HOUSE OF COMMONS

Scottish Affairs Committee

Oral evidence: Telecommunications in Rural Scotland, HC 1094

Wednesday 18 March 2015

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Watch the evidence session

Members present: Mr Alan Reid (Chair); Mike Crockart; Mark Menzies; Graeme Morrice; Pamela Nash.

In the absence of the Chairman, Mr Reid was called to the Chair

Questions 242-301

Witnesses: **Steve Unger**, Acting Chief Executive, Ofcom, gave evidence.

Q242 Chair: Thank you very much, Steve, for coming along this afternoon. We appreciate your coming and we are sorry that the previous session lasted a bit longer than we thought it would. Perhaps you would introduce yourself.

Steve Unger: I am Steve Unger. I am acting chief executive of Ofcom until the end of this week. Next week Sharon White takes over as chief executive. My permanent job is as a group director for Ofcom responsible for the work we do on overall strategy, the work we do internationally and for our technology and economics teams. My own background is as a technologist, although it has been some years since I was in industry.

Q243 Chair: Thank you. Could you sit forward a bit for the microphone, and to make sure that the webcam can pick you up?

I know you heard part of the previous session. We heard various issues with BT and Ofcom regarding maintenance over the past year. Regarding mobile phone coverage in rural areas, if there are breaks in service what is your role in supervising the mobile phone companies to make sure that they carry out repairs in a speedy fashion?

Steve Unger: I would say that there are probably two main aspects to our role. One is a consumer empowerment point. Alongside horizontal consumer law there are some sector-specific provisions, which essentially allow individual consumers who feel that they have

had a poor deal to escalate it through the operator. If that does not give them satisfaction, they can go to one of the ADR schemes approved by us.

Q244 Chair: What is ADR?

Steve Unger: Alternative dispute resolution. Essentially, it is a dispute resolution scheme specific to this sector, which allows those who have not got satisfaction from the operator to take a complaint to an arbitration process. That arbitration process is binding on the operator. The outcome would vary; it might, for example, include compensation or the ability to exit a contract. That is one part of it—the consumer rights side of it.

The other part I have particularly focused on is the direct engagement between us and the operators. There is a process where outages above a certain threshold are reported to us. We set out a series of guidelines for the threshold at which outages are severe enough to be reported to us. Those guidelines are much more stringent when emergency access is affected. If the ability to make a 999 call is part of the service, the threshold is that any outage which affects 1,000 customers for an hour should be reported to us. For fixed networks how that is interpreted is relatively straightforward, because there is just one network. For mobile networks there is a slight subtlety, which is that in cases where only one network goes out but the other networks continue to operate, and therefore it is possible to make a 999 call by roaming on to another network, that does not have to be reported, because the 999 call can be made.

There is then a series of thresholds for different services. When 999 is not part of the service, there is a different set of thresholds, which recognise that safety of life is not at stake but there is still a need for that to be reported as the outage gets severe enough. To give a sense of scale overall, we publish a statistical summary of these outage reports each year in our infrastructure report. Last year there were 566 outages reported to us.

Q245 Chair: Can you tell us the number of consumers that have to be affected before you would trigger the non-999 need to report?

Steve Unger: It varies. It is a combination of the number of consumers and the amount of time. I had better check the precise number. I would say that at the very highest threshold the incidents we tend to investigate most closely are those where there is a total of 1 million hours. It is the combination when the number of hours of outage times the number of people affected is 1 million. Those are the most severe. That is probably a relatively small percentage of the total, probably about 20 or 30 in a year.

Q246 Chair: We are talking about the likes of the population of Islay, which is about 3,000 people. Is it just the consumers of the particular network living in that area that you would count within that number?

Steve Unger: With mobile, there is always a bit of a judgment as to who is affected. We ask the operator to apply a bit of common sense. We have issued this guidance, but we have also said that any outage that creates public concern over a period of more than 24 hours is something we would want to know about. Essentially, this is the first filter. We would like to know about the outages that might be material.

We then tend to do one of two things. There are a relatively small number of outages which we investigate in detail ourselves, perhaps 10 or 20 a year. One example of the scale of those sorts of outages was a very major incident last November when the ability to make a call to 101 or 111 was lost across the entire UK for most of a Saturday morning. That is of the magnitude that we would investigate in some detail ourselves.

Q247 Chair: I am concerned about small communities like the islands in my constituency. We heard how on Luing the service was down for two months, but because it is a small community that will never register with you.

Steve Unger: We have a detailed investigation for any major outages. For the more minor outages we try to look statistically at what is the root cause of those outages. We publish statistics on whether it is generally a power failure, bad weather, equipment failure or a poor software change. The idea is to try to understand it. We just do not have the resources to get involved in every single outage, but we want to make sure that as an industry we learn from that experience. We take that learning forward into potentially new guidance. For example, in relation to some of the cyber-type issues that are of particular concern at the moment, we have worked with other parts of Government to develop guidance as to how networks can be protected from those types of risks.

