

## Product Security & Telecommunications Infrastructure Bill

### Public Bill Committee

#### Written Evidence from CityFibre

##### Introduction

CityFibre warmly welcomes the Product Security and Telecommunications Infrastructure (PS&TI) Bill and believes that the steps taken to simplify and accelerate the process of agreeing and sharing wayleaves for fixed line infrastructure will have a material impact on both speeding up and expanding full fibre rollout.

Our comments are limited to Part 2 of the Bill.

CityFibre is the nation's largest independent Full Fibre wholesale platform. We have a £4bn build programme underway to 8m premises. We are playing a critical role in upgrading the UK's digital infrastructure, levelling-up the UK and delivering greater competition that benefits citizens and consumers.

The Government has committed to deliver Full Fibre and Gigabit-capable broadband to a minimum of 85% of the country by 2025, and the Levelling Up White Paper lists nationwide gigabit capable broadband coverage by 2030 as one of the Government's key 'Missions', to be enshrined in law.

Full fibre is the gold standard of digital infrastructure. It delivers unrivalled speed, quality and reliability, and is future proof. It will transform local communities, deliver huge economic benefits as well as driving smarter & greener delivery of public services.

##### Barriers to deployment

While excellent progress is now being made towards these goals, there are some practical barriers to deployment.

The principal practical barrier is the difficulties telecoms operators face obtaining the consents needed to access private land in order to bring fibre networks to certain properties. This permission is called a wayleave.

Wayleaves can take many forms but the main obstacle they present is when seeking agreements needed to **share existing duct (the underground tubes carrying telecoms cables) & poles (the telegraph poles carrying overhead cables) infrastructure on private land.**

##### Sharing existing infrastructure

In 2010, after years of various Ofcom activity and interventions to promote competition with BT in the telecoms market, Ofcom introduced Physical Infrastructure Access (PIA).

Under PIA regulations Ofcom required BT to allow other operators to share the use of their ducts and poles – this is infrastructure it had either inherited from the days when it was nationalised or had since built, with wayleaves already agreed where necessary - to allow others to deploy their own networks more efficiently.

Ofcom itself describes the transformational impact of PIA thus:

*“The high costs of deploying physical infrastructure, such as ducts and poles, remains a barrier to large-scale network deployment in significant parts of the country as these costs constitute a*

*large proportion of the overall capital expenditure of an access network, typically of the order of 50% to 70%.*

*“Reusing existing underground ducts can also reduce the time it takes to deploy a new network: whereas in some cases it can take days to build 200m of duct using traditional construction methods, fibre cables could be installed in the same length of existing duct in a matter of hours.*

*“PIA is therefore an important remedy to address the competition concerns in order to promote competition in broadband and fixed telephone services.”*

These ducts and poles are sited on either public or private land. When located on public land, operators do not require a wayleave to access them, however when on private land new wayleaves are required to both upgrade and share the infrastructure.

In 2017 the UK Government sought to remedy this. It amended the Electronic Communications Code to remove the need for operators to obtain new wayleaves for the use of ducts and poles on private land installed after 2017.

Unfortunately the impact of this reform was limited due to the fact that the vast majority of ducts and poles were installed well before 2017, and require wayleaves.

**Put simply, there is now a needless distinction between pre and post 2017 infrastructure which this Bill can remedy.**

The Bill does contain measures to allow for sharing of pre 2017 *ducts* without a wayleave

The only barrier the Bill does not address is explicitly allowing for the sharing of pre 2017 *poles* on private land.

### Poles

The vast majority of poles in urban England are situated on public land – most often on pavements - where no wayleaves are required. However, due to an historical quirk of BT’s network planning, in rural England and urban Scotland the vast majority of poles are sited on private land – such as in fields or in back gardens – and therefore require wayleaves if they are to be shared under PIA.

Negotiating a single wayleave may seem like a relatively minor step, but multiplied to the deployment of a new network across a whole town or city, tens of thousands of new individual wayleaves are required.

The consequence of this problem is that full fibre rollout in Scotland is slower than compared to England. And in England, rollout is slower in rural areas compared with urban.

