



**Proposal to apply Code Powers to
Broadband for the Rural North Limited**
Statutory notification under section 107(6) of the Communications Act
2003

Consultation

Publication date: 24 March 2016

Closing Date for Responses: 25 April 2016

About this document

This document sets out Ofcom's proposal to grant Code powers, pursuant to the electronic communications code ("the Code"), to Broadband for the Rural North Limited.

The grant of Code powers is intended to assist persons that provide an electronic communications network and/or system of conduits. In particular, persons with Code powers may:

- construct and maintain infrastructure on public land (streets) without needing to obtain a specific street works licence to do so;
- benefit from certain immunities from the Town and Country Planning legislation; and
- apply to the Court in order to obtain rights to execute works on private land in the event that agreement cannot be reached with the owner of that land.

Ofcom considers applications for the grant of Code powers from providers of electronic communications networks and providers of conduit systems (or both) with reference to the matters set out in section 107(4) of the Communications Act 2003 ("the Act").

As such, Ofcom has reviewed an application for Code powers submitted by Broadband for the Rural North Limited and this document sets out a summary of the contents of that application, as well as Ofcom's proposal to grant Code powers in favour of Broadband for the Rural North Limited.

Ofcom will consider any responses to this consultation before deciding whether or not to make a direction, under section 106(3) of the Act, applying the Code to Broadband for the Rural North Limited.

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Section 1

Summary

Purpose of consultation

- 1.1 We are proposing to apply the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 as amended (the “**Code**”) on terms proposed in this consultation to Broadband for the Rural North Limited, whose registered company number is 31352R (the “**Applicant**”). Further background about the Code (including the procedure that applies in this context) is set out in Section 2 of this document.
- 1.2 The reasons for our proposal are set out in Section 3 of this document and our draft direction applying the Code to the Applicant is set out in Annex 1 to this document.
- 1.3 The closing date for responses is 25 April 2016 and stakeholders wishing to respond are directed to Annex 1 for information on how to respond to this consultation.

Proposed application and terms

- 1.4 The only purposes for which the Code may be applied in a person’s case are:
 - 1.4.1 the purposes of the provision of an electronic communications network; or
 - 1.4.2 the purposes of the provision of a system of conduits which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.
- 1.5 Having considered the Applicant’s application for Code powers, we propose that the Code should have effect in its case for the provision by the Applicant of its electronic communications network in the United Kingdom; and secondly, the provision by the Applicant in the United Kingdom of a system of conduits which the Applicant is making available, or proposing to make available, for use by providers of electronic communications.
- 1.6 The Applicant (which is also known as B4RN) is a not-for-profit community benefit society that is working with local communities and volunteers in rural areas to provide a full end-to-end fibre broadband service. It has explained that it operates both the physical network and also acts as an internet service provider offering internet connectivity to its customers (which include residential, small enterprises, agricultural and not for profit type users). Services offered by the Applicant include a basic service of 1Gbs symmetrical fibre broadband, as well as higher speed 10GbE service.
- 1.7 According to the Applicant, it currently has approaching 1,000km of duct deployed across an 800km square area which it uses to provide high speed broadband services to approximately 1,500 premises. Whilst its network is currently focused in the North West of England, it has explained that it does not want its Code powers to be limited to this area as it expects to expand beyond the North West when other community groups join it.

- 1.8 We consider that this proposal is appropriate having regard to the matters set out in section 107(4) of the Communications Act 2003 (the “**Act**”). We consider that the performance of our statutory duties in sections 3 and 4 of that Act would be secured and furthered in relation to this proposal.
- 1.9 We will consider any responses we may receive by the closing date before making our decision as to whether we should give a direction applying the Code to the Applicant.

Background

The Code

- 2.1 The Code is designed to facilitate the installation and maintenance of electronic communications networks.¹ It confers rights on providers of such networks and on providers of systems of conduits which are made available for use by providers of electronic communications networks for the purposes of the provision of those networks, to install and maintain apparatus in, over and under land and results in considerably simplified planning procedures.
- 2.2 Where the Code is applied in any person's case, it may be subject to restrictions and conditions set out in other legislation from time to time.²

The application of the Code

- 2.3 The Code only has effect in the case of a person to whom it is applied by a direction given by Ofcom (or, in the case of the Secretary of State or any Northern Ireland department, where the Secretary of State or that department is providing or proposing to provide an electronic communications network).³
- 2.4 The only purposes for which the Code may be applied in a person's case by a direction are:
 - 2.4.1 the purposes of the provision of an electronic communications network; or
 - 2.4.2 the purposes of the provision of a system of conduits which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.
- 2.5 A direction applying the Code to a person may take effect:
 - 2.5.1 in relation only to such places or localities as may be specified or described in the direction;
 - 2.5.2 for the purposes only of the provision of such electronic communications network, or part of an electronic communications network, as may be so specified or described; or
 - 2.5.3 for the purposes only of the provision of such conduit⁴ system, or part of a conduit system, as may be so specified or described.⁵

¹ "Electronic communications network" for the purposes of the Code has the same meaning as in the Act: see Telecommunications Act 1984, Schedule 2, paragraph 1(1) and section 32 of the Act.

