



## Communications Consumer Panel and ACOD comments on the Digital Economy Bill for the House of Commons Public Bill Committee

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1. The Communications Consumer Panel (the Panel) and the Advisory Committee for Older and Disabled People (ACOD) work to protect and promote people's interests in the communications sector. We are an independent statutory body set up under the Communications Act 2003.
2. The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses. Four members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively.

### *Response*

We focus below on key elements of the Bill relevant to communications consumers and citizens.

#### **Universal service broadband obligations**

1. We support a Universal Service Obligation (USO) based on legislation to allow all UK consumers, citizens and micro businesses to request a broadband connection that provides the minimum acceptable speed for today's requirements.
2. There are still significant gaps in availability of a usable broadband service. Detriment is disproportionately experienced by vulnerable consumers and micro businesses. An affordable USO is therefore urgently required. It is important that the minimum speed provided grows in line with future consumer needs.
3. The USO should be technology neutral and include factors of access, affordability and availability alongside quality of service, transparent information, redress and consumer representation. The broadband USO must include provision for micro businesses and we would like to see the Bill reflect this.
4. The USO must provide for an affordable broadband and line rental service, with 'affordable' covering both set-up and ongoing costs. It is vital that set-up and ongoing costs for consumers of any potential technological solution are known from the start, so that the needs of those who might encounter difficulty paying for the service can be accounted for. We urge consideration of voucher schemes to allow consumers to pay upfront set-up costs and social tariffs to manage ongoing costs for low-income consumers (following basic telephony, and other utilities). We would also recommend that households are allowed to amalgamate their

allowance, which will allow for more robust funds to be available for harder to reach properties.

### **Switching**

5. We have previously highlighted our concerns about the barriers to switching faced by consumers and micro businesses, most recently in our responses to Ofcom's consultations on mobile switching<sup>1</sup> and the potential removal of mobile notice periods<sup>2</sup>. In short, as well as removing technical barriers to switching, there should be no financial disincentive for the consumer and no unjustified enrichment for providers. We therefore support the measures making it explicit that Ofcom can set General Conditions to facilitate switching between providers.
6. Barriers to switching face all consumers, but particularly those who are older, disabled, or on lower incomes. Micro businesses also warrant particular attention. This should be reflected in the Bill.
7. Reform of switching regulation has been long needed and we welcome the Bill's proposals. The current switching regime is a source of multiple types of detriment.

### **Automatic compensation**

8. We believe that a step change is needed in terms of service quality performance and that there is a good case for a ubiquitous and consistent automatic compensation scheme that provides access to redress in appropriate circumstances. However, it is vital that this is arranged in a way that does not result in consumers in effect over paying for their own protection. Both residential consumers and smaller businesses (and especially micro businesses) should be included.
9. Automatic compensation should be exactly that - automatic and should apply in cases of service loss; delayed repair or restoration; late installations; missed appointments; and billing problems where a customer has been left out of pocket. We believe there should also be a clear link to switching delays and problems, so that automatic compensation is triggered as soon as there is a problem.

### **The Electronic Communications Code - mobile coverage**

10. Mobile communications services are essential services to UK consumers and citizens, and micro businesses. We believe universally consistent coverage (the ambition should be 100%) regardless of location must be the aim for mobile voice and data services, with mobile network operators (MNOs) held to account for market failures. In our response to a consultation by the Department for Culture,

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<sup>1</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/mobile-switching-june-2016.pdf>

<sup>2</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/ccp-acod-mobile-switching-additional--requirement-to-remove--notice-period-charges-sept-2016.pdf>



Media and Sport (DCMS) in November 2014<sup>3</sup> we highlighted the fact that market pressures on their own would not solve the coverage problem that exists in the UK and pressed for government intervention.