CityFibre is bringing full fibre to up to one million premises in Scotland across Edinburgh, Glasgow & Renfrewshire, Stirling, Dundee, Inverness & Aberdeen. In those areas our detailed planning has shown that there are approximately 37,000 poles across these cities, and that c.98% of them are situated on private land - which means each and every single pole would require new wayleaves if they were to be used.

This has created a perverse situation of operators unnecessarily digging up streets in Scotland to install new infrastructure because it is easier than sharing what is already there. Not only is this disruptive to residents and road users, it is slowing down rollout.

**Ask:**

**Government must therefore follow through and deliver on the policy intent of the 2017 reform, using the PS&TI Bill to explicitly permit the sharing of pre-2017 pole infrastructure on private land.**

**This change would have a significant impact on the speed of full fibre rollout in Scotland, and across rural areas in England. It ends needless disruption to road users and residents.**

Without urgent action, both rural England & urban Scotland will lag behind the rest of the UK in full fibre rollout.

**Ducts**

We welcome the measures in the Bill to allow for the sharing of wayleave permissions for pre 2017 ducts under private land.

As with poles, the current Electronic Communications Code allows competing operators to share BT's existing network of ducts under private land installed *after* 2017, but not those installed *before* 2017.

The PS&TI Bill removes this distinction, and allows operators to share ducts regardless of when they were first installed.

This change will both accelerate rollout and bring full fibre to homes which may otherwise have missed out.

Currently homes situated on private land, i.e., unadopted, roads often get left out of rollout plans. This is because, since the road is private land, an operator must agree a wayleave – regardless of whether it wants to dig up the road or use existing pre-2017 duct.

The permissions needed for private roads can be very complex – some roads are owned in common by all residents; some are owned piecemeal by residents; others are owned by a single private individual and others may be owned by a company. Therefore, both identifying who has the ability to grant a wayleave, and entering into negotiations to agree that wayleave, can be so complicated and time consuming that the road is instead often removed from the rollout plan.

**Ask:**

**We ask for support for the measures in the PS&TI Bill which would allow operators to use the pre-2017 duct under private land without the need for new wayleaves.**

**We believe this will avoid creating a digital divide, where those on private roads are left out of rollout while their neighbours on council adopted roads are included.**

We would like to see two minor changes to rationalise the practical rules around noticing these works.

The Bill rightly sets out rules for operators to publish notices advising local residents when sharing is about to take place. Currently these requirements place the noticing condition entirely on the main operator.

**Ask:**

**While we agree that such noticing is necessary and provides valuable transparency for landowners and residents, we believe that, in practical terms, this should be amended to allow for such a notice to be displayed by *either* the main operator *or* the operator sharing the apparatus.**

Such an amendment would remove the risk of a large noticing burden falling on the main operator as a result of sharing its historic duct network. It would therefore be more likely that the noticing condition is consistently met, and that the information included is accurate, if the condition can be fulfilled by either operator.

**Other measures****Alternative Dispute Resolution**

The Bill correctly identifies issues with the current process for obtaining wayleave agreements with freeholders of tenanted properties, in particular local authorities and housing associations.

Whilst those organisations are often supportive of the installation of new fibre services for their residents, they simply do not have sufficient resources to ensure that agreements can be signed in a timely manner.

In CityFibre's experience, it takes an average of c.9 months before a wayleave is granted and in many cases this period can be significantly longer. Under the current Code the only available option to bring these cases to a conclusion is taking them to the Upper Lands Tribunal.

This is not only costly and time-consuming, but because it is adversarial in nature it risks severely damaging relationships between operators & landlords. It also risks clogging up the legal system with scores of cases which could be resolved more efficiently.

We therefore welcome the measures in the Bill to encourage the use of Alternative Dispute Resolution as a more efficient and less confrontational method for crystallising negotiations than going to the Upper Lands Tribunal.

**Third Party Land**

We welcome the measures in the Bill to grant interim Code rights to operators in very limited situations where a rural landowner has repeatedly failed to respond or engage.

The impact of non-responsive landlords on rollout is significant in rural areas, where the option to redesign the network can be limited. A repeatedly uncontactable or unresponsive landlord can prevent a whole village or community getting connected, where crossing that land is the only route in.

The extension of interim rights to six years in the PS&TI Bill for these limited cases is very welcome as it allows operators to mitigate the risk of using temporary rights to build their network upon which many households will rely for connectivity.