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# Proposal to apply Code Powers to Aylesbury Vale Broadband Limited

Statutory notification under section 107(6) of the Communications Act  
2003

Consultation

Publication date: 5 May 2017

Closing Date for Responses: 5 June 2017

# About this document

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 Aylesbury Vale Broadband 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 Aylesbury Vale Broadband 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 Aylesbury Vale Broadband 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 Aylesbury Vale Broadband Limited, whose registered company number is 9661210 (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 4 to this document.
- 1.3 The closing date for responses is 5 June 2017 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 The Applicant has explained that it was established with the mission of eliminating the digital rural and urban divide and, to this end, it works with local communities to deliver a full end-to-end ultra-fast fibre broadband service to rural villages in Buckinghamshire.
- 1.6 According to its application, the Applicant focuses upon the provision of services to villages that are unable to receive at least super-fast broadband speeds from incumbent providers, especially those customers who are some distance from their nearest exchange/cabinet such as farming communities. It has explained that it is currently offering between 30 Mb/s to 300 Mb/s symmetrical fibre broadband on its network, but that it plans to increase its service offering up to 1 Gb/s by December 2017.
- 1.7 It has explained that its ultra-fast fibre network went live in November 2015 and; since then, it has deployed over 50 kms of ducting and installed fibre in a number of rural villages in Buckinghamshire. Its current network already passes approximately 2,000 homes, and it has explained that, if it is granted Code powers, it intends to have its ducting and fibre installed in at least another three rural villages by the end of July 2017, with another seven targeted by the end of this year. It has also explained that, if Code powers were granted to it, it is highly likely that it will in the future expand its fibre network into the neighbouring counties of Berkshire, Oxfordshire, Northamptonshire, Bedfordshire, Milton Keynes and Hertfordshire.
- 1.8 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 East Midlands, the East of England and the South East of England; and secondly, the provision by the Applicant in those regions 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.

- 1.9 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.
- 1.10 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.

## Section 2

# Background

## The Code

- 2.1 The Code is designed to facilitate the installation and maintenance of electronic communications networks.<sup>1</sup> 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.<sup>2</sup>

## 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).<sup>3</sup>
- 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.<sup>4</sup>
- 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

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<sup>1</sup> "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.

<sup>2</sup> 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).

<sup>3</sup> Section 106(3) of the Act.

<sup>4</sup> Section 106(4) of the Act.

- 2.5.3 for the purposes only of the provision of such conduit<sup>5</sup> system, or part of a conduit system, as may be so specified or described.<sup>6</sup>

## 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.<sup>7</sup>
- 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.<sup>8</sup>

## Time limit for making a decision on application

- 2.8 Regulation 3(2) of the Electronic Communications and Wireless Telegraphy Regulations 2011<sup>9</sup> 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.<sup>10</sup>
- 2.10 Such a notification must contain the following<sup>11</sup>:
- 2.10.1 a statement of Ofcom's proposal;<sup>12</sup>
  - 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 notification<sup>13</sup>).

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<sup>5</sup> "Conduit" includes a tunnel, subway, tube or pipe.

<sup>6</sup> Section 106(5) of the Act.

<sup>7</sup> Section 107(1) of the Act.

<sup>8</sup> 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

<sup>9</sup> SI 2011 No. 1210.

<sup>10</sup> Section 107(6) of the Act.

<sup>11</sup> Section 107(7) of the Act.

<sup>12</sup> 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.

<sup>13</sup> Section 107(9) of the Act.

- 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.<sup>14</sup>
- 2.12 The notification published at Annex 4 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.

### **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 matters<sup>15</sup>:
- 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.<sup>16</sup> 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 is particularly relevant to this consultation.

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<sup>14</sup> Section 107(10) of the Act.

<sup>15</sup> Section 107(4) of the Act.

<sup>16</sup> Section 107(5) of the Act.

- 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.
- 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](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 26 April 2017, we received a fully completed application from the Applicant.

3.3 Accordingly, we consider that the Applicant's completed application meeting the requirements referred to in Section 2 of this document was received on 26 April 2017.