² Section 109 of the Act – see, at present, the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003 No. 2553), as amended by the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2009 (SI 2009 No. 584) and the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013 (SI 2013 No. 1403).

³ Section 106(4) of the Act.

⁴ "Conduit" includes a tunnel, subway, tube or pipe.

Application process for applying the Code

- 2.6 Ofcom must not give a direction applying the Code in any person's case except on an application made for the purpose by that person.⁶
- 2.7 Any such application must be made in accordance with the requirements for the time being in force with respect to the content of an application for a direction applying the Code and the manner in which such an application is to be made.⁷

Time limit for making a decision on application

- 2.8 Regulation 3(2) of the Electronic Communications and Wireless Telegraphy Regulations 2011⁸ provides that, except in cases of expropriation, Ofcom must make its decision within 6 months of receiving the completed application. In other words, that time limit applies from the moment Ofcom receives an application that fully complies with the requirements described above.

Statutory consultation process on proposal

- 2.9 Before giving a direction applying the Code to the applicant in question, Ofcom must publish a notification of its proposal to give the direction and consider any representations about that proposal that are made to Ofcom within the period specified in the notification.⁹
- 2.10 Such a notification must contain the following¹⁰:
- 2.10.1 a statement of Ofcom's proposal;¹¹
 - 2.10.2 a statement of Ofcom's reasons for that proposal;
 - 2.10.3 a statement of the period within which representations may be made to Ofcom about the proposal (which period must end no less than one month after the day of the publication of the notification¹²).
- 2.11 Ofcom must publish a notification in such manner as Ofcom considers appropriate for bringing the notification to the attention of the persons who, in Ofcom's opinion, are likely to be affected by it.¹³
- 2.12 The notification published at Annex 1 to this document is a notification for such purposes, which notification should be read in conjunction with the entirety of this document, including the reasons set out in Section 3.

⁵ Section 106(5) of the Act.

⁶ Section 107(1) of the Act.

⁷ Section 107(2) of the Act. For the current requirements, see the Notification under section 107(2) of the Communications Act 2003, dated 6 October 2003, at Annex B to the statement entitled '*The Granting of the Electronic Communications Code by the Director General of Telecommunications – A Statement issued by the Director General of Telecommunications*', published on 10 October 2003

⁸ SI 2011 No. 1210.

⁹ Section 107(6) of the Act.

¹⁰ Section 107(7) of the Act.

¹¹ Subject to sections 113(7) and 115(5) of the Act, the statement of Ofcom's proposal must contain a statement that Ofcom proposes to apply the code in the case of the person in question and set out any proposals of Ofcom to impose terms under section 106(5): see section 107(8) of the Act.

¹² Section 107(9).

¹³ Section 107(10) of the Communications Act 2003.

Relevant considerations in making a decision (four factors)

- 2.13 In considering whether to apply the Code in any person's case, Ofcom must have regard, in particular, to each of the following matters¹⁴:
- 2.13.1 the benefit to the public of the electronic communications network or conduit system by reference to which the Code is to be applied to that person;
 - 2.13.2 the practicability of the provision of that network or system without the application of the Code;
 - 2.13.3 the need to encourage the sharing of the use of electronic communications apparatus;
 - 2.13.4 whether the person in whose case it is proposed to apply the Code will be able to meet liabilities arising as a consequence of the application of the Code in that person's case and any conduct of that person in relation to the matters with which the Code deals.
- 2.14 For the purposes of this process, those four factors rank equally with Ofcom's statutory duties under sections 3 and 4 of the Act.¹⁵ Where appropriate, outside of those statutory considerations, we will also have regard to any additional factors that, in our opinion, are relevant to the particular application.