There is a particular focus at the moment on the issue of power. It is striking that particularly for mobile networks there is a recurring theme of whether there is sufficient battery back-up on sites. It goes wider than mobile. The traditional voice networks in this country, such as the BT exchanges, are very well protected against power outages. They have battery back-up and diesel generators. Typically, they have up to a week's supply of diesel fuel, so they are well protected. There is an issue going forward, because as new types of networks replace that traditional network—as new broadband networks are rolled out—there is a big question around now as to whether we require the same level of protection for new broadband networks delivering voice over the top of the broadband. I would say that is a very live public policy debate at the moment.

Q248 Chair: What rights do consumers have to compensation if their service is down for 18 days, as occurred in Islay?

Steve Unger: There is a two-part answer to that. First, they have rights under horizontal consumer law. In relation to our sector they can go to alternative dispute resolution. Depending on the circumstances, they would be awarded compensation or be allowed to exit the contract. Generally though, most people feel that they would rather have the service. There is a general issue. What we actually want is for the service to be good. I expect we all feel that if we lose service for a week we would rather not have lost service than get a refund.

Q249 Chair: Am I right, interpreting what you said, that they would get their money back as compensation rather than there being any penalty on the operator?

Steve Unger: That is up to the body doing the dispute resolution, but that is generally the approach. Generally penalties are not punitive; it is about redressing harm. That goes to a

wider point about the need to improve performance. The outcome we all want is where performance is improved rather than there being lots of penalties.

Q250 Mike Crockart: In your annual plan, you talk about the UK Government's target of ensuring that superfast broadband services are available to 95% of UK premises by 2017. I do not know whether you heard the questioning that I directed to BT. Do you have concerns about what that will actually mean, and whether it can be delivered?

Steve Unger: There are two or three different issues. Could you be specific about the concern because I might have missed the question—otherwise I can talk about two or three?

Q251 Mike Crockart: Let us start with what is meant by superfast broadband.

Steve Unger: In our publications we define superfast as a speed of 30 megabits per second. There are debates about whether it is 24 or 30; it does not matter very much. The key point is that, as soon as you get to a speed of about 24, delivering broadband from an exchange is not good enough; you have to deploy fibre. We tend to talk about 30 megabits. That requires the provider to deploy fibre beyond the exchange, either to a cabinet or direct to the home. That 30 megabits is also the definition used by the European Commission when it looks at state aid cases and score cards across Europe.

Q252 Mike Crockart: That raises all sorts of questions. You are judging it to be 30; BT are judging it to be 24; the aspirational target set by the Scottish Government is 40 to 80; and BT have already given evidence that they are only going to make it to potentially 77%, making that their view of what is superfast.

Steve Unger: There is not a great difference between 24 and 30, because if the 24 target forces BT to go beyond the exchange and deploy fibre to a cabinet, in practice most of the lines from the cabinet will deliver speeds well in excess of 30. There is a statistic we published last year; I think it is something you were talking about earlier. There are two different things. One is how much of the country gets next generation access—fibre of some sort. Then there is the question of how often you get superfast speeds. The statistic that we published last year is that, for the UK as a whole, right now we think 78% of the UK has next generation access: either fibre to the cabinet, cable or fibre to the home, and 75% of the UK gets a speed of 30 megabits per second or more, so there is a slight gap, in the sense that for some people there is a 3% difference. They have the next generation access technology but are not getting a 30 megabit per second speed.

Q253 Mike Crockart: How close will they get to that, or does it very much depend on the technology, how close they are to the exchange and everything else?

Steve Unger: Generally I think there is cause for optimism in terms of the macro targets. Then you get particular problem areas. You talked earlier about exchange only lines. That is a particular problem area in London as much as in Scotland. There are also particular problems in very isolated communities that it is difficult to reach.

Q254 Mike Crockart: That is really the next question. If we are talking about reaching 95% by the end of 2017, what does that mean for rural Scotland? Is the 5% that is left going to be large sections of rural Scotland?

Steve Unger: There is no doubt that the question of the people left behind is a very big issue. There is a general picture of the UK increasing average speeds but also increasing the divide. We have highlighted that in our infrastructure reports. For the main development areas, there was the announcement today from the Government that they propose to uprate the universal service obligation. There are two different policy levers. There is the universal service commitment, which has been the Government's focus. Their commitment was that 95% would be superfast and the rest would get the 2 megabits universal service commitment. Separately, there is the universal service obligation, which the Government specifies they will be responsible for administering. The Government announced today that that will be uprated to 5 megabits per second. The short answer is that we need to get superfast as far out as we possibly can. We need to be creative. If we can get beyond 95% to 96% or 97% that is good, but beyond that it is now a 5 megabit per second backstop. That clearly needs to evolve over time as users' needs evolve.