### The person seeking Code powers

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

3.4.1 Company name: Aylesbury Vale Broadband Limited

3.4.2 Registered company number: 9661210

3.4.3 Registered office: The Gateway, Gatehouse Road, Aylesbury, HP19 8FF

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

3.5 The Applicant has explained that it is in the process of deploying a full end-to-end ultra-fast fibre broadband network to rural villages in Aylesbury Vale, Buckinghamshire although it is highly likely that its fibre network and ducting will be expanded into the neighbouring counties of Berkshire, Oxfordshire, Northamptonshire, Bedfordshire, Milton Keynes and Hertfordshire if it is granted Code powers.

3.6 According to its application, the Applicant focuses upon the provision of services to villages that are unable to receive at least super-fast broadband speeds from incumbent providers, especially those customers who are some distance from their nearest exchange/cabinet such as farming communities. It has explained that it is currently offering between 30 Mb/s to 300 Mb/s symmetrical fibre broadband on its network, but that it plans to increase its service offering up to 1 Gb/s by December 2017.

3.7 The Applicant has explained that it operates both the physical network and acts as the 'Internet Service Provider', offering internet connectivity to its customers (which include residential, businesses, farmers and not for profit type users).

## 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 As explained above, the Applicant was established with the mission of eliminating the digital rural and urban divide and, to this end, it works with local communities to deliver a full end-to-end ultra-fast fibre broadband service to rural villages in Buckinghamshire. The Applicant has emphasised that it is delivering its network in rural areas that currently cannot receive super-fast broadband, and are not covered by the Connected Counties (BDUK) programme, and that it is highly unlikely that any other competing operators would deploy a full fibre network to these areas (at least not in the foreseeable future).
- 3.9 The Applicant has explained that its fibre broadband service has transformed the villages it currently serves. In particular, the Applicant believes it is helping to reduce the urban/rural divide making a considerable difference to the economic viability of farming, rural businesses and to everyone who lives in the rural areas served by the Applicant. By way of example, the Applicant highlighted the following examples of how its network is benefiting its rural customer base:
- 3.9.1 Many local primary schools only have access to maximum download speeds of 15 Mb/s and this means it is impossible for those schools to use the internet to educate their children. However, the Applicant explained that it spent a considerable amount of free time and resources working with Buckinghamshire County Council's educational department to allow North Marston Primary School to be switched to its fibre broadband network. According to its application, North Marston primary school has since purchased a number of new computers and electronic tablets in order to make use of its ultra-fast broadband service, and it is not charged by the Applicant to access these broadband services. The Applicant has also explained that Buckinghamshire County Council has also approached it to request that it include other villages in Buckinghamshire with primary schools in its future rollout, and that it expects a number of other primary schools to be switched to its fibre network in the next few months; and
- 3.9.2 The Applicant has explained that in any village where it is delivering its fibre broadband service, approximately 1 out of 3 houses contains a small business, and that many people are now also increasingly working from home. The Applicant has explained that it is vital that these small businesses (including local farmers that are reliant on the Internet to use government services) and individuals working from home have decent broadband access, and has explained that its network should benefit these people specifically;
- 3.9.3 Whilst it is a commercial company, it considers itself a "*community driven*" initiative and, in recognition of the support provided by local communities, it provides free broadband (subject to an initial connection fee) to local community facilities such as village halls and sports fields.
- 3.10 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**

