Broadband Stakeholder Group Response
to the Public Consultation on the
Statement of Strategic Priorities for telecommunications,
the management of radio spectrum and post

BSG
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Group

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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.

Executive Summary

The Broadband Stakeholder Group (BSG) welcomes the opportunity to respond to the Government on the Statement of Strategic Priorities, especially where the Government priorities and stated aims impact on the telecommunications sector.

If the goals that the Government set for the UK and the UK's digital communications sector in its 2018 Future Telecoms Infrastructure Review (FTIR) - to see nationwide full fibre coverage by 2033 and 5G coverage by 2027 - are to be genuinely achievable rather than solely a laudable ambition, then it is right that Government provide Ofcom with the means and support to ensure that market conditions are conducive to industry investment.

As stated in our response to the FTIR Call for Evidence[1] we believe that the right policy and regulatory framework must be in place to provide the support for industry to deliver on the deployment targets of Government. We therefore gladly welcome the SSP's reiteration of the undertakings of the FTIR and the commitment incentivising the roll out of gigabit-capable digital infrastructure across the UK.

Whilst deployment of full fibre networks has significantly advanced, with Ofcom's latest Connected Nations report revealing that almost 1.8 million homes and businesses (6%) are now able to access gigabit speeds[2], for roll out to reach nationwide levels by 2033 will necessitate a step change in pace, and at a rate that can be maintained for a decade plus. Industry announcements – from the intentions of CityFibre's £2.5 billion investment plan

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[1] http://www.broadbanduk.org/wp-content/uploads/2018/08/Future-Telecoms-Review-BSG-Response.pdf
[2] https://www.ofcom.org.uk/__data/assets/pdf_file/0020/130736/Connected-Nations-2018-main-report.pdf

to see full fibre rolled out to five million homes by 2025[3] to Openreach's Fibre First programme which commits to connecting three million premises by 2020[4] - show the commitment of industry in achieving the Government's vision of a Gigabit UK. Yet the road to roll out is far from smooth, and whilst we welcome the Government's direction, where the challenges to deployment are too great, the roll out schedule will be unable to match the pace and scale necessary to achieve this.

As a whole we endorse the Government priorities for the sector as set out in the Statement and look forward to Ofcom embedding these principles in their regulatory strategy. To succeed in delivering nationwide roll out, it is vital that Government and Ofcom policies are aligned. Nevertheless, we would urge caution that the SSP doesn't frame these priorities as overly prescriptive recommendations, and detail suggested regulatory methods to arrive at the desired outcome – for example promulgating "potential pricing interventions such as targeted safeguard caps". Government tipping over into Ofcom's domain could in fact serve to hinder the delicate equilibrium of industry investment and consumer benefits against an inadvertently damaging regulatory framework. We set out our thinking in greater detail below.

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[3] https://www.cityfibre.com/news/cityfibre-puts-place-debt-package-1-12-billion-underpin-capital-investment-full-fibre-across-uk-towns-cities/

[4] https://www.homeandbusiness.openreach.co.uk/fibre-first?utm_source=carrousel

Do you agree with the Government's strategic priorities and desired policy outcomes for telecommunications, the management of radio spectrum and postal services?

1) <u>World-class digital infrastructure</u>

As set out in the FTIR, the best way to realising nationwide full fibre connectivity should foremost be through industry investment and the encouragement of a competitive environment, with intervention applied where expedient. Where the SSP examines in greater detail the strategic priorities presented in the FTIR, we have responded to each point in turn.

- Barriers

The BSG recognises and is grateful for the work of the Barrier Busting Taskforce in working towards the removal of many of the blocks in the path to digital infrastructure deployment. Whilst many of the barriers are known in the case of fixed telecoms equipment deployment, and for mobile, since the publication of the FTIR the BSG has published a report on the key challenges facing the 5G deployment process[5] which may be reliant on a proliferation of network equipment on a denser scale than previously required. To the extent possible we would encourage Government to adopt a technology neutral approach to removing obstacles, reflecting also that the use cases of technology will sometimes complement and sometimes replace more traditional counterparts.

The work of DCMS in tackling the skills and labour shortage, which may well be exacerbated by a combination of either a disorderly departure from the EU or a result of the Government's post-Brexit migration policy, will be critical as the pace of deployment steps up.

