



By Email Only

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- **Wholesale Local Access Market Review: Further consultation on proposed charge control for wholesale standard and superfast broadband**
- **Quality of Service for WLR, MPF and GEA (further consultation)**

1. UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at [www.ukcta.com](http://www.ukcta.com). This short submission is in response to Ofcom's two consultations relating to funding and quality of service proposals for wholesale local access services. UKCTA welcomes the opportunity to respond to these consultations since the subject matters which they relate to are of fundamental importance to our member companies.

2. The views expressed in this response do not necessarily reflect those of Virgin Media, which will be making its own submission.

3. This is a market where BT has significant market power (SMP), with the most UK consumers reliant on Openreach for both telephone and broadband services. It is also a market where Openreach has been able to generate significant excess returns over previous charge controls yet still be responsible for a quality of service crisis that has damaged the standing of our industry in the eyes of consumers.

4. The net impact of these further consultations is to increase the modelled 'allowable' costs in the WLA cost stack and increase the proposed prices Openreach can charge for MPF and GEA products, whilst at the same time lowering the

expected service levels Openreach will be expected to deliver. The fundamental issue with both Openreach's level of costs and the service level they provide is without doubt linked to historic under-investment in their WLA network, something that Openreach themselves have publicly acknowledged<sup>1</sup>.

5. The reality for UK consumers is that adequate investment in the network has not occurred. This has left Openreach running a legacy copper network that is isn't able to meet the demands of all consumers. Ofcom's previous charge controls included generous allowances for investment that BT has failed to deploy (through Ofcom's hypothetical ongoing network approach), this investment deficit has caught up with BT, with QoS issues and an inability to deliver the broadband speeds sought by consumers.

6. These revised proposals from Ofcom fail to acknowledge that past credit BT has been afforded for investment, leaving millions facing the prospect of paying more in charges than Ofcom's proposals, yet receiving poorer service levels in return. It also represents a failure to hold BT to account for the investment they should have undertaken.

7. UKCTA is concerned how these revised proposals have come about, with BT delivering selective information to Ofcom to tilt the charge control and QoS standards in its favour. BT has a much better understanding of its own costs and revenues than Ofcom or indeed other stakeholders and it also has a very strong incentive to project an adverse view of its prospects to Ofcom. It is also very selective in what it puts forward, with no incentive to highlight to Ofcom where any over-estimation might have occurred. Ofcom acts with caution, giving BT the benefit of the doubt and never correcting for this obvious information asymmetry. In addition, this renders the modelling and consultation process highly opaque for other stakeholders whose businesses rely on the charge controls being as accurate and fair as possible. The reality is when BT's pessimistic view of its business transpires to be an inaccurate depiction and excess profits are being earned, there is no regulatory come back.

8. Furthermore, it is questionable why Ofcom considers it appropriate to rely on Openreach's Allocation Model to any degree given the concerns highlighted by the Analysys Mason audit. Ofcom should instead rely on its own developed and peer-reviewed model alone to avoid any manipulation from Openreach.

9. We have concerns that BT is supplying unreliable cost data that favours BT, for example on co-mingling<sup>2</sup> and on tie-cables. This has historically lead to various problems arising, including double cost recovery (for example in ECCs in 2012). Ofcom should investigate these concerns to make sure all information used is unbiased and isn't giving rise to excess recovery.

10. BT has failed to invest in FTTP at scale which has a far lower fault rate and greatly improved service capability. In other countries FTTP rollout has transformed service performance. Despite this under-investment, BT is now requesting that Ofcom increase end consumers service charges so that end customers pay Openreach more money to allow excess earnings to continue. This is an unacceptable outcome for consumers and BT's competitors, who are required to purchase wholesale services from Openreach.

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<sup>1</sup> <https://www.broadband-finder.co.uk/news/bt-could-ve-invested-more-admits-openreach-chairman#.WfGUIWb2Zes>

<sup>2</sup> See consultation 4.44

11. UKCTA is supportive of the direction of travel set out in Ofcom's first WLA QoS consultation, which sought to impose a steady improvement of the service floor for service provisioning and service repair across copper services across the UK. Those proposals would still have resulted in many customers having longer periods awaiting service repair and service provision compared to the SLA that BT offers with its products, but would still be a notable improvement for service expectations. These revised proposals are a scaling back of that ambition and are neither helpful to consumers or justified from a performance perspective.

12. Furthermore, some of the proposed changes are very odd. For example:

- In relation to the assumed reduction in cumulo rates following negotiation, we do not agree that using Virgin Media's reduction as a "top-end" reduction. Surely, BT with a larger network and significant, proven experience in such discussions could achieve a larger rate reduction.
- In relation to QoS, it is unclear why Ofcom has proposed an 88% standard for on-time fault repairs given that Openreach's own analysis suggests that it had an operational limit above 89%.<sup>3</sup>
- Further, in relation to fault repairs, Ofcom has been lenient in accepting that some GM regions perform less well than others, leading it to propose lower fault repair standards. This is strange given that, in other sectors, Ofcom has taken a bolder stance on efficiency improvements across different regions by expecting efficiency to meet the levels of upper quartiles or deciles. It is unclear why Openreach should not be expected to do the same.<sup>4</sup>

13. We note that separately Ofcom wishes to incentivise service improvement by Openreach via the proposals for consumer automatic compensation. The idea being that the additional costs of automatic compensation will motivate Openreach to improve service beyond the Ofcom MSL. This incentive is substantially diminished by the inclusion of these costs from the charge control, restraining any incentive impact. We urge Ofcom to ensure both wholesale and retail policies are fully aligned to ensure they can work in together to incentivise Openreach to deliver good performance.

14. We urge Ofcom to revert to its original QoS and charge control proposals, taking account of the selective nature of BT's representations and the significant funding that has been allocated to network investment that has failed to take place.

-End-

**UKCTA Secretariat**

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<sup>3</sup> See paragraph 4.29 of the Quality of Service for WLR, MPF and GEA - Further consultation on proposed quality of service remedies, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0012/106311/consultation-quality-service-wlr-mpf-gea.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0012/106311/consultation-quality-service-wlr-mpf-gea.pdf)

<sup>4</sup> For example, in the efficiency section of the Review of Royal Mail Regulation, Ofcom examined the efficiency gains that could be had by bringing lower performing delivery offices up to the top quartile and decile, arguing that this could be achieved simply by following the same practices or efficiency measures already in place in the higher performing ones. The detailed econometric analysis can be found from this page: <https://www.ofcom.org.uk/consultations-and-statements/category-1/royal-mail-review2016>, see Annex 5 of the May 2016 consultation, and the accompanying Deloitte report. One could argue that Royal Mail faces greater regional differences due to factors such as topology, population density, and local labour conditions, than Openreach does in relation to fault repairs.