



**Department for Digital, Culture, Media and Sport Consultation  
Ensuring Tenants' Access to Gigabit-Capable connections**

**Consultation Response from Mobile UK**

December 2018

**About Mobile UK**

1. Mobile UK is the trade association for the UK's Mobile Network Operators (MNO) - EE, Telefonica UK (O2), Three and Vodafone. Our goal is to realise the power of mobile to improve the lives of our customers and the prosperity of the UK as a whole.
2. As mobile increasingly becomes the device of choice for running daily life both at home and at work, customers want improved coverage and greater capacity. Mobile UK's role is to identify the barriers to progress and work with all relevant parties to bring about change, be they Government, regulators, industry, consumers or citizens more generally.

**Introduction**

3. Mobile UK welcomes the opportunity to respond to the Department for Digital, Culture, Media and Sport's consultation on ensuring tenants' access to gigabit-capable connections.
4. This submission not only sets out Mobile UK's response to the consultation but also, and where relevant in addition to the set questions in the consultation, outlines the mobile industry's key priorities and recommendations for making it easier for operators to deliver better coverage, capacity and capabilities to build the connectivity that will underpin the Government's aim to ensure the UK remains a leading digital economy.
5. Mobile UK stands ready to assist further to expand on points made in this submission.

**Mobile UK Response Overview**

6. Mobile UK welcomes the Government's decision to seek evidence on ensuring tenant's access to gigabit capable connections to improve infrastructure delivery and installation.
7. Mobile UK also believes that while this consultation is focussed mainly of fixed-line gigabit connections it also has clear implications for mobile infrastructure deployment. Fixed fibre forms an essential part of the mobile networks' backhaul so extending gigabit connectivity also enhances the ability of operators to extend and enhance their networks. Mobile, therefore, calls on Government to ensure that mobile and fixed-line broadband services receive equal focus and attention to ensure equivalent legal and regulatory rights.
8. Mobile UK agrees with the Government that the principle of the Electronic Communications Code is that negotiation and agreement between a landlord and an operator is the best means to access, install and maintain digital infrastructure.
9. MNOs, however, continue to face numerous barriers when deploying the infrastructure that underpins their networks. The Electronic Communications Code was created to mitigate these barriers and to ensure that network rollout was not just economically viable but could also be

deployed rapidly – even more important as we head towards the installation of new 5G networks. However, since the Code came into force in December 2017, operators have experienced some implementation issues.

10. Mobile UK supports the Electronic Communications Code to facilitate faster and more cost-effective deployment of mobile infrastructure. We welcome the proposals set out in this consultation and believe that the recommendations made here, and by operators individually, can help in the effective implementation of the Code. Ultimately, if the UK is to achieve the Government's ambition of being a leading digital economy with world-class connectivity it is important to ensure that operators are able, through agreement to easily, and cost-effectively gain access to sites to ensure that they can maintain, and enhance, their networks for the benefit of the customer and the UK as a whole.

## **Mobile Communications – Critical Infrastructure**

11. Mobile communication is part of the UK's critical infrastructure and is integral to people's lives. At the end of December 2016, there were 92 million mobile connections (including 52.4 million 4G mobile subscriptions).<sup>1</sup> 94% of the adult population has a mobile phone.
12. According to Ofcom, 92% of UK premises have indoor call coverage from all four mobile networks, while 88% have indoor coverage for mobile data services. These figures are up from 85% and 80% respectively last year.<sup>2</sup>
13. The increase in coverage, capability and capacity of mobile networks has led to an explosion in demand for mobile data. 4G is driving greater volumes of data usage. A total of 156 petabytes was sent over all mobile networks in June 2017, a 47% increase over the previous year. The average volume of data consumed per subscriber now stands at 1.9 gigabytes per month up from 1.3 gigabytes in 2017.<sup>3</sup>
14. Improved 4G services and the rollout of 5G has the potential to increase this demand further. It is expected that 5G will form the critical backbone of many of the UK's key services such as e-health, the internet of things and connected vehicles. Mobile networks are the modern-day highways and are critical to the nation's economic well-being.
15. Mobile data use tripled over the period 2014-2017 and is expected to increase by a further 700% by 2021. Average mobile subscriber use is predicted to grow to 18 gigabytes per month by 2021 (up from 1.9 gigabytes now).<sup>4</sup>
16. The mobile industry has made huge strides in improving mobile connectivity in recent years. The industry is re-investing over £2bn annually in new network equipment (around 15% of all mobile revenues), to improve capacity, footprint and performance.

## **Mobile UK Response**

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

Mobile UK believes that placing an obligation on landlords to respond to requests sent by operators would be one potential option to facilitate negotiation and agreement when requests are sent by operators to foster favourable and constructive proposals that would help operators to extend, enhance and maintain coverage for customers. Also, operators also suggest that DCMS could also seek to amend and update Ofcom's Code of Practice.