Q255 Mike Crockart: The way that last 5% is going to be reached is not going to be through traditional means. It is going to be through innovative technology. Part of the process that will deliver that will presumably be different spectrums being used, and the next generation being auctioned off.

Steve Unger: That is right.

Q256 Mike Crockart: What I have heard from some operators is that the target should be on geography rather than on the number of premises, which would then deliver that 5% much more effectively. It certainly would not raise as much money but it would force companies to go into areas that they otherwise would not reach.

Steve Unger: There are two different targets that apply. For mobile we set an obligation in the 4G auction, which was premises focused, but, first, it was aimed at indoor coverage and, secondly, there was a specific target for Scotland and the other nations. What we said in the 4G auction was that there was 98% indoor coverage UK-wide, but we were concerned that that might be met by focusing on England, so we set a sub-target of 95% as a minimum in each of the nations. That indoor coverage obligation turned into something rather better in terms of outdoor coverage. Driving 4G coverage for mobile would also have a potential benefit for fixed provision, because it could be a substitute in some cases.

More recently, just before Christmas, the Government announced a geographic area obligation. The operators have now committed to provide mobile coverage across 90% of land mass of the UK. The combination of those will drive mobile further, and that will also help on the fixed side because, for a reasonable range of bandwidths, mobile is a credible substitute for fixed. It is not at the very high bandwidths, but for the sort of 5 to 10 megabit per second bandwidths that we are talking about at the moment wireless is quite an important alternative to wire line.

Q257 Mike Crockart: Are you confident that the 95% target can be reached and that the 5% will not be left too far behind?

Steve Unger: I would not want to say confident. I worry a lot, particularly about the 5%. I am reasonably confident about the 95%. I have been very worried for the last two or three years about the last 5%. In our infrastructure reports, on an annual basis, we have been very clear about this concern. We see experiments with gigabit per second speeds. York will now get a gigabit per second service. It cannot be the case that 5% end up with 1 megabit or less. I think though that the announcement today is really important. That gives us the tool for ensuring that everyone gets at least a 5 megabit service. I should say that the phraseology in the announcement is "virtually everybody" so there is probably still a bit of detail to be sorted out.

Q258 Chair: Was the announcement a guarantee or an aspiration?

Steve Unger: I think there were two parts to it. One was about concrete funding for satellite. I think there is a general expectation that satellite is the answer for the last 1% or so, and there was an announcement that we would get on with that. The other part of it was about the universal service obligation, which at the moment is still stuck on a voiceband modem. The focus over the last few years has been on the universal service commitment, but the USO, for which we are responsible, slightly ridiculously still talks about voiceband modems. That will be uprated to 5 megabits per second. The process though is that the Government would have to consult on that changed requirement, and what has been said today is that that would happen shortly after the election.

Q259 Chair: Would the onus be on BT, or rather Openreach through their fibre-optic network, or would it be delivered through wireless or satellite?

Steve Unger: It is the way it might work. I should emphasise that. We have obviously been in some discussion about the way this might play out, but we now need to think in more detail. The way it would usually work though is that the Government would first need to specify what level of service was required. There has been a high-level statement today that those details are being worked through. There is then a process for selecting the universal service provider. The attraction of it being specified at this sort of level is that these wireless speeds ought to be a credible alternative to BT, and therefore you have a chance of running a contested procurement process. If nobody competed and it was just BT, and we had to designate BT, we would run something called a net cost analysis. We have to work out whether this obligation places a significant burden on BT. If it does, we then have to set up a universal service fund to which the other operators contribute. The mechanism you get to in the end is where one operator is designated as the universal service provider and the other operators contribute to that cost, if it is material, via some form of fund. These models have been used elsewhere, but not that often. There is some detail to be worked out after today.

Q260 Pamela Nash: I have to refer members and the witness to my declaration in the Register of Members' Interests. On satellite broadband, why are we not 100%? Why is that not included in the measurements at the moment? You say that it can provide the last 1%, but

doesn't it already because of the nature of the technology available to people with the equipment?

Steve Unger: Satellite is very widely available. Of course, if you take satellite you have to have the dish. We would be cheating a bit if we said that broadband was universally available because satellite was notionally available. There is also a concern as to whether satellite gives a good enough consumer experience. Generally, there have been quite a lot of advances in satellite technology and they can deliver the sorts of speeds that we are talking about at the moment, but the total capacity of a satellite is relatively limited. That means that for too many consumers you might have a 10, 20 or 30 megabit speed but the capacity cap would mean you just could not use it very much.

