

## Verizon Response to Ofcom’s “Mobile call termination market review 2018-21” consultation

### Introduction

1. Verizon Enterprise Solutions (“Verizon”) welcomes the opportunity to respond to Ofcom’s Mobile call termination market review 2018-21 consultation (“the MCT consultation”).<sup>1</sup>
2. Verizon is the global IT solutions partner to business and government. As part of Verizon Communications – a company with nearly \$131 billion in annual revenue – Verizon serves 98 per cent of the Fortune 500. Verizon caters to large and medium businesses and government agencies and is connecting systems, machines, ideas and people around the world for altogether better outcomes.
3. Please note the views expressed in this response are specific to the UK market environment and regulatory regime and should not be taken as expressing Verizon’s views in other jurisdictions where the regulatory and market environments could differ from that in the UK.
4. In this response, we offer some general comments on the findings and proposals of the consultation, and then we provide some more detailed comments on the specific issue of calls from non-EEA countries.

### General comments

5. We support Ofcom’s continued overall approach to the mobile call termination market. Regulation of termination rates is necessary in this market, and the approach taken to date has proved effective and continues to be appropriate for the next market review period.
6. We agree with the market definition; the Significant Market Power (SMP) analysis; and the proposed LRIC-based charge control remedy being applied to all providers with SMP, regardless of operators’ size. The regulatory certainty and increased simplicity such a remedy provides, to both buyers and providers of mobile call termination (MCT), is beneficial. More importantly, however, this is clearly appropriate given the evidence presented by Ofcom that higher mobile termination rates (MTRs) were being charged by smaller operators that were not

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<sup>1</sup> Consultation available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0011/103340/mobile-call-termination-consultation.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0011/103340/mobile-call-termination-consultation.pdf), and annexes at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0014/103343/mobile-call-termination-consultation-annexes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0014/103343/mobile-call-termination-consultation-annexes.pdf)

subject to the charge control remedy, leading to a potential distortion of competition.

7. We do however have some specific point to make on the following remedies:
  - i. LRIC cost standard;
  - ii. Price transparency and advance notification; and
  - iii. Non-discrimination.

#### LRIC Cost-standard

8. Verizon considers that the LRIC cost standard is the most appropriate standard to choose in order to best sustain competition in the UK, for both fixed and mobile termination rates. We are therefore encouraged to see that Ofcom has remained consistent with the 2009 EC recommendation in favour of LRIC,<sup>2</sup> and we fully support this approach. Consistency of regulatory approach across the EU is of considerable benefit to both pan-European operators and consumers alike, and therefore we support Ofcom's proposed approach.
9. In relation to price transparency, we welcome Ofcom's proposal to continue publishing the MTR cap on its website, however we strongly disagree with Ofcom's proposal to remove the SMP condition requiring price transparency and replacement with an annual notification to Ofcom.

#### Price transparency and advance notification

10. Advance notification is necessary for providers who purchase MCT as it allows them to plan their costs, scrutinise compliance before harm occurs, and allows them to adjust the charges to customers in advance. Like most of industry we operate on monthly billing cycles; therefore our strong preference is for a 30-day advance notification requirement for changes to rates. We note that a 28-day notice period is in place already in the MCT market, and we consider that this strikes a fair reasonable and effective balance. We therefore urge Ofcom to reconsider the notification requirement.
11. We acknowledge Ofcom's argument that there would always be a maximum cap, which should provide comfort for operators. However, we consider that there are strong arguments for implementing a reasonable advance notice period which would benefit customers. The following two situations illustrate this:

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<sup>2</sup> As noted by Ofcom at paragraph 4.68 of the MCT consultation.

- i. A price decrease – advance notification of a rate decrease would mean that we could pass the saving on to our customers as soon as possible by updating our billing systems, resulting in lower prices for end users at an earlier point.
- ii. A price increase – a MCT provider may decide to offer a lower rate than the cap for a period of time before raising it to the maximum cap level. Advance notification again allows us to adjust our charges to better reflect our costs, and would also provide us with an opportunity to attempt to mitigate the increase through commercial negotiation.

