

UKCTA Response to DCMS consultation on “Ensuring tenants’ access to gigabit-capable connections”

21 December 2018



Introduction

1. UKCTA is a trade association promoting the interests of fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.org.uk. Given that the Government's proposals are likely to impact UKCTA members, UKCTA welcomes the opportunity to respond to the consultation.

The proposals

2. The DCMS proposal that Communication Providers (CPs) should be able to apply to the Magistrates Court two months after first contacting the landlord is not practicable. Access to communications services are essential to both consumer and business customers. This time limit is too long, and we would prefer it to be shorter. CP's need to provide access to services in a timely manner. CPS do not need two months to prepare the necessary paperwork for an application to the court. It should not be necessary to give landlords more one month to respond to a formal request for access.
3. Court processes can be slow and uncertain. This in itself is a barrier to deployment. Therefore, UKCTA suggests having a fixed, low cost document based process Court application process to avoid further delays.
4. With regard to the duty to facilitate deployment proposed for landlords, there appears to be no way of encouraging or enforcing this duty. The result of non-engaged landlords (either absent, slow or obstructive) is lack of connectivity to customers; lower productivity for UK plc, commercial damage for CP in terms of loss of revenue (which for those engaged in largescale network rollouts, can damage the case for future investment. Evidence shows that landlords are aware of the commercial constraints that CPs are under and use this as a negotiation tool. Any new process should ensure that the CP and landlord relationship is more balanced fairly.
5. The need for the tenant to engage with the landlord, and for there to be a proven order for this proposal to apply further restricts the impact of the remedy. This requirement should be removed as it hampers proactive rollouts, including efficient rollouts in-building (i.e. connecting multiple floors in one building at the same time). Delays certainly cause a

lot of pain for business customers as evidenced by the recent research carried out by Cartesian for Ofcom's Business Connectivity Market Review.¹

6. There are uncertainties about the warrant issued by Magistrates for example, whether CPs would be required to continue showing that they are trying to engage with the landlord.
7. It can also be said that the Government's proposals will not address unengaged landlords who may be in contact once but very sporadically, slowing down negotiations by several months or even years. This is a major issue which will not be addressed by these proposals.

Areas the Barrier Busting Taskforce (BBTF) should seek to address

8. UKCTA considers that the following barriers could be addressed by the BBTF:
 - a. Cost-oriented charging for use of land/facilities/infrastructure, especially public/government-owned infrastructure which should be free.
 - b. Incentivising landlords to engage with the wayleave process in a timely manner.
 - c. Reducing negotiation time through standardised wayleaves in primary legislation.
 - d. Preventing unlimited liability clauses in wayleaves.
 - e. Standardising professional costs to negotiate and complete wayleaves, for example: legal and surveyor charges.
 - f. Addressing the issue of identifying landlords to begin wayleave discussions, especially when they may be off-shore or shell companies.
 - g. Reducing cost of street works through having an integrated national system building on best practice from Local Authorities as well as Scotland's integrated system under the Scottish Road Works Commissioner².
9. BBTF should also consider other examples of helpful public policy from around the world, which could be adapted for fixed access for all CPs in the UK. This should give the BBTF the confidence that such interventions are feasible and beneficial, for example

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0009/113112/cartesian-business-connectivity-market-assessment.pdf

²² <https://roadworks.scot/home>

- a. Public land/facilities should be made free-of-charge or at least cost-oriented. Free-of-charge public land/facilities access is currently the norm in the Netherlands³, Belgium⁴ and Italy⁵.
- b. The FCC order made concerning small cell deployments in which it set maximum charges for annual rentals and applications fees that local governments can charge providers with the view that this should not be revenue-generating for those governments.⁶
- c. The State of New York's Commission on Cable Television's determination that cable operators putting television cable into buildings are required to pay landlords a one-off payment of one US dollar in compensation.⁷
- d. Determining a per cubic feet, cost-oriented charge for space in physical infrastructure by Shelby County in the US.

10. UKCTA would be very happy to meet with DCMS to discuss the points raised in this response.

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³ Dutch Telecommunications Act, Chapter 5

⁴ Art 98(2) of the Law of 21 March 1991, Belgium

⁵ Art. 93 del d.lgs n.259/2013 (il c.d. codice delle comunicazioni elettroniche) cos l come interpretato in via autentica dall'art.12 del d.l. n. 33/2016 (il c.d. decreto fibra)

⁶ <https://docs.fcc.gov/public/attachments/DOC-353962A1.pdf>

⁷ <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BEA6F6DEE-34F5-4A2C-A078-F6A62424FD18%7D>