Q261 Pamela Nash: Just to be clear, it is not included in the figures at the moment.

Steve Unger: It is a very credible backstop. The other issue with satellite is the lag. There is about a half second delay when you use a satellite service. It is a good option when there isn't anything else.

Q262 Pamela Nash: I want to touch on the previous goals of the Government in terms of roll-out. You went over this a bit with my colleague. In the infrastructure review last year, it was stated that 97% of households in the UK now have some sort of broadband. Is there a figure that has been calculated for Scotland on its own?

Steve Unger: I think it is 96%, but I can check that for you.

Q263 Pamela Nash: Thank you. Would you check it for us? It would be interesting to know.

Steve Unger: I will check it. By the way, I think the difference is more severe for superfast. This is from memory, but at the 2 megabit level there is that modest difference. At the superfast level I said earlier that the figure for the UK is 75%; I think the figure for Scotland is 61% at the moment.

Q264 Pamela Nash: That is a bigger gap.

Steve Unger: I had better check those figures.

Q265 Pamela Nash: In terms of getting universal coverage of at least 2 megabits, has there been a delay in getting that because for some areas it has just been put off because eventually they will get superfast broadband anyway?

Steve Unger: This is largely a question to Government, of course. There has been a hope over the last few years that the focus should be on getting superfast out if we can, because that is the long-term answer. I have some sympathy for that. There was a risk that we would have short-term measures to get a 2 megabit service, which might have kept us going for another year or two. The 2 megabits was never going to endure over time, so I think there was merit in trying to get superfast as far as we possibly could.

Q266 Pamela Nash: Can I confirm that? Has that been the case? Have decisions been made on that basis?

Steve Unger: I am not sure if there has been any specific decision. The commitment from the Government has been to do both. I am just giving the sense that the focus has been on the superfast side of it, but you had better ask the Government as to whether there has been an actual decision.

Q267 Chair: The thing that worries me about all these numbers is that the Government declare a number now but then it takes about five years to deliver that number, by which time it is obsolete. I can remember, just over 10 years ago, when there was an upgrade of exchanges in Scotland. Broadband then was defined as 512K, but by the time everybody got 512K, of course, it was a pathetically slow speed.

Steve Unger: Yes, I remember that well.

Q268 Chair: Then the Government in 2010 decided that by 2015 everybody would have 2 megabits, but of course, 2 megabits today is considered hopeless. What assurance can we have that this figure of 5 megabits will either be implemented before it becomes obsolete or that there will be a mechanism in place for upgrading it as technology improves?

Steve Unger: That is a very good question. I was involved in the 2 figure, which was based on the idea then that it was what a service like YouView needed. Of course, it is now obsolete because you have multiple people in a typical home. The 5 figure is constrained mainly by the European framework. The rules that govern the USO, which we administer, are part of the European telecoms framework. Guidance from the European Commission says that a USO can only be set at a level which is 80% of current lines, so we have to look at the set of people who take broadband at the moment and ask, "What speeds do 80% of those currently get?" The guidance from the Commission is that you are not allowed to set a USO above that level. That turns out to be 5 megabits. Essentially, we are constrained at the moment by that guidance, which says that it is the 80% rule which gets us the 5 megabits. Obviously, that is going to change over time. I hope that we will have the mechanisms in place that allow a service to be provided, and clearly the nature of that service has to evolve over time, as it has from voiceband modems through 2 megabits to 5 megabits. In our infrastructure report last September, we said that 10 megabits was already pretty well the norm. We can see a need. It is good to get the 5 megabits; it is good to get that universally available, but it will need to evolve.

Q269 Chair: Are you confident that a system can be in place constantly to revise this figure as the average, the 80%, goes up?

Steve Unger: There can be: first, because the Government can review that requirement again as the generality of users upgrade their speeds and, secondly, because we are about to go into a review of the European framework where the whole question about infrastructure, investment and the quality of infrastructure is one of the big issues, not just

in the UK but across Europe. There is a fair bit of scope for evolving the framework here as well.

Q270 Chair: What implication will it have for consumers in terms of consumers' rights? Let me tell you where I am coming from. A constant complaint I get from people who have only a few K is that their service provider has sold them a package that usually is cunningly phrased, and says "up to" a certain number of megabits. Then when the consumer complains that they are only getting a few K, they are told, "Ah, but your contract only says 'up to'." Is there any definition at the moment of a minimum speed that qualifies as broadband?

Steve Unger: There are a couple of different things. One is that this use of "up to" is something that is not acceptable. We have taken action to make sure that at the point of sale there has to be an estimate of the actual speed.

Chair: Good.