Statutory duties

General duties

- 2.15 In carrying out its functions under the Act (which includes giving a direction to apply the Code), Ofcom's principal duty as set out in section 3 of the Act is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.16 In so doing, we are required to secure a number of specific objectives and to have regard to a number of matters set out in section 3. As to the prescribed specific statutory objectives in section 3(2), we consider that the objective of securing the availability throughout the UK of a wide range of electronic communications services objectives as particularly relevant to this consultation.
- 2.17 In performing its duties, Ofcom is also required to have regard to a range of other considerations, which appear to us to be relevant in the circumstances. In this context, we consider that a number of such considerations are relevant, particularly:
- 2.17.1 the desirability of promoting competition in relevant markets;
 - 2.17.2 the desirability of encouraging investment and innovation in relevant markets; and
 - 2.17.3 the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom.

¹⁴ Section 107(4).

¹⁵ Section 107(5).

- 2.18 We have also had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, as well as the interest of consumers in respect of choice, price, quality of service and value for money.
- 2.19 Ofcom has a wide measure of discretion in balancing its statutory duties and objectives. In so doing, we will take account of all relevant considerations, including any responses received during this consultation process, in reaching our conclusions.

Specific duties for fulfilling Community obligations

- 2.20 The function of giving a direction to apply the Code would involve us exercising functions falling under the EU regulatory framework. As such, section 4 of the Act requires us to act in accordance with the six European Community requirements for regulation.
- 2.21 In summary, these six requirements are:
- 2.21.1 to promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
 - 2.21.2 to contribute to the development of the European internal market;
 - 2.21.3 to promote the interests of all persons who are citizens of the European Union;
 - 2.21.4 to take account of the desirability of Ofcom's carrying out of its functions in a manner which, so far as practicable, does not favour one form of or means of providing electronic communications networks, services or associated facilities over another, i.e. to be technologically neutral;
 - 2.21.5 to encourage, to such extent as Ofcom considers appropriate for certain prescribed purposes, the provision of network access and service interoperability, namely securing efficient and sustainable competition, efficient investment and innovation and the maximum benefit for customers of communications providers;
 - 2.21.6 to encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of communications providers.
- 2.22 We consider that the first and fifth of those requirements are of particular relevance to our proposal in this consultation and that no conflict arises in this regard with the specific objectives in section 3 we have identified above as particularly relevant in this context.

Impact assessment and equality impact assessment

- 2.23 The analysis presented in the entirety of this consultation represents an impact assessment, as defined in section 7 of the Act.
- 2.24 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that

generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on the Ofcom website:

http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

- 2.25 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by or in relation to what we propose.
- 2.26 There are two main options for this consultation:
- 2.26.1 give a direction to apply the Code to the Applicant; or
- 2.26.2 not to give such a direction.
- 2.27 In carrying out our functions (again, something which includes giving a direction to apply the Code), we are also under a general duty under the Equality Act 2010 to have due regard to the need to:
- 2.27.1 eliminate unlawful discrimination, harassment and victimisation;
- 2.27.2 advance equality of opportunity between different groups; and
- 2.27.3 foster good relations between different groups,
- in relation to the following protected characteristics: age; disability; gender re-assignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 2.28 Such equality impact assessments ("EIAs") also assist us in making sure that we are meeting our principal duty under section 3 of the Act.
- 2.29 We have therefore considered what (if any) impact the proposal in this consultation may have on equality. We do not, however, consider the impact of the proposal in this consultation to be to the detriment of any group within society. We have therefore not carried out separate EIAs in relation to race or gender equality, or equality schemes under the Northern Ireland and Disability Equality Schemes.

Section 3

Reasons for proposal

Introduction

3.1 This Section contains our reasons for proposing to apply the Code to the Applicant.

Factual matters

Receipt of a completed application

3.2 On 10 December 2015 we received a fully completed application from the Applicant.

3.3 Accordingly, we consider that the Applicant's completed application meeting the requirements described in Section 2 of this document was received on 10 December 2015.

The person to whom it is being sought the Code should apply

3.4 According to the application, the person seeking Code powers is:

3.4.1 Company name: Broadband for the Rural North Limited

3.4.2 Registered company number: 31352R

3.4.3 Registered office: Station Yard, Kirkby, Lonsdale Road, Melling, Nr Carnforth, Lancaster LA6 2QY.

Description and location of the network or conduit system for Code powers

3.5 The Applicant has confirmed that it is a not-for-profit community benefit society that is working with local communities and volunteers in rural areas to provide a full end-to-end fibre broadband service. Its customers are stated to include residential consumers, small enterprises, agricultural enterprises and not-for-profit users such as parish churches. Services offered by the Applicant include a basic service of 1Gbs symmetrical fibre broadband, as well as point to point leased Ethernet services and external connectivity for business purposes to Manchester and London.