The recent DCMS consultations - on facilitating the delivery of gigabit capable networks to new builds, and on ensuring a right of access to ease the ability of tenants to enjoy gigabit capable broadband - have been a welcome and necessary step in the right direction. As stated in our responses to these consultations, we believe however that where Government can go further and be bolder when it comes to addressing blockages to deployment, the options available through legislative measures should be fully considered. For example, a mass deployment of FTTP at scale will entail proactively building out across an area as a whole, and the risk of not fully addressing the problem of unresponsive landlords will likely result in premises and areas being left behind.

- Duct and Pole Access

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[5] http://www.broadbanduk.org/2018/07/20/forging-our-5g-future-barriers-and-solutions-to-network-deployment/

Whilst we welcome the incumbency access requirements, the extension of access obligations to include, for example, sub-sea cabling will be an important passive access pre-requisite for roll out to reach the more remote areas of the UK. Where the sub-sea cables have been put in place through the support of State Aid schemes, access obligations exist, but it is the commercially laid cablings where there are no access requirements in place that will prohibit the roll out and where a dark fibre remedy could serve to overcome a current barrier to connection.

In addition, March saw the launch of Openreach's final product for Physical Infrastructure Access[6], which will be introduced April 1st and which should be reflected in this Statement. Given that the success of the goals of the FTIR are premised on the success of the DPA regime in bringing down cost and speeding up deployment, Government, Ofcom and industry will need to ensure that the product can be used in the way it is intended.

The passive infrastructure owned by other utilities and by Network Rail will become increasingly important – be it to lower the costs of the actual laying of the infrastructure or because without access, connectivity simply cannot be present. The latter is exemplified through the scale of frustration with poor connectivity on trains, illustrated repeatedly, for example as reported: Majority of UK Train Commuters Complain of Poor Mobile and WiFi (ISP Review)[7] .

We are cognisant of the National Infrastructure Commission's Regulatory Study that seeks to explore the potential of a super regulator and will remain involved in the ongoing discussions surrounding this.

- Stable and long-term regulation

The geographic differentiation of wholesale regulation is an approach that should result in pro-competitive conditions being nurtured, and regulation redundant as competitive pressures determine the investment and pricing decisions. The use of the phrasing 'For areas where there is actual or *prospective* effective competition between networks', we note raises the prospect of premature de-regulation in a potentially competitive area, and risks killing off competition before it materialises by de-regulating too soon. However, the alternative of not de-regulating early enough risks compromising the investment from regulated parties and so it is vital that the correct balance is struck on de-regulation.

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[6]

https://www.openreach.co.uk/orpg/home/products/ductandpoleaccess/ductandpoleaccess/downloads/PIA_Product_Description_Final_Reference_Offer_Issued.pdf
[7] https://www.ispreview.co.uk/index.php/2019/02/majority-of-uk-train-commuters-complain-of-poor-mobile-and-wifi.html

The principle of 'fair bet' and allowing industry to recoup their risky and large investment costs is an important regime. We wholeheartedly endorse the Government's statement that "promoting investment should be prioritised over interventions to further reduce retail prices in the near term" and recognition that fair effective competition should be a key driver of network roll out. As such we fully advocate fair bet for all, and support the principle of investment in place of pressures on driving full fibre pricing down.

The Government states that it will work with Openreach and Ofcom on 'effective measures' around greater transparency of Openreach's build plans. We would like to see DCMS recognise and reflect in the SSP the meaningful commitments around transparency made by Openreach – for example the FTTP ' Fibre First' towns and cities programme published on the Openreach public website[8] which details build locations over the year and specific exchanges where FTTP is already/ currently/ or will be built, updated every three months. Whilst this is a welcome step towards greater transparency, some operators advocate that a mechanism overseen by Ofcom would provide for independent monitoring of more granular plans allowing for industry to plan deployment with greater certainty, although a more granular approach would need to take account of the potential commercial confidentiality and competition risk such disclosure may cause.

- An Outside-In Approach

The ongoing discussions on how this approach will work in practice remain very important, and we are especially interested in how the delivery will work alongside the goals of the USO and LFFN for example. Clarification would be useful on both how the programmes will interact, and how the programmes will ensure that any overlap does not result in duplications of investment and unnecessary overbuild in inefficient areas.