12. In both of these cases there are clear benefits to consumers. It is hard to see, therefore, how Ofcom's proposal is consistent with the principle duty under section 3(1) of the Communications Act, to further the interests of consumers.

13. If Ofcom continues with its proposed condition requiring annual notification of the MTRs applied, we would need greater clarity on the way in which these would be reported to Ofcom. We acknowledge that Ofcom has proposed the following wording: "the dominant provider shall notify Ofcom in writing of the level of the call termination charge or charges it made to each third party during that relevant period" in the revised SMP conditions.<sup>3</sup> We consider that this reporting method will only work as long as every single charge split out per providers was included – this would ensure that there was no averaging out of the cap (i.e. a higher rate above the maximum cap applied in one circumstance counterbalanced by a lower rate in another). Even if this was the intention, this proposal introduces unnecessary complexity and uncertainty for both Ofcom and the industry.

14. Furthermore, we question whether an annual notification at the end of the year would really be effective. It creates a significant time delay between a potential contravention of the cap and Ofcom becoming aware of the contravention and subsequent enforcement action. It will also create an administrative burden for Ofcom to check, chase up, and enforce all the 80+ notifications (which would include multiple lines of charges) all within a short window at the time of the notification deadline. We do not see the logic in this, and we are very concerned that Ofcom will not be able to enforce the cap in a proactive manner. If Ofcom insists with carrying through this proposal we therefore request that it sets out how it intends to proactively and effectively monitor and enforce compliance under an annual notification framework.

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<sup>3</sup> Annex 7, Schedule 1 of the MCT consultation.

15. A 30-day notification (as we propose above) would allow industry to identify and resolve issues between themselves in the first instance, with only unresolved issues needing to be raised with Ofcom.
16. In any case, we consider that the termination rates notified to Ofcom would be confidential. We therefore seek Ofcom's assurances that the notification details would be kept confidential and be only used internally for ensuring and enforcing compliance with the maximum MTR cap.

### Non-discrimination

17. We strongly disagree with Ofcom's proposal not to apply an SMP condition requiring mobile operators to not unduly discriminate in relation to termination rates. We consider that an SMP remedy to this effect is necessary, particularly when considering the relationships between mobile and fixed operators.
18. Our ability to negotiate termination rates with mobile operators is severely limited. [X] We are extremely concerned that removal of this condition would allow the mobile operators to differentiate rates based on traffic volume or number of interconnects. This could potentially force CPs to move away from direct interconnects onto relying on transiting traffic through BT. Given that Ofcom removed all regulation in the transit market, (which as highlighted in our response to the 2017 Further Narrowband Consultation is in need of urgent review<sup>4</sup>), this would result in a significant cost increase for us and would have a detrimental impact on our customers (and those of other providers in a similar position).
19. In addition, removing the non-discrimination SMP condition would increase complexity of regulation and would make it less transparent for operators purchasing MCT. Given the above concerns, we strongly urge Ofcom to reconsider and to impose an SMP condition requiring no undue discrimination.
20. We also have major concerns about interconnect agreements with mobile operators. We are currently in a transitional period, with some mobile operators moving to IP interconnect rather than TDM interconnect. We therefore strongly urge Ofcom to ensure that the regulations it imposes applies to both TDM and IP interconnect in order to avoid this regulation being undermined, which could ultimately harm competition and eventually consumers through higher prices.

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<sup>4</sup> See paragraph 34 of Verizon's response to Ofcom's "Narrowband Market Review: Further Consultation - Proposals on price notification remedies in the WCT markets and regulation of BT's interconnect circuits", submitted in August 2017.