Steve Unger: In the early days of broadband roll-out, people were being sold first "up to 8" and then "up to 24", and many people were getting nothing like that sort of speed. That has been a big issue. It is less of an issue now. There is still concern about transparency of service up front and particularly what happens if the service changes. That is a particular issue for mobile, of course. In terms of the right to get it in the first place, the point about a universal service obligation is that it is a right. You go to the supplier of last resort—the designated universal service provider—you say to that universal service provider, "I want this speed," and you have the right to get that speed. The caveat, in the case, for example, of the current voice universal service, which applies to BT, is that there is a cost threshold above which the consumer has to make a contribution. That is part of a policy detail that the Government will have to work through.

Q271 Chair: If people are getting only a few K, do they have a case against their service provider?

Steve Unger: If they have been told by the service provider that they are going to get something different, then, potentially, yes. If they are told by the service provider that the service provider cannot deliver that service, then no.

Q272 Chair: If they are told at the point of sale—

Steve Unger: If they have been sold something which is broadband, and they have been told at the point of sale that the expected speed is, say, 10 megabits, that is what the consumer ought to expect to get. If, however, the service provider has said at the point of sale that they could not provide that speed because it is an exchange only line or something else, the issue is a different one. Then you get into questions of how we improve the quality of the network.

Q273 Chair: If they were told at the point of sale that they could expect, say, 5 megabits and they were only getting, say, 500K, you would think that they had a case.

Steve Unger: I would think so, yes. In most normal markets you would think that you had a case if you were sold something which was 10% of the performance that you had been promised.

Q274 Chair: One regular concern is the fact that Openreach, in many parts of the country, has a monopoly. Is there anything that you can do to open up that market?

Steve Unger: There is a two-part answer. First, there are some promising signs of competition to Openreach, with Virgin extending their network.

Chair: I am sorry, but I did not hear that answer as I was interrupted.

Steve Unger: There is a two-part answer. First, in a fair bit of the country they have a monopoly but Virgin Media has just announced a very big investment in the UK. That will take the cable footprint from where it is at the moment—44% of the country—to 66%, so at least the cable alternative will be available for significantly more people. There are also companies such as CityFibre, who are experimenting to try to compete with BT, and in co-operation with Sky and TalkTalk, but there will always be parts of the country where BT is the sole supplier. Our focus in those cases is making sure that Openreach supplies a service on an equivalent basis to downstream providers, so that at the very least there can be competition at the retail level. That is the point of the functional separation of Openreach and the various obligations that apply to Openreach.

Q275 Chair: Thank you. In terms of BT's performance on maintaining what is the universal service obligation at the moment for voice calls—I do not know if you were here when we were questioning BT on their performance over the last winter—they referred to an acronym that I am sure you will be familiar with, which is MBORC, matters beyond our reasonable control, over a large area of the highlands and islands. What role do you have when BT declares MBORC? Do you have any role in checking that what they are doing is reasonable?

Steve Unger: We tend to have a parallel role. MBORC is really a part of the contractual set of arrangements between Openreach and the other providers. We have a parallel role, part of which I have already described in terms of outage reporting; all operators will be required to report outages to us above a certain level.

Q276 Chair: Do you know what that level is?

Steve Unger: I would need to go back and check.

Q277 Chair: Perhaps you could write to us.

Steve Unger: Absolutely. I can check, and I can also check whether the particular outage you are referring to was reported to us. With Openreach, in particular, we have a further role, which is that as a result of their market power we place a set of obligations on BT in relation to service provision and fault management. At the moment, those mainly relate to the provision of residential copper lines. That is something we introduced a year or so ago. We are about to consult on a new set of obligations that deal with the ethernet-type

circuits, which are used, for example, to underpin mobile networks. We set some minimum standards for BT, because of their market power, and there are penalties that apply if they fail to meet those minimum standards, but they are at a macro level. We would not tend to get involved too much in individual instances except where they are very similar.

Q278 Chair: With the storm last December, it meant that in a large part of the highlands and islands people were left without a phone line for up to two months. They did not seem to have any means of effecting a quicker repair. Okay, they are entitled to compensation but, as you said earlier, what people want is the service, not the compensation. BT simply said that a lot of damage was done and they could not repair it any quicker. Are there any regulations that could encourage them to employ more engineers and repair these things quicker?

Steve Unger: That goes back to the point about minimum standards. They are subject to requirements that a certain percentage of lines need to be provided within a set time and repaired within a set time. If they fail to meet those standards, they are subject to penalties. That has driven Openreach to employ several thousand more engineers over the last few years. The fault picture flow from each is still not good enough. The general picture I see at the moment is that, on the consumer side, they were in a dreadful place a year or two ago. They got somewhat better towards the end of last year. For the ethernet services—the things that underpin a mobile—they are still not in a good enough place. Also in new build they are not yet in a good enough place. I think they would recognise that.

