the build by the year or so that pursuing the Tribunal process would entail, a more expensive route would instead be designed so as to avoid breaching for example a State Aid contract or risking a prohibitively expensive roll out.

If an expression of interest must be in place in order to oblige landlords to engage, the bar for defining what constitutes an expression should not be unduly prescriptive or onerous to determine.

Q2 To what extent would placing an obligation on landlords complement or undermine the facilitation within the Electronic Communications Code of negotiated agreements between landlords and operators?

Q3 Do you consider that the use of the courts for the purpose of granting entry to operators where they have not been able to contact a landlord is reasonable? If not, why not?

That the Tribunal Courts have not been used thus far by an operator as a means of being granted access to a property is mostly attributable to the length of time that the process would take, and as stated before the high costs of ensuing delays to the roll out schedule.

Easing the constraints of the Tribunal Courts by allowing operators to bring cases to the magistrates' court and ensuring that a clear and speedier process is in place will be key to realising the goals of nationwide full fibre.

Q4 Do you agree two months is an appropriate amount of time to pass before a landlord is considered absent and an operator can seek entry via the courts If not, what time would be appropriate?

Two months would more than allow for reasonable efforts from an operator to be able to contact a landlord and to conclude that the landlord is not engaging. However, two months equally would potentially result in a likely unacceptable and unviable delay to the build process and risk that those properties with absent or unidentifiable landlords would still remain excluded from the deployment plans.

For Government to truly be able to see full fibre rolled out at pace, and minimise the potential for premises being omitted, we would recommend that this gap needs bringing down to one month.

Q5 What evidence should an operator be reasonably expected to provide to the courts of their need to enter a property and their inability to contact a landlord?

Absent landlords can be considered absent either through an unwillingness to engage, or because they are unidentifiable and unlocatable.

Where an operator is able to identify and locate a landlord, and contact has been attempted it would not necessarily be considered overly onerous for the operators to provide proof - if this would then be used to speed up the magistrates' process. Whilst guidance on what evidence would be acceptable in order to allow for business operational clarity and legal certainty would be welcomed, a better and smoother process would allow operators to self-certify that reasonable efforts and have been made to contact a landlord.

The bigger challenge for operators, that is not covered by these proposals, are where landlords are unidentifiable. Where operators cannot determine who the landlord is, they cannot necessarily provide the proof or evidence that contact has been attempted that may then be required. Again, a self-certification process that reasonable efforts have been made might be the most logical process.

If the end goal of Government is to allow for an accelerated build process, these two scenarios must be reflected so that industry can build proactively and assume an aggregated need to gain access rather than have individual premises place hurdles in the pace and scale of mass deployment.

Q6 Is there a need to define what constitutes a request by a tenant for a communications service?

As stated above in the response to question one, the deployment process, especially at scale and speed, cannot rely on individual requests by tenants. As such, any definition that further limits the ability of operators to build out would be detrimental to the deployment process as a whole. The need of an operator to access property will also not be limited to providing the tenant with a service, as deployment plans will cover properties (for example a farmer's fields) that may not want a fiber product at that point in time.

Q7 Do you agree the temporary access granted by the court should be valid until such a time as a negotiated agreement, underpinned by the Code, is signed between an operator and a landlord?

Q8 Would temporary access granted by the court provide an incentive for landlords to re-engage?

In this instance, would the process then revert to the Tribunals if commercial negotiations with the landlord fall down?

Q9 Do you foresee any issues with operator/ landlord negotiations which take place after the installation has taken place?