3.6 According to the Applicant, it currently has approaching 1,000km of duct deployed across an 800km square area which it uses to provide high speed broadband services to approximately 1,500 premises. To provide these services, it has installed fibre links from individual premises to one of 21 strategically located network nodes (known as 'village' or 'parish' nodes). These nodes are, in turn, linked to a primary switching centre based in either Arkholme or Quernmore (both in Lancashire), both of which are interconnected to Telecity in Manchester via leased dark fibre links.

3.7 The Applicant has explained that it intends to maintain and expand its network. Whilst it will focus initially on expansion in the North West of England (including in two national park areas - the Yorkshire Dales and the Lake District), it has explained that it expects to expand beyond this area as further community groups join the project. According to the Applicant, it is currently growing its network at a rate of about 100 connections per month.

Analysis of the four factors

The benefit to the public of the electronic communications network by reference to which the Code is to be applied to the Applicant

- 3.8 The Applicant has explained that its network is targeted at areas of the country where existing provision of broadband falls far short of that required by today's users, and where the costs of upgrading by other operators to be able to deliver superfast broadband are considered too great. It has explained that it is a true community project, reliant on funding generated by residents of the communities it serves.
- 3.9 As explained above, the Applicant has suggested that its network would allow for broadband services exceeding speeds of 1Gbs and that its full end-to-end fibre optic based services will provide seamless broadband services to everyone within their footprint. According to the Applicant, its network is already making a huge difference to the lives of its customers and is breaking down the urban/rural divide making a considerable difference to the economic viability of farming, rural business and everyone who lives in the countryside.
- 3.10 In particular, the Applicant has explained that many rural businesses suffer from a lack of good broadband and noted that most government services (including DEFRA, with which the rural farming community are frequently in contact) now require online submission of returns. It has also suggested that its network will be beneficial for local businesses such as leisure parks given that visitors now expect wi-fi coverage in caravans and lodges. It explained that many such parks have been using multiple satellite links to try to meet demand, often unsuccessfully. The Applicant has suggested that it has seen businesses moving into the areas served by its network as they are able to get better broadband from the Applicant than in towns.
- 3.11 The Applicant has also explained that a lack of good broadband in rural areas may disadvantage children in those areas. It highlighted the proliferation of online learning environments and explained that students are often expected to be able to access these for homework from home. It has suggested that, without its network, a number of children living in rural areas would be unable to access a sufficient internet quality.
- 3.12 The Applicant has also explained that it tries hard to support any local initiatives and that, in 2015, it stopped charging places of worship for their broadband and intends to do the same with primary schools.
- 3.13 For the reasons above, Ofcom considers that granting the Applicant Code powers would benefit the public.

The practicability of the provision of the network without the application of the Code

- 3.14 The Applicant has explained that without Code powers it would not be able to continue to grow its network.
- 3.15 In particular, the Applicant has suggested that, whilst its network is largely built on private land, there are still many roads that have to be crossed to reach distant properties and connect new network nodes to the core. To date, it has obtained individual licences pursuant to section 50 of the New Roads and Streets Act 1991 each time that it wishes to undertake this type of work. However, the Applicant has explained that this process does not scale to the many hundreds of crossings that would be required in order to expand its network and suggested that the Highway

departments are not prepared to grant them for large-scale projects such as those envisaged by the Applicant.

- 3.16 The Applicant has also explained that it has looked at a number of options such as duct and pole sharing, as well as leasing capacity from alternative network operators. However, it suggests that the areas where it is building its network do not have any suitable infrastructure in place that can be shared and it is, therefore, having to create it from scratch.
- 3.17 We consider, therefore that the grant of Code powers is necessary for the practical provision of the Applicant's electronic communications network.

The need to encourage the sharing of the use of electronic communications apparatus

- 3.18 The Applicant has confirmed that its network has deliberately been built to be open access, such that it can offer connectivity to other providers at either the physical dark fibre layer or at the Ethernet layer.
- 3.19 We consider that sharing of the use of apparatus would be encouraged by granting the Applicant Code powers as a result of those stated intentions.

Whether the Applicant will be able to meet liabilities as a consequence of (i) the application of the Code; and (ii) any conduct in relation to the application of the Code

- 3.20 The Applicant has considered its duties and responsibilities with regard to compliance with Regulation 16 (Funds for Liabilities).¹⁶
- 3.21 The Applicant has assessed its asset base and future network deployment and has confirmed that it will make arrangements to put the requisite funds in place in the event that Code powers are granted by Ofcom. In particular, it has provided Ofcom with a signed letter from one of its directors certifying that the Applicant will put sufficient funds for liabilities in place before exercising Code powers.