Q279 Chair: In the light of the cases that happened in the highlands and islands, as you said, the MBORC is between Openreach and the retailer. Is there an equivalent of MBORC between Openreach and yourselves?

Steve Unger: It goes back to outage reporting. In the case of major outages, we received reports last year of just under 600 outages. We investigated perhaps 10 or 20 of those in a reasonable degree of detail. The next stage for us, if we are not satisfied with the assurances we get from the operators that what they did was sufficient, is that we have the power to require them to carry out a security audit to identify concerns and make sure it does not happen again. Usually, with that threat, they would do that anyway. After that, we have the sanction of financial penalties if they still have not met their rating obligation. This outage reporting is against the backstop of a rather generic rating obligation which says that operators need to take all appropriate steps to maintain network security. That is a rather generic statement—obviously, it means guidance—but it means that, in principle, for a serious enough outage or for a repeat pattern of failure to act in a responsible way, we have the ability to take action.

Q280 Chair: Mr Dick seemed to believe that BT had done all that was reasonable. Will you be reviewing their performance in the highlands and islands over the past winter?

Steve Unger: I will need to go away and check whether that was the one that was reported to us, and if it was reported to us what we did about it, and if it was not reported to us why not. Let me go away and check that.

Q281 Chair: Can you write to us about that after you have had a chance to look at it?

Steve Unger: Yes, of course. I am aware of a number of such incidents that we have looked at in some detail. I am just not aware of that specific one.

Q282 Chair: Mr Dick seemed to be of the opinion that employing more engineers in order to be able to react more quickly was not a sensible thing to do from BT's point of view. Given the way the universal service obligation works at present, if you investigate and you come to a different conclusion, what powers do you have to make BT act differently the next time?

Steve Unger: First, I talk a fair bit to Joe Garner, who is the chief executive of Openreach. Openreach have recruited new engineers over the last couple of years, and they have done quite a lot of work to improve the efficiency with which engineers are used, so that they cover better planning to ensure more engineer visits per day. There is a fair bit of work there. If it is not sufficient, there is, essentially, a dialogue that we have with BT. We carry out regular market reviews. It goes back to what I was saying earlier about the minimum levels of service that we specified. Basically, there is a trade-off between costs and quality of service. We have the ability in that market review process to, if you like, be slightly more generous on the costs side if we are persuaded that what they are going to do with that is improve quality of service. That is the dialogue we had with them during the last market review, but we need to be persuaded that, in being more generous with them on the price controls that we enforce, that generosity is going to feed through into more engineers, more efficient engineers and a better quality of service. We've got to have demonstrated evidence that it will improve the quality of service.

Q283 Chair: Mr Dick's excuse was that this was, in his words, a once- in-a-generation weather event, so it was not reasonable to expect them to prepare for it. Is that a point of view that you share?

Steve Unger: There is always a trade-off. It goes back to the point I made earlier about power back-up. Particularly in relation to mobile, we could as a country decide to provide a much more extensive power back-up facility on base stations—the back-of-an-envelope cost would probably be about £1 billion—or we could look at being very efficient in bringing in replacement services when there is some form of failure. That is a practical trade-off. I am slightly nervous about the once in a lifetimes. I have seen a few once-in-a-lifetime incidents in my lifetime, so I would rather not use that sort of language. But there is a trade-off. We can have whatever quality of service we want in this country but we have to pay for it, and sometimes it is better to fix things that go wrong afterwards. That is the practical judgment that needs to be made.

Q284 Chair: Turning to mobile phone companies, there has been an agreement with the Government, as I am sure you are aware, to extend their coverage to include a lot of not-spots. What is concerning me after recent events in my constituency, and the discussions today, is that it is all very well to put the system in place, but if it is not then maintained it is

no good to anybody. What powers do you have to ensure that mobile phone companies maintain the quality of their network?

Steve Unger: It comes back to the outage reporting process. With the mobile operators we do not have the same powers as we have with BT, because there is not the same market power, but the general reporting requirements apply to the mobile operators just as much as to the fixed operators. For example—I am not sure if it relates to this Committee—I know that in Wales everything everywhere had a series of problems with the integration of their networks, which resulted in widespread outages. Those were reported to us and we looked at them in detail. There is a mechanism for looking at outages from mobile networks as well as from fixed networks.

Q285 Chair: In the agreement that has been reached between the Government and the mobile phone companies about extending the network, do you have a role to ensure that the mobile phone companies stick to that agreement?

Steve Unger: Yes. That is our role. What happened was that we were involved with the discussions but then, at the end of January, we varied the operators' licences, with their consent, so that the 90% coverage obligation that they agreed in principle with the Government now forms part of their spectrum licence, which means that all the usual processes that we have for dealing with breaches of their spectrum licences apply, so yes. They agreed that variation at the end of January.