21. Furthermore, such changes in interconnect technology could require significant investment and network planning, and as such, adequate notice is essential. We therefore urge Ofcom to put in place a requirement for a minimum advance notification of technical interconnect changes of at least seven months – this would align with Section 4 of the Standard Interconnect Agreement with BT.<sup>5</sup>

22. [X]

### **Termination rates for calls origination from non-EEA countries**

23. We strongly support Ofcom’s provisional conclusion that the charge control on mobile termination rates should apply to all calls to UK mobiles regardless of origin (including from non-EEA countries).<sup>6</sup> This would represent consistency and regulatory certainty in the UK regulation which we also strongly support. We also commend the in-depth, detailed and fair analysis that Ofcom has carried out in order to reach this robust provisional conclusion.

24. We strongly support Ofcom’s findings that allowing differential regulation would be inappropriate because:

- It would not deliver any benefits in terms of investment in the mobile market as any increase in revenue would likely be met with an increase in cost due to retaliation or a “race to the top” in termination rates.<sup>7</sup>
- Any increase in MTRs could discourage consumers and businesses from calling the UK, which could have both wider economic effects, but as Ofcom has highlighted in its Equality Impact Assessment, could have social impacts on consumers with relatives and friends abroad, including most notably BAME (Black, Asian, and Minority Ethnic) consumers.<sup>8</sup> While Verizon does not directly serve such end-users in the UK, we note that this is also a concern for international trade. As noted in our May submission paper, the U.S. Trade Representative (USTR) has already identified “differential regulation” for termination rates as a “foreign trade barrier”, and has already raised the issue both in 2015 and 2016.
- It could increase the risk of calls being routed inefficiently or caller information being masked or incorrect, heightening the risk posed by nuisance calls.<sup>9</sup> We note this issue was also highlighted by Ofcom in the Narrowband Market

<sup>5</sup> Available at: <https://www.btwholesale.com/assets/documents/Regulatory/Main.doc>

<sup>6</sup> See paragraph 4.74 of the MCT consultation.

<sup>7</sup> See for example paragraphs A11.53 and A11.54 in Annex 11 of the MCT consultation.

<sup>8</sup> See paragraphs A4.8 to A4.12 in Annex 4 of the MCT consultation.

<sup>9</sup> See paragraphs A11.56 and A11.57 in Annex 11 of the MCT consultation.

Review consultation.<sup>10</sup> Both of these potential impacts of “differential regulation” would mean that tackling nuisance calls, one of Ofcom’s goals in its Annual Plan for 2017/18<sup>11</sup>, would be harder.

25. We believe that the call to implement differential rates from certain mobile operators<sup>12</sup> is driven by a desire to increase rates (whether as part of a negotiation or not). This is also discussed by Ofcom, who notes that operators are likely to be incentivised to increase net revenue inflow to the UK through increasing termination rates.<sup>13</sup> We consider that by far the most likely outcome is that operators would raise rates to the detriment of consumers (both originating and receiving) and this would in turn lead to a “race to the top” of termination rates. This is particularly true where the higher rates in other countries are set by regulation, as noted by Ofcom in its analysis.<sup>14</sup> The likelihood of achieving a rate decrease is therefore unlikely to be changed if differential regulation were applied, but would only result in a cost increase for UK consumers. We note that Ofcom agrees with this position as it says that “the likelihood of differential regulation leading to low termination rates, where UK providers currently face high termination rates, is limited.”<sup>15</sup>

26. Such an outcome may lead to increased revenue, and but also increased cost. At best, this would lead to a neutral outcome, and worst, it could lead to substantial cost increases which would be passed on to retail customers (clearly a detrimental outcome for them), or to wholesale customers (which would be negative for competition). If such operators have issues with high termination rates in other countries, then they should lobby the relevant regulators, governments or operators to change that situation, and should not use UK consumers as leverage.

27. The likelihood of a rise in rates if differential regulation were implemented is high, as evidenced by Ofcom’s analysis and data received from other European NRAs in Annex 11 of the consultation.