11. A DEFRA report<sup>4</sup> looking at the impact of living, working and staying in a not-spot area found that most people living in not-spots own mobile phones. It found that among both residents and businesses, a key reason for having a mobile phone was for emergencies. The report also found that improved mobile phone services would benefit local businesses, with 47% of businesses and 41% of home-run businesses reporting a negative impact on their profit, turnover and productivity. The report found that the potential visual impact of additional mobile phone masts was not a major concern to respondents. We therefore support the Bill's planning reform measures that reduce barriers to extended mobile networks.
12. Mobile communications services are a particularly vital tool for micro businesses. Evidence from our Realising the Potential: micro businesses' experiences of communications services<sup>5</sup> research in 2013 supports the importance of not only voice, but, increasingly, mobile data coverage to micro businesses - providing a gateway to other services and connecting micro business owners with their customers, employees and suppliers. We made a number of recommendations in respect of coverage and speed including that Government and Ofcom should investigate the effectiveness of methods of increasing mobile coverage - including road and rail coverage - as a matter of urgency.
13. We have encouraged Ofcom to work with MNOs to ensure that operators are fully using their allocated spectrum to best and most efficient effect, rather than allow some allocated frequencies, for example in rural areas, to sit unused, but remain unavailable to others who may have potentially innovative ideas for their exploitation, for example as the bearer for local or community fixed wireless broadband services.
14. The National Planning Framework for England, published on Gov.UK's Planning Portal<sup>6</sup> gives helpful guidance in relation to safeguarding, which we believe should be maintained. If complied with, these would appear to be sensible guidelines, aimed at protecting consumers and citizens from harm.

#### **Penalties for contravention of wireless telegraphy licences**

15. We fully support the proposal to give Ofcom a new power to fine those who breach spectrum licence conditions. We believe that a much stronger deterrent is required for regulatory non-compliance and believe that Ofcom must retain an element of

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<sup>3</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/response-to-dcms-not-spot-consultation-261114-final.pdf>

<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/412201/Mobile\\_network\\_not\\_spots\\_final\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412201/Mobile_network_not_spots_final_report.pdf)

<sup>5</sup> <http://www.communicationsconsumerpanel.org.uk/research-and-reports/realising-the-potential-micro-businesses--experiences-of-communications-services>

<sup>6</sup> <http://planningguidance.communities.gov.uk/>

flexibility in relation to setting an appropriate and proportionate penalty. There should be a clear link between the level of penalty and the consumer harm caused or likely to have been caused - other forms of penalty, including 'naming and shaming' may be appropriate on occasion. In addition to penalties, we have encouraged Ofcom to consider wider motivations for regulatory compliance and conversely, regulatory non-compliance.

#### **Comparative overviews of quality and price/Provision of information to Ofcom and Information required from communications providers**

16. We welcome the Bill's aims and believe that clear, accurate and comparable information about quality of service expectations, pricing and customer service standards should be readily available to consumers. The proposals - especially in relation to quality of service, and strengthening Ofcom's information gathering powers - will support this.
17. As we emphasised in our response to Ofcom's Annual Plan, accessible, accurate and digestible information on buying and switching services is key. Awareness of trusted sources of information is lower among older consumers in each market. In its Switching Tracker, highlighted in the Consumer Experience Report 2015<sup>7</sup>, Ofcom notes that the proportion of consumers aged 65+ who are unaware of *any* trusted sources of information is about double the average in each market - ranging from 5% in the bundled services market to 26% in the fixed line market.
18. We support the amendment to Ofcom's powers to enable it to publish data that will enable consumers to make informed decisions more easily.

#### **Appeals from decisions of Ofcom**

19. By their very nature, regulatory decisions have significant consequences. As such, it is vital that they are based upon transparent, objective, evidence-based and robust consideration of the highest standard. As part of that decision-making process, business also has a responsibility to present evidence during the consideration period that it considers pertinent to the issue under debate.
20. We recognise that such decision-making often involves trade-offs; but what is fundamental is that, in addition to being legal, fair and rational, the decision correctly balances the interests of consumers, citizens and business. Given the importance of such decisions, it is essential that regulators can be held to account and that there is a clear and well-documented mechanism for challenge. However, the Panel believes that the current process for regulatory appeals does not sufficiently take into account the interests of consumers.
21. We are conscious that, unlike the regulator, the Court does not have an explicit duty to further the interests of consumers and citizens. Lengthy legal appeals

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<sup>7</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/38543/annex.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/38543/annex.pdf)

which reopen consideration of the grounds of a decision delay the implementation of regulation - potentially to the detriment of the consumer and citizen.

