Response to the Consultation

Ensuring tenants' access to gigabit-capable connections

By

TRUESPEED COMMUNICATIONS LTD

By email to

tenantconnectivity@culture.gov.uk

20th December 2018

Submitted on behalf of Truespeed by Mr Patrick Mulcahy, Financial Director,
patrick@truespeed.com

Background

Truespeed Communications Limited ("Truespeed") is a communications operator with Code Powers building new physical infrastructure, including ducts and overhead apparatus, to provide its customers with advanced Gigabit capable "full fibre" connections. It has access to substantial funds through an agreement with Aviva Investors announced in July 2017.

Truespeed aims to reach over 70,000 premises by 2020. It is primarily targeting rural settlements in Somerset and the South West but will enlarge its footprint over time to cover more conventional urban areas within the county and elsewhere in the South West.

The issue of landlords' access and wayleaves is important. At present, there are few multi-tenant/multi dwelling (MTU/MDU) buildings within Truespeed's target market, but as the footprint grows, coverage of flats and apartment blocks are expected to increase.

In addition, there are some similarities between gaining access to MDUs and issues with access to smaller settlements where road access may be restricted and where there is limited access to footway or verge. This occurs not infrequently and requires access to farmland adjacent to or within a few kilometres of smaller settlements. We would therefore request that DCMS considers access to smaller settlements to be very similar to issues with MDUs. The suggestions in the consultation of using a Magistrates' Court warrant of entry should, we propose, not be restricted to MDUs but should be extended to any situation where a landlord refuses to respond or refuses to reach a "fair and reasonable"[1] arrangement under the Code. The case law already confirms the rights to an operator to install, and that provided the terms are "fair and reasonable" it has already been decided by the Courts that this does not infringe the landlord's rights to property under Art 1 Protocol 1 of the ECHR.[2]

Our answers to the specific questions in the consultation are below.

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

   This must be beneficial. Whilst we endeavour to reach commercial agreements with landlords, any statutory obligation helps those discussions and significantly assists with reaching satisfactory commercial terms in a timely manner.

   We would like to see this obligation applying to landlords within say, 5 km of any settlement which had residents that have requested advanced fibre services such as those provided by TrueSpeed.

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 believe this would support, and not detract, from the Code obligations.

[1] See para 3 and 20 Geo v Bridgewater Canal [2010] EWCA Civ 1348 (30 November 2010)
[2] Ibid

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 that as proposed, the suggestion of incorporating a "warrant of entry" from a Magistrates Court is the appropriate mechanism for an unresponsive or absent landlord. We also believe it is the appropriate route when a "fair and reasonable" offer has been made, and declined, or no response received. In terms of "fair and reasonable" we consider that for rural land, the NFU and CLA national charges are the appropriate benchmark.

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, how much time would be appropriate?

We consider 2 months to be too long. The recommended time contained in the Ofcom approved Code notice is 28 days. If there has been no response at all, then we consider 28 days to be sufficient, provided the operator has used reasonable endeavours to identify and communicate with the landlord. In the case of rural areas, this is usually via the tenant, who is well aware of the identity and address for service of the landlord.

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?

The operator should provide evidence of attempts to both identify the landlord from, say, Land Registry records, and communicate with the landlord or his or her agent. There should be more than a single attempt in writing, with evidence the correspondence was delivered either by a witness, or by a "signed for" service such as that provided by the Royal Mail. We consider three attempts to be reasonable.

There should also be a description of why access was essential, and that there are no reasonable economic alternatives for the purposes of the operator.

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

It would be helpful to define this, in order to satisfy the Courts that there was a genuine request. As Ofcom has done with suggested Notices under the Code, it would be beneficial for this to be defined. It does not have to be long or complex. A suggested format might be:-
I have reviewed the literature and costs of the service provided by [operator x] and wish to purchase this service. [Name and Address]
The advantage of proscribing its form would be to assist the Courts. In terms of numbers, in an MDU or rural settlement, the threshold might be say, 10% of the tenants or residents. However, if this is a business customer in, say, a London office, the threshold should be only a single tenant.

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?

The issue of a temporary notice in the case of access to, and installation on, private land is problematic as it raises the risk of the operator having to remove apparatus installed pursuant to the Order allowing entry in or on the land. It is always open to the parties to confirm or replace the warrant of entry.

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

As noted above, the stronger the statutory basis given to the operator in providing service to tenants or residents, the greater the likelihood that the landlord will engage in a timely manner. However, if the landlord does not engage, for whatever reason, the rights to entry and apparatus installed should remain in situ indefinitely, unless their removal is required by a Court Order.

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

Yes. This raises the issue of what happens to the service and installed apparatus in the event that the parties do not reach agreement. Any legislative change should protect the operator and its customers from a vexatious refusal by the landlord to reach agreement. This could be done by ensuring the operator would only have to remove apparatus (and make good any damage as a result) on the order of a Court.

TrueSpeed Communications Limited

20th December 2018