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<sup>10</sup> For example see paragraph 13.113 of the 2016 Narrowband Market Review Consultation, available at: <https://www.ofcom.org.uk/consultations-and-statements/category-1/narrowband-market-review>

<sup>11</sup> See paragraph 3.22 and page 35 of Ofcom’s Annual Plan for 2017/18 available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0027/99621/Annual-Plan-2017-18.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0027/99621/Annual-Plan-2017-18.pdf)

<sup>12</sup> Ofcom notes that both EE and Three (H3G) have asked for differential regulation of termination rates – see paragraph A11.6 in Annex 11 of the MCT consultation.

<sup>13</sup> See for example paragraphs A11.39 and A11.40 in Annex 11 of the MCT consultation.

<sup>14</sup> See for example paragraph A11.19 in Annex 11 of the MCT consultation.

<sup>15</sup> See paragraph A11.33 in Annex 11 of the MCT consultation.

28. In addition to the points raised above, and in Ofcom's consultation, we would like to reiterate and expand on the following additional points from our May 2017 submission and September 2016 position paper:

- In terms of legal arguments, we consider that implementing differential regulation would be a violation of:
  - EU telecommunications rules – such as the need for MTRs to be cost-orientated;
  - General competition rules – in the form of abuse of a dominant position as operators have 100% share of the relevant market in the form of excessive or discriminatory pricing; and
  - The WTO General Agreement on Trade in Service (GATS) – as it would go against the principle of service suppliers treating Members less favourably than any other;<sup>16</sup> that access and use of any public telecommunications transport networks and services for Members should be on reasonable and non-discriminatory terms and conditions;<sup>17</sup> and that “major suppliers” to interconnect with cost-orientated, transparent, and reasonable rates.<sup>18</sup>
- Implementing differential regulation would cause an administrative and cost burden as a result of the individual negotiations that would need to take place between operators and system changes in order to manage the large variety of possible termination rates that could result from this approach. These costs would be passed on to consumers too. We therefore strongly believe that simple, consistent regulation as proposed by Ofcom is the best approach.
- “Differential regulation” would mean increased complexity of regulation for MTRs. We consider that it would be inappropriate to introduce inefficient, burdensome and complex regulation in this area. Furthermore, it would not align with Ofcom's bias against regulation, and the principles of being not unduly burdensome, objectively justifiable, and proportionate.
- Some regulators have argued that rates for internationally-originating calls could be negotiated in global transit or bi-lateral agreements – we strongly refute this. As noted in the responses from mobile operators to Ofcom's information requests, such agreements are negotiated with international

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<sup>16</sup> Article II of the WTO GATS.

<sup>17</sup> See Article 5(a) of the Annex on Telecommunications to the WTO GATS.

<sup>18</sup> See Section 2.2 of the Telecommunications Services Reference Paper.

carriers<sup>19</sup> who, when reaching an overall charge for the transit of such calls, will need to take account of the various cost elements in the chain, including termination rates in the various countries covered by the agreement. It is therefore unlikely that such international carriers would agree to a charge that did not cover the costs of transiting the calls. Furthermore, the termination rates are “bundled” into the price, may cover a number of countries, and therefore tend not to be individually negotiable. This is evidenced by the relevant operators’ inability to provide such splits of the costs of these transit calls in response to Ofcom’s information requests.<sup>20</sup> As such, this further disproves the operators’ arguments that differential regulation would help them negotiate lower rates.

29. Given the above arguments, combined with our May 2017 submission, our September 2016 position paper, and Ofcom’s analysis, it is clear that the only appropriate option is to apply the MCT charge control to all mobile calls terminating in the UK, regardless of origin (including calls from non-EEA countries).

30. We therefore strongly support Ofcom’s approach and encourage it to continue with its proposal in this area.

Verizon Enterprises Solutions  
September 2017

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<sup>19</sup> See paragraph A11.37 in Annex 11 of the MCT consultation.

<sup>20</sup> See paragraph A11.37 in Annex 11 of the MCT consultation.