Q286 Chair: I suppose that ties back to my previous question. Now that they have entered into that agreement and the licences have been varied, does that mean that you will have powers to intervene if, having put the infrastructure in place, they then fail to maintain it properly?

Steve Unger: If the result of not maintaining it properly is that they do not meet the coverage target, yes. The problem we have is that they can probably meet the coverage obligation, but that does not necessarily mean that you will always get the quality of service that you want. On the coverage question, there is a range of issues. There is the basic question of whether there is coverage at all. There is another set of questions as to whether, on a routine basis, the quality of service is good enough—issues like dropped calls and so on. Then there is the question of how they respond when there is a major outage and whether that is good enough. We need to make progress on all of those.

Q287 Chair: Is that work in progress?

Steve Unger: The levers we have are slightly different. The coverage obligation is a licence obligation. For the outages, as I said, there is outage reporting and the potential explanation that goes with it.

Q288 Chair: Your recently announced strategic review of digital communications is going to look at obstacles or bottlenecks that might be holding the digital communications sector

back. What will you be looking at with regard to mobile phone coverage and internet coverage in rural Scotland?

Steve Unger: What we have said in general terms is that there are three key sets of issues we want to look at. First, there is the question about investment, and we have linked that particularly to availability and quality of service. That goes to much of the discussion that we have been having. We want to understand whether sufficient investment is going into UK networks to get availability, particularly in rural areas, and sufficient quality of service for consumers' needs. That is the first of the three bullets. The second bullet in our announcement was about competition—trying to understand what the enduring economic bottleneck is and making sure that we have regulated that in the appropriate way. We then said that, if we got the second of those right, we ought to be looking at options for deregulation. What we would like to see is competition working and delivering benefits to consumers, and then, where we can, we would want to step back from micro-regulation. We would like to be able to do that.

Q289 Chair: You said earlier that you thought there would be competition in about 60% of the country.

Steve Unger: Two thirds; yes.

Q290 Chair: The other third will presumably include most of the rural parts of the country, and that implies that there will not be competition. Do you see any way of introducing competition in those parts of the country?

Steve Unger: To the extent that mobile can compete with fixed, there will be competition across most of the country. That is likely to be the case with voice services going forward and low bandwidth data, but you get to the point where wireless cannot compete with fixed for ever-increasing bandwidths—once you get to 100 megabits per second as a requirement. Wireless might be able to do it one day. We are hearing a lot of hype at the moment about 5G but that is an awful long way away, so you get to the point where for some people, the only option is BT, and that is why we have the Openreach model. There are some parts of the country where that is the only option. It is a natural monopoly, but then what matters is that Openreach provides wholesale services to all communications providers—Sky, TalkTalk and others—so that consumers still see a choice.

Chair: Do other members of the Committee have any further questions?

Q291 Mike Crockart: As a constituency MP, I do not think that the BT Openreach model is working, because it feels as if all it is doing is giving all the companies involved somebody else to blame.

Steve Unger: The Openreach model was originally set up to address one specific competition concern, which was that BT might discriminate between other providers and itself. The evidence is that it has probably worked in addressing that concern. My biggest worry is that there is some evidence that everyone is getting equivalent performance, but it is just not good enough. For me, the biggest question in fixed telecoms is how you make sure that an upstream natural monopoly delivers the quality of service that you would

expect in a more competitive market. That is a big challenge. I do not think we are where we need to be at the moment. I suppose the functional separation, or any form of separation, does not fix that. If you have a natural monopoly that does not face competition, competition is not going to drive quality of service. At the same time, this is not a market where ever more detailed regulation is likely to be a good way of really getting to a good place, because the risk is that you end up with hundreds and hundreds of KPIs—you end up mired in bureaucracy. It is a difficult challenge. I am not sure that I have answered the question.

Q292 Mike Crockart: Ultimately, is there not a need for it to be designed in a different way, so that, as far as the consumer is concerned, they are just dealing with the company that is providing them with their service? At the moment, there is too much of that company being able to say, "No, you need to speak to Openreach."

Steve Unger: That just should not happen. I would be interested in specific examples of what you have just described, because when I talk to companies like Sky and TalkTalk they understand that it is their job to take in concerns from consumers. Sometimes the fault is in their networks. The model we have is that sometimes it is the electronic equipment that they have placed in BT's exchange that is at fault, and they are the people who have to do that diagnosis. They then have to work out, if it is an Openreach problem, how to manage that. If there are cases where there has been buck-passing, I would like to hear about them and I will raise them with the providers.

Q293 Chair: There have been plenty of them.