Overall assessment

- 3.22 In addition to our consideration of the four factors discussed above in paragraph 2.15, we consider that our proposal would secure or further the performance of our statutory duties under sections 3 and 4 of the Act.
- 3.23 In particular, we consider that, if the Applicant's intended infrastructure plans through the use of Code powers are realised, it may contribute to the availability throughout certain regions in the UK of a wider range of electronic communications services. We also believe that our proposal will encourage competition in the provision of electronic communications networks and services and associated facilities as well as encouraging investment and innovation.
- 3.24 The impact of implementing the proposal is likely to be low. Any costs to those affected by the Applicant's use of Code powers are likely to be outweighed by the benefits. On the other hand, the detrimental effect on the Applicant of a refusal to grant such powers (including to the practicability of its network roll-out) is likely to be

¹⁶ Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003 No. 2553) (as amended).

significant. As noted in Section 2 paragraph 2.31 of this document, we are also of the view that the impact of our proposal is not likely to be to the detriment of any protected group within society.

Proposal

- 3.25 For these reasons we propose that Ofcom should give a direction applying the Code to the Applicant.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 25 April 2016**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/broadband-rural-north-limited/howtorespond/> , as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data please contact numbering.information@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Numbering Team
Ofcom
4th Floor Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3061
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Numbering Team on 020 7981 3000.

Confidentiality

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement in April 2016.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publication of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is as easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Statutory notification

Notification under section 107(6) of the Communications Act 2003

Proposal to give a direction applying the electronic communications code

Proposal in this Notification

1. Ofcom hereby proposes, in accordance with section 107(6) of the Act, to give a direction under section 106(3) of the Act applying the Code to the Applicant.
2. The proposed direction applying the Code to the Applicant on the terms proposed is set out in the Schedule to this Notification.
3. Ofcom's reasons for giving the proposed direction are set out in the accompanying consultation document.

Ofcom's duties

4. In making this proposal, Ofcom has had regard, in particular, to each of the matters set out in section 107(4) of the Act. Furthermore, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.

Making representations

5. Representations on this proposal may be made to: Numbering Team, Ofcom, 4th floor, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, by no later than 5pm on **25 April 2016**.

Interpretation

6. In this Notification—
 - (a) “**Act**” means the Communications Act 2003;
 - (b) “**Applicant**” means Broadband for the Rural North Limited, whose registered company number is 31352R;
 - (c) “**Code**” means the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 (as amended); and
 - (d) “**Ofcom**” means the Office of Communications.
7. For the purpose of interpreting this Notification—
 - (a) headings and titles shall be disregarded; and
 - (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

8. The attached Schedule forms part of this Notification.

Signed

A handwritten signature in black ink, appearing to read 'Brian Potterill', with a long horizontal flourish extending to the right.

Brian Potterill
Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

24 March 2016

SCHEDULE

[Proposed] Direction under section 106(3) of the Communications Act 2003 applying the electronic communications code

Background

1. The Applicant has applied to Ofcom for a direction applying the Code to the Applicant.
2. The date on which Ofcom received a completed application that meets the statutory requirements with respect to the content of an application for a direction applying the Code and the manner in which such an application is to be made was 10 December 2015.
3. By virtue of regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011 No. 1210), except in cases of expropriation, Ofcom must make its decision within 6 months of receiving the completed application.
4. Prior to giving a decision under section 106(3) of the Act to apply the Code to the Applicant, Ofcom must publish a notification of its proposal to give the direction and consider any representations about that proposal that are made to Ofcom within the period specified in the notification.
5. On 24 **March 2016**, Ofcom published, in accordance with section 107(6) of the Act, a notification of its proposal to give a direction applying the Code to the Applicant for the reasons set out in the consultation document accompanying that notification. That notification invited representations to Ofcom by no later than 5pm on **25 April 2016**.
6. Ofcom has considered every representation about the proposal made to it. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom has had regard, in particular, to each of the matters set out in section 107(4) of the Act. Furthermore, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.

Decision

7. Ofcom hereby directs, in accordance with section 106 of the Act, as follows—
 - (a) the Code shall apply to the Applicant for the purposes of:
 - (i) the provision by the Applicant of an electronic communications network; and
 - (ii) the provision by the Applicant of a system of conduits which the Applicant is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks;
 - (b) that application of the Code shall have effect throughout the United Kingdom.
8. This Direction shall take effect on the day it is published.

Interpretation

9. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Applicant**” means Broadband for the Rural North Limited, whose registered company number is 31352R;
- (c) “**Code**” means the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 (as amended);
- (d) “**Ofcom**” means the Office of Communications.

10. For the purpose of interpreting this Direction—

- (a) headings and titles shall be disregarded;
- (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

Signed

Brian Potterill
Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002