The prospect of a premise being eligible under the auspices of the USO programme, but for example the delivery being unachievable in the 12-month stipulated time scale could see a connection of between 10-30Mbps being delivered. The premise potentially would then still be eligible for the State Aid program, risking the program being, at best, financially inefficient and raising the prospect of overbuild in an otherwise unviable area.
In this instance the financial burden would reveal the potential inefficiencies of the system.
If however the broadband service delivered allowed for speeds greater than 30Mbps, the premise would fall out of the State Aid program, and to gain access to ultrafast speeds would see a potential second disruption to the area through roll out of the gigabit capable infrastructure.

- Switchover Process

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[8] https://www.homeandbusiness.openreach.co.uk/news/our-transparency-approach

As stated in the SSP, industry is working with both Ofcom and Government to ensure that the switching process is aligned with policy and regulatory goals, but the end switchover process should be one that reflects the needs and wishes of the customer in the smoothest possible way. If, as stated in the European Electronic Communications Code, the process is to be a gaining provider-led one, then it is incumbent upon Ofcom to show leadership and clarify the requirements and limitations and ensure that the approach adopted by industry is both cohesive and end-user friendly.

- Mobile and 5G Connectivity

The potential requirement that Ofcom might impose national roaming when granting rights of use for spectrum to address the issue of national not spots should be carefully balanced against the impact on operators' willingness and ability to invest in furthering their rural reach.

We welcome the government confirming its strategic priority to "extend geographic mobile coverage to 95% of the UK by 2022. While we recognise that 2022 is challenging, it is an appropriate target but it will require political will and support to deliver.

Related to this we welcome the speech from the Secretary of State on 7 March 2019 where he stated: "I want to see new innovative ideas from industry to deliver widespread, high quality [mobile] coverage. And if necessary, we will consider every single tool that we and Ofcom have in the policy and regulatory toolbox in order to achieve that 95 per cent goal [by 2022]"

We also support the desire for a material improvement of mobile coverage "across the UK particularly in rural areas and on the UK's major roads" to be "the key priority in the conduct of [the 700 MHz and 3.6-3.8 GHz] auction". Clearly ensuring that everyone can share the benefits or mobile services is critical.

2) <u>Furthering the interests of telecoms consumers</u>

It would not necessarily be helpful to equate an unengaged consumer with an unhappy consumer, and assume that inertia corresponds de facto to an industry levied penalty. Given that customer retention is a both a key metric and ultimate goal in demonstrating satisfaction with the service provided, as a general principal, where competition exists, companies will seek to keep their customers and companies will seek to win them over.

The UK market has allowed for high levels of competition and consumer choice, the volume levels of which may in itself be overwhelming for British consumers. The Government

rightly recognises that providing ever more information to consumers will not solve their concerns surrounding "engaging" consumers. Information fatigue and overload is a well-documented issue and contributing further to this is unlikely to be welcome nor helpful.

The associated costs of providing additional information to consumers, of "engaging" customers who may prefer to be left alone, of providing proof of "engagement" and of assuming that customers will not choose the packages and tariffs that best suit their needs and requirements at any one time will not be free, and the likelihood is that the additional costs and resources will be passed on across the board thereby risking increasing the prices for all. In this instance, the requirements on service providers should be applicable to all, so that operators are competing on a level playing field.

We do however recognise that customers must be well-informed on their rights and options so that they are fully available to take advantage of what products and services are available and best-suited to them and therefore support the necessity of providing better information. To ensure that customers are receiving better, not just more or different information, there is a role for Ofcom in working to understand better the market and therefore the information that customers are currently lacking.

The Government recommendation that Ofcom, should it find evidence of consumer harm from consumer choice to not engage with Communications Providers and the offers available, could take into account the recommendations of the CMA. One of these recommendations refers to the option of "potential pricing interventions such as targeted safeguard caps to protect vulnerable consumers". Whilst there certainly seems to be scope for Ofcom to look further into the area of disengaged customers, we do not see that it is appropriate for Government to direct Ofcom towards specific, targeted and rigid regulatory interventions. The potential for overstep from Government into recommending specific regulatory solutions is also in direct contradiction to the previous Strategic Priority that Ofcom promote network investment over short-term consumer price savings.

In summary, we advocate the rationale of the Strategic Priorities to give expression to the goals of the FTIR, and set out the desired outcomes and focus areas for Ofcom. To ensure the success of the FTIR, Ofcom must assume the intentions of the Priorities and note the current blockages to achieving the FTIR goals. We do however note that a Statement of Strategic Priorities should necessarily limit itself to general principles and not verge at any point onto the territory of prescriptive recommendations and consumer policy intervention.