

CityFibre response to *Ensuring tenants' access to gigabit-capable connections* consultation

Introduction

CityFibre is the UK's largest independent provider of full fibre network infrastructure, with major networks in 54 towns and cities across the UK, and construction underway to reach 5 million homes. We welcome the opportunity to respond to this consultation.

Executive Summary

CityFibre welcomes the Government's focus on removing barriers to full fibre rollout. Improving and speeding up the process of acquiring wayleaves, simplifying planning processes and ensuring everybody is able to access full fibre is critical to both rollout and take-up of this transformative new digital infrastructure.

We welcome this consultation's aim of ensuring that landlords must respond to a request from a tenant for a Gigabit-capable connection and welcome measures to simplify the overly burdensome court process currently in place. We do, however, believe that there are a number of areas where further clarity is needed, and where the proposed changes fall short of achieving an efficient and even-handed approach to ensuring tenants have access to Gigabit-capable connections.

For example, in many cases where a landlord does respond within two months of initially being contacted, we often experience significant periods of little or no communication when in the process of negotiating a wayleave agreement. While this slows down rollout significantly, the proposals included in the consultation would fail to resolve the problem due to the landlord having initially been contactable.

As we deploy our infrastructure at speed and scale, we are in many cases unable to identify and contact landlords in the first instance, risking a slower, less efficient and more costly rollout. There is nothing in this consultation to address this problem.

Please find our detailed responses to the consultation's specific questions below.



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

In CityFibre's view, the efficacy of this obligation will be determined by the level of awareness among landlords. Such an obligation would need to be effectively communicated as one of their key duties as a landlord if it is to have a notable impact.

Beyond the initial response from a landlord, where that response is positive, we believe there should also be an ongoing commitment to engage in good faith with operators to ensure that a wayleave is then granted in a reasonable amount of time. Landlords should not be able to respond to an initial request and then be under no obligation to engage further or constructively on the details of the wayleave agreement.

2. 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?

We do not foresee a significant effect on the majority of landlord/operator negotiations under the Code as a result of this, as the vast majority of such negotiations will take place without resort to the obligation.

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

We believe it is reasonable as a final resort when a landlord is consistently uncontactable or unresponsive. However, it is in all parties' interests to ensure that the court process is as fast and simple as possible to ensure that is an effective backstop to the problem of unresponsive landlords. An expensive and time-consuming court process could lead the operator to conclude that a connection is uneconomic to pursue, based on a cost/benefit analysis, leaving the potential end-user with their existing, inferior, connection.

The current arrangements of reverting to the Tribunal Courts demonstrate that an onerous, expensive and time-consuming court process removes the incentives for operators to pursue such a route.

4. Do you agree that 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 how much time would be appropriate?

A two month wait for a landlord response risks slowing down rollout and increases the likelihood of a tenant withdrawing their request. We believe that a period of one month provides enough time to determine that a landlord is unresponsive and allows the operator enough time to make reasonable and repeated attempts to contact them.

5. 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?

Operators should be expected to provide clear prima facia evidence that demonstrates repeated attempts to make contact. For example, evidence of registered letters, emails and, where appropriate, attempted telephone contact should be sufficient to determine their inability to contact a landlord.

An issue not covered by these proposals is where the landlord of a property is unidentifiable and therefore no contact can be attempted. We primarily use Land Registry data to determine property owners passed by our network. This allows us to request wayleave permissions to connect individual properties and bring all the speed and reliability benefits of full fibre to as many homes as possible. We also use the information for targeted information literature, such as an introductory letter and marketing materials informing property owners of our construction work in their area and how they can make the most of the new network. We do however experience difficulty in obtaining up to date information for a significant proportion of landlords, meaning we cannot make contact with them at all. We believe greater clarity is needed as to whether reasonable attempts to identify a landlord are also covered by these proposals.

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

We do not believe a prescriptive definition is needed of what constitutes a request from a tenant, as this risks creating an extra bureaucratic burden for those requesting a connection. We do however have concerns that relying on specific requests from tenants does not align with the speed with which full fibre networks are constructed.

7. 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 landlord?

If the temporary access can expire before a negotiated agreement, underpinned by the Code, is in place then there is no incentive for a landlord to continue to engage and could instead wait for the temporary access to lapse. This would potentially lead to equipment having to be uninstalled, making the whole process costly, disrupting for residents and commercially unviable.

Where an agreement cannot be reached, the court imposed access should constitute the Code right, making the wayleave permanent. This ultimate backstop to the negotiations ensures that operators do not risk having to remove a connection installed under temporary access, which would be expensive, time-consuming and commercially risky.

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

We anticipate temporary access granted by the court would incentivise a landlord to re-engage.

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

Yes. A landlord could, in such circumstances, set out obligations/conditions/fees which make the connection commercially unviable and lead to it being uninstalled. This would mean that the whole process, cost and court time has been wasted, with operators therefore unlikely to use this mechanism.

It may be that the terms of the temporary agreement made by the court automatically become permanent once the installation has taken place, reducing the risk of having to uninstall equipment.

December 2018