- 3.11 The Applicant has explained that it considers Code powers essential for it to become a sustainable business, and that without the application of Code powers the growth of its network would be hampered.
- 3.12 In particular, the Applicant has explained that:
- 3.12.1 Buckinghamshire County Council recently announced changes to its licensing regime which mean it is no longer viable for the Applicant to continue its network rollout by using individual street works licences pursuant to Section 50 of the New Roads and Street Works Act 1991. This is because a street works licence in that area will now only cover a maximum of 200m of a named street and will cost £580. In this regard, the Applicant emphasised the rural nature of its network, which means that it is being deployed to areas with a much smaller population (which deliver lower revenues), and where there are long distances between villages;
  - 3.12.2 it expects the process of applying for such licences in the future to take longer and to give rise to unreasonable delays given resourcing constraints in the relevant local councils;
  - 3.12.3 it cannot rely on existing ducting in order to roll out its network as there is a lack of existing infrastructure (or damaged infrastructure) in the areas it is delivering its network to; and
  - 3.12.4 given the higher costs of delivering fibre broadband in rural areas, it is essential for all costs to be minimised as much as possible otherwise it will have no choice but to pass these higher costs onto its customers. The Applicant considers that Code powers will assist it in keeping its costs low.
  - 3.12.5 the lack of Code powers will place it at a competitive disadvantage, and therefore mean that it is unable to provide its network as efficiently and effectively as its competitors are able to.
- 3.13 We consider therefore that the grant of Code powers is necessary for the practical provision of the Applicant's electronic communications network and system of conduits.

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

- 3.14 The Applicant has confirmed that it has deliberately built its infrastructure and network to be open access, allowing it to offer other providers Ethernet layer access, dark fibre, wholesale access and duct rental. In particular, when designing its physical infrastructure, the Applicant has chosen to deploy ducting (rather than burying its fibre cabling) and to deploy additional ducting such that it can leave two ducts spare for rental.
- 3.15 It has also explained that, once it has reached the critical milestone of being a sustainable business, it will be in a position to allow other providers to access its fibre network.

- 3.16 Furthermore, the Applicant also explained that it is in the process of holding talks with a wireless internet provider about the use of its fibre service as backhaul to reach villages not currently receiving its service.
- 3.17 We consider that sharing of the use of electronic communications 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**

- 3.18 The Applicant has considered its duties and responsibilities with regard to compliance with Regulation 16 (Funds for Liabilities).<sup>17</sup>
- 3.19 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 its managing director certifying that it will put sufficient funds for liabilities in place, by way of a designated client escrow account with a reputable bank, before exercising Code powers.

**Overall assessment**

- 3.20 In addition to our consideration of the four factors discussed above in paragraph 2.13, we consider that our proposal would secure or further the performance of our statutory duties under sections 3 and 4 of the Act.
- 3.21 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 England 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.
- 3.22 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 significant. As noted in Section 2, 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**

- 3.23 The Applicant has explained that its current and future network deployment is likely to be focused on the East Midlands, the East of England and the South East of England, rather than the United Kingdom as a whole. We are therefore proposing to impose a geographic restriction on the locations for which the Code will have effect, such that the Applicant's Code powers have effect throughout these regions only.

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<sup>17</sup> Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003 No. 2553) (as amended).

## 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 5 June 2017**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://www.ofcom.org.uk/consultations-and-statements/category-3/code-powers-aylesbury-vale-broadband>, 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](mailto: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  
4<sup>th</sup> 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](http://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 intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

## Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement in Summer 2017.
- 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](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](mailto: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 Steve Gettings, Secretary to the Corporation, who is Ofcom's consultation champion:

Steve Gettings  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [steve.gettings@ofcom.org.uk](mailto:steve.gettings@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

## Ofcom has seven principles that it follows for every public written consultation:

### Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 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 for people to give us a written response. If the consultation is complicated, we may provide a short Plain English/Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

### After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these 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](http://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/](http://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, 4<sup>th</sup> floor, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, by no later than 5pm on 5 June 2017.

#### Interpretation

6. In this Notification—
  - (a) “**Act**” means the Communications Act 2003;
  - (b) “**Applicant**” means Aylesbury Vale Broadband Limited, whose registered company number is 9661210;
  - (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

**5 May 2017**

## 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 26 April 2017.
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 5 May 2017, 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 **5 June 2017**.
6. [*Ofcom has considered every representation about the proposal made to it/Ofcom did not receive any representations about the proposal*]. 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; and
  - (b) that application of the Code shall have effect throughout the following regions of England: the East Midlands, the East of England and the South East of England.
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 Aylesbury Vale Broadband Limited, whose registered company number is 9661210;
- (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**

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