22. Regulatory certainty allows business greater confidence to create and invest. In the most general sense, greater competition can lead to improved choice, lower prices and an increased focus on innovation - which are all to the benefit of consumers. A long and unwieldy appeals process and regulatory uncertainty can limit businesses' ability to plan effectively and grow.
23. In addition to our concerns about delays and uncertainties related to the appeals system, we are conscious of the impact on Ofcom's limited resources. It is not effective that those resources are consumed by legal challenges. While it remains vital that regulators' decisions are open to challenge and scrutiny, defending fewer appeals would allow the reallocation of resources to work aimed to protect and promote the rights of consumers.
24. We would argue that appeals should be limited to where there is genuine concern that a regulator has acted unlawfully, failed to exercise its discretion appropriately, or made a factual or process error. We therefore support the proposal to move to judicial review appeals. Such appeals would preserve the required challenge to regulatory decisions but deliver swift and efficient justice for consumers, citizens and small and large businesses.

#### **Direct Marketing Code - nuisance calls**

25. Nuisance calls can cause consumers irritation, anxiety, distress and potential financial loss. Despite some progress in this area, nuisance calls remain a scourge - especially for vulnerable consumers. We welcome the proposal to require the Information Commissioner to produce a direct marketing code of practice which will make it easier for the Information Commissioner's Office to take more effective action and impose fines.
26. We continue to urge the provision of free CLI by default for consumers. In light of the Government's drive to ensure the provision of CLI, we cannot see how some communications providers can continue to justify charging for CLI, especially when other providers provide CLI to all their customers free of charge. There are few tools available to consumers to combat nuisance calls, but the CLI service can be used to report nuisance calls to regulators, as well as being critical for the effective use of handsets and services that rely on caller display to block and filter certain calls.

#### **Proposed amendment: Digital Engagement**

27. It is our belief that all consumers should be able to benefit from the opportunities and enjoyment that communications services can bring. Fundamental action needs to be taken to mitigate the increasing risk of the digital divide becoming an ever greater digital gulf. We live in an era in which we are seeing many Government

services become “digital by default” and when being online is becoming a necessity of life rather than an optional extra.

28. While the advantages of online connectivity apply to all groups in the community, they are especially relevant to disabled people, those on a low income and older people, many of whom may be less mobile than younger people. However, according to Ofcom’s 2015 Adult Media Use and Attitudes Report<sup>8</sup>, two in three people aged 75+ are non-users of the internet. Internet access is also significantly lower for those consumers with a disability (65%) than for non-disabled consumers (88%)<sup>9</sup>.
29. In our responses to the House of Commons Science and Technology Committee call for evidence in relation to Digital Skills<sup>10</sup> and DCMS’ call for inputs into a new digital strategy for the UK<sup>11</sup> we highlighted that we believe that infrastructure cannot stand alone and must be linked to digital participation initiatives. The best connectivity in the world is undermined if significant numbers of the population are not able to use it to best effect. In our view, social inequalities will be heavily influenced one way or the other by communications availability and effective digital participation (or lack of these things).
30. We therefore welcome the proposed amendment for publicly-funded basic digital skills training being offered free of charge to adults in England who need it. However, we worry that there is no new funding for this initiative and that it is to come out of existing adult education budgets. We question whether this is sustainable, and look forward to the further consultation announced by the Minister.

**Proposed amendment: Equivalent access**

31. Throughout the past year we have raised our concerns about ensuring that content is available, accessible and inclusive on both broadcast and video on demand content.
32. Audience members, and particularly older and disabled people, should be able to have access to content by their preferred method; and they should have equal opportunity to consume and enjoy a range of high quality content. The paucity of access services provision on VOD is a major concern for us and we plan to undertake research in this area.