Steve Unger: I am sure there have been, but my point is that that should not happen.

Q294 Chair: That is interesting, because it happens all the time. A consumer complains to their service provider, who just turns round and says to them: "It's Openreach's fault." The consumer then contacts Openreach and gets told by Openreach: "We can't talk to you. You have to go to your supplier."

Steve Unger: We do not let Openreach talk to them.

Chair: That is right.

Steve Unger: Openreach is not supposed to talk to the consumer, because the idea is that there is a risk of starting to discriminate and saying: "Let's sell you the BT service". The model is supposed to be that the retail provider deals with the consumer, works out what the fault is and handles the upstream relationships. I know that it does not always work that way—I am not naive—but when we hear about it happening in a different way we pick that up with the retail comms provider, because that is not what should be happening.

Q295 Chair: In practice, though, what can the retail provider do? If Openreach is only providing a service of a few K and the consumer complains to their provider, even if they contact Openreach, Openreach will just say: "Sorry, we can't do anything about it."

Steve Unger: First, at the point where a retail provider sells someone a service, which goes back to the issue about point of sale, they will have an estimate from Openreach of what the speed is, and that should be pretty accurate. The retail provider should not be selling a service which they cannot deliver, and that is about communication between them and Openreach. When there is a fault, there is a commercial relationship between the retail providers and Openreach which they have to manage in the same way as in any normal business. If you go into Tesco and complain about what you have just bought, it is Tesco's job to fix that. It is the same here; it is the retail provider's job to address concerns from consumers. They have to manage their relationship with Openreach. I would add, by the way, that I spend quite a lot of time sitting in meetings involving Openreach and their key retail providers, sharing issues to try to make sure that that relationship gets better.

Q296 Chair: What you are really saying is that it is up to people, when they are signing a contract with their service provider, to make sure that they put something in writing that specifies a speed they can expect.

Steve Unger: It should not have to be in writing. There is an obligation on all of these providers to provide information at the point of sale as to the expected speed range. We do not license operators, but all operators are subject to what are called general conditions—a set of rules that any provider needs to comply with to operate in the UK market. That includes provisions around sales and marketing, and they have to provide at the point of sale information as to the expected speed range.

Q297 Chair: Is that legally enforceable by the consumer?

Steve Unger: At a couple of different levels. First, if they have not provided that information, and the performance is not what they bought into, there is a point about individual consumer redress, which we talked about earlier. Also, if we get evidence that retail providers are not complying with their general obligations to provide that data, it could be a breach of the general conditions and we could take enforcement action against them more generally.

Q298 Chair: Is there a complaints procedure that the consumer would have to go through?

Steve Unger: In terms of individual consumer complaints, they are generally dealt with through the dispute resolution process. We also have a consumer call centre, so consumers complain to us about things. We track the complaints that come into us. That is one of the main mechanisms we use to decide where to focus our enforcement activity. If we get a large number of complaints about a new type of nuisance call that suddenly emerges, or if a new type of abuse emerges, we would use evidence from our consumer complaints to drive enforcement action.

Q299 Chair: I get the impression that consumers are not aware of those rights. Is there a job for you in making consumers more aware?

Steve Unger: It is always an issue. We put information on our website about the obligations on providers to make clear to consumers, both in their terms and conditions but also in more plain terms, their rights in terms of dispute resolution and so on. As I am sure you know, there is always mixed success in reaching the full range of consumers. That is why we do not entirely rely on consumer complaints. If a major retail provider is not complying with the general conditions, we would not need every consumer to complain about that. We would become aware of that from a relatively small number of complaints, and we also carry out our own consumer research. I hope we would become aware and then be able to take enforcement action, but there is obviously an issue about whether all consumers are aware of their rights.

Q300 Chair: What about the relationship between the retail service provider and Openreach? If the retail service provider has said to the consumer at the point of sale, "You can expect a certain range," will the retail service provider have a contract with Openreach that specifies that particular range?

Steve Unger: What they will have had from Openreach is a prediction of the line performance. If the retail provider cannot provide that, they will be able to flow that back up the line. Yes. It is a straightforward point. If Openreach does not provide to the retail provider the service that they have said they can provide—it is a common sense point, frankly, as much as a legal point—it would not be right for Openreach, in those circumstances, to insist on their providing that service. There are legal mechanisms as a backstop if they do, but it would just be ridiculous.

Q301 Chair: Good. That is very important information which is clearly not available to consumers; I have had so many cases where the retail provider just turns round and blames Openreach, and does not inform the customer of any rights or does not take any action against Openreach. That has been very useful. Are there any other questions? Is there anything that you want to add before you go?

Steve Unger: No. I am here to answer questions. That is fine.

Chair: That's great. Thank you very much for all your help.