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<sup>1</sup> Ofcom – Communications Market Update, Q4 2016

<sup>2</sup> Ofcom – Connected Nations Spring Update, 2018

<sup>3</sup> Ofcom – Connected Nations, 2017

<sup>4</sup> CCS Insight, 2017

Mobile UK believes strongly that in responding to this consultation, it is important to note that the issues raised are not confined to fixed line operators but also take into account mobile operators, particularly when exercising Code rights.

It is important that the Code provides a clear timetable for a landlord to respond to a Code Operator. Where an access request to install equipment is made, we would suggest a 21-day notice period, whereas in recognition of expectation by consumers for coverage we would suggest a shorter 48-hour notice period is imposed where a Code Operator is seeking to resolve a network repair issue.

**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?**

Mobile UK believes that the placing of an obligation on landlords would complement the facilitation within the Electronic Communications Code of negotiated agreements between landlords and operators. Also, as per the response to question one Mobile UK also believes that Ofcom's Code of Practice could also be updated to achieve similar aims.

**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?**

Mobile UK believes that the use of the courts for the purpose of granting entry to operators where they have been unable to contact a landlord to negotiate an agreement is reasonable.

Mobile UK's members continue to raise concerns that they experience difficulties gaining access to buildings to repair, upgrade or inspect their equipment. Operators have also outlined further concerns that difficulties gaining access also applies to a third party or neighbouring land due to various issues including inadvertent, or sometimes deliberate, refusal or obstruction from owners which adds to delays and increases costs, particularly where access attempts have been aborted. This can also lead to 'dead cells' where a mobile operator's equipment is not operating, and this coverage is denied.

Issues around access are not limited to the identification of landowners or the failure to respond to requests; they can also arise due to the deliberate obstruction by a landowner of an operators seeking to exercise code rights. Operators must also be able to access their equipment where there are outages to repair or restore service. Operators have indicated to Mobile UK that landowners have in some instances blocked access to sites or demanded payment to access, even where payment is not required by an agreed lease or other agreement. This behaviour only delays operators' ability to restore services to customers and places an even greater financial burden on operators to resolve the issue by having to pay landowners. This increase in cost could impact on the wider ability of operators to reinvest in their national networks.

**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?**

No. Mobile UK believes that two months is not an appropriate amount of time to pass before a landlord is considered absent and an operator can seek entry via the courts.

As outlined previously, Mobile UK has suggested that, when addressing a service impacting fault, the period should be 48 hours. Where an access request to install equipment in the context of exercising a Code Right is made, we would suggest a 21-day notice period.

**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?**

Mobile UK believes that there are two scenarios that should be considered; firstly, an absentee

landlord scenario; and secondly, an urgent access to restore network service scenario, where a landlord has raised a dispute in connection with a code operators' access request.

In the case of an absentee landlord, Mobile UK believes the Magistrates Courts is an appropriate forum (as the Tribunal, which already adjudicates on matters of this nature pursuant to the current notice and interim application provisions with the new Code) to provide access to land where an agreement has not been possible. In this instance, operators should be required to provide the original request for access and all following correspondence. Also, a declaration should be required of operators confirming that they have received no substantive response to their attempts to engage with the landlord.

Secondly, in the case of an urgent access to restore network service where a landlord has raised a dispute in connection with a code operators access request, Mobile UK believes in addition to the existing right to go to the Chancery Division of the High Court, or the Tribunal, for a resolution, code operators should be able to refer such matters to a sub-forum which could work under the auspices and with the authority of the Tribunal. This sub-forum could hear interim rights applications, temporary rights applications requests for access (whether prior to a grant of Code rights or during the life of the Code agreement) and similar matters. It is important in these circumstances that priority must be given to operators to restore and/or maintain service for residents, customers and businesses.

Mobile UK has provided below a suggested draft which could be included in new legislation to enable operators to enforce existing rights more quickly than current processes permit. A clause to give effect to this might read as follows:

Access Order

*"If an Operator*

- (i) requires access to land in order to exercise any Code Right; and*
- (ii) has given to the [occupier] [relevant person] 48 hours prior notice or such lesser period of notice as in all the circumstance's it considers to be reasonable and the [occupier] [relevant person] has not agreed to allow operator access;*

*Then the operator may apply to the court for an order allowing the operator to exercise any Code Right and the Court may grant such order if the court thinks that there is a good arguable case that the test n paragraph 21 for making the order is met.*

*On the making of such an application, the parties will act on the basis that the Code Right is enforceable between an operator and any [occupier] [relevant person] and its successor in title;*

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

7. Mobile UK believes it would be useful to have clear guidance as to what constitutes a tenant request. Mobile operators experience tenant-led requests, e.g. where a corporate customer, which occupies a building as a tenant, requests in-building coverage enhancement.

**8. 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?**

Mobile UK agrees that 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.

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

Yes, Mobile UK believes that temporary access granted by the court would provide an incentive for landlords to re-engage.

**10. Do you foresee any issues with operator/landlord negotiations which take place after the**

**installation has taken place?**

Mobile UK hopes that agreements between operators and landlords would address ongoing access issues post installation.