<sup>8</sup> <http://stakeholders.ofcom.org.uk/market-data-research/other/researchpublications/adults/media-lit-10years/>

<sup>9</sup> [http://stakeholders.ofcom.org.uk/market-data-research/other/cross-media/disabled-consumers-ownership-commsservices/Disabled-consumers-use-of-communicationservices/?utm\\_source=updates&utm\\_medium=email&utm\\_campaign=Disabled-consumers-use-of-communicationservices&utm\\_term=disability%20disabled%20communications%20services%20mobile%20phone%20tv%20landline%20research](http://stakeholders.ofcom.org.uk/market-data-research/other/cross-media/disabled-consumers-ownership-commsservices/Disabled-consumers-use-of-communicationservices/?utm_source=updates&utm_medium=email&utm_campaign=Disabled-consumers-use-of-communicationservices&utm_term=disability%20disabled%20communications%20services%20mobile%20phone%20tv%20landline%20research)

<sup>10</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/hoc20digital20skills20jan202016.pdf>

<sup>11</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/digital-strategy-190116.pdf>



33. We strongly support the new clause proposed by Action on Hearing Loss to provide for a statutory code to underpin the provision of essential access services (subtitles, audio-description and signing) for on-demand television. This would bring parity to the legislation governing linear broadcasts and on-demand content, and would ensure that the successful provision of access services on the former would extend to the growing amount of TV content that is watched on-demand.

### *Summary*

34. **Universal service broadband obligations:** We support a Universal Service Obligation (USO) based on legislation to allow all UK consumers, citizens and micro businesses to request a broadband connection that provides the minimum acceptable speed for today's requirements.
35. **Switching:** Reform of switching regulation has been long needed and we welcome the Bill's proposals. The current switching regime is a source of multiple types of detriment.
36. **Automatic compensation:** We support the introduction of an automatic compensation scheme that covers the issues that matter most to consumers. It is important that such a scheme does not become a surrogate for a good level of service in the first place - and we hope that with the right design it will serve consumers well, and provide an incentive for CPs to make a step change in the way that they deal with the problems that consumers experience.
37. **The Electronic Communications Code - mobile coverage:** We strongly believe that Government and MNOs should work to fulfil the public expectations that they have set. The proposed changes to the planning system form part of the bigger picture - and all available options should be considered, including expecting MNOs to develop contingency plans for the predictable areas where coverage is poor; Ofcom taking action in respect of licensed spectrum that is sitting unused by MNOs; and ensuring future spectrum allocations serve consumers by obliging MNOs to maximise coverage.
38. **Penalties for contravention of wireless telegraphy licences:** We fully support the proposal to give Ofcom a new power to fine those who breach spectrum licence conditions.
39. **Comparative overviews of quality and price/Provision of information to Ofcom and Information required from communications providers:** Clear, accurate and comparable information is vital for consumers. We support the amendment to Ofcom's powers to enable it to publish data that will enable consumers to make informed decisions more easily.
40. **Appeals from decisions of Ofcom:** We believe that the current process for regulatory appeals does not sufficiently take into account the interests of consumers. We would argue that appeals should be limited to where there is genuine concern that a regulator has acted unlawfully, failed to exercise its

discretion appropriately, or made a factual or process error. We therefore support the proposal to move to judicial review appeals.

41. **Direct Marketing Code - nuisance calls:** We welcome the proposal to require the Information Commissioner to produce a direct marketing code of practice which will make it easier for the Information Commissioner's Office to take more effective action and impose fines. We continue to urge the provision of free CLI by default for consumers.
42. **Proposed amendment: Digital Engagement:** Infrastructure cannot stand alone and must be linked to digital participation initiatives. The best connectivity in the world is fundamentally undermined if significant numbers of the population are unable to use it to best effect. We therefore welcome the proposed amendment for publicly-funded basic digital skills training being offered free of charge to adults in England who need it. However we are concerned that there is no new funding for this initiative and that it is to come out of existing adult education budgets. We question whether this is sustainable.
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