



## Internet Telephony Services Providers' Association

### ITSPA Response to consultation: Copper retirement – conditions under which copper regulation could be completely withdrawn in ultrafast exchanges

#### About ITSPA

The Internet Telephony Services Providers' Association ("ITSPA") represents over 100 UK businesses involved with the supply of next generation communication services over data networks to industry and residential customers within the UK. Our traditional core members are VoIP providers. ITSPA pays close attention to both market and regulatory framework developments on a worldwide basis in order to ensure that the UK internet telephony industry is as competitive as it can be within both national and international markets.

Please note that certain aspects of the ITSPA response may not necessarily be supported by all ITSPA members. Individual members may respond separately to this consultation where a position differs. However, the ITSPA Council is confident that this response reflects the views of the overwhelming majority of ITSPA members.

A full list of ITSPA members can be found at <http://www.itspa.org.uk/>.

#### Introduction

First, before we address the substantive concerns with the subject matter of the Consultation, we consider it may be helpful to rehearse our understanding of the roadmap to withdrawal of copper in each exchange area.

1. A notice is published by BT, which says it *projects* to achieve 75% *Ultrafast* (i.e. greater than 300 Megabits per second download speed) availability at 75% of Relevant Premises in 12 months' time. These notices can be published today but can have no effect until after April 1<sup>st</sup>, assuming Ofcom proceed with the structure consulted upon.
2. BT announce that they have achieved 75% Ultrafast availability to 75% of Relevant Premises, and, providing 12 months has elapsed from the notice in point (1), they may cease to provide new copper connectivity to premises where *fibre* is available, if they so wish.
3. When they complete 100% Ultrafast availability to 100% of Relevant Premises, they publish a Second Notice, at which point various charge controls cease to apply to copper products at Relevant Premises *where fibre is available*. In other words, BT has pricing freedom on copper if fibre is available.
4. At this point, or any time afterwards, BT may publish a third notice, providing that copper is consumed at under 10% of Relevant Premises and that Ofcom has satisfied itself that vulnerable consumers are protected, giving 24 months' notice of a cessation of supply of existing copper services, if BT so wishes.



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In the above, strictly, we interpret fibre availability to mean available to be consumed by an Openreach Customer serving a Relevant Premises, not exclusively to BT's downstream retail divisions. Additionally, the use of 40/10 GEA by Critical National Infrastructure is exempt.

There are a number of concerns arising from our understanding of the picture across the consultations published so far on this subject.

### **Relevant Premises**

We consider it is critical that there is no ability to game the system, that BT cannot favour affluent suburbs over social housing, or act to protect its Ethernet revenues in business premises.

In giving BT the ability to exclude premises from the calculation, and thus approach closer to "job done" without laying fibre or upgrading to Ultrafast, there must have been a failed concerted effort to justify it. For example, proof that genuine attempts to reach allegedly absentee landlords have been made, and no succor given to the excuses such as "the lane to the farm is too long".

### **Available**

The use of the term "available" in the relevant Significant Market Power conditions is not defined. It therefore must be taken to be its ordinary and natural meaning for the context in question. Which, to ITSPA members, as a minimum, means it must be available to order and be supplied within the standard BT SLA as a standard provisioning task by an average Openreach engineer.

Available to order but not supplied for 9 months, or with civil works or wayleaves as a prerequisite, is not, in our respectful opinion, the ordinary and natural meaning of "available". Nor would there being fibre in a trunk on a main road, but none in the cul-de-sac where the prospective customer is residing.

There is a very real risk that BT's lead times or ability to reach certain premises will be limited, yet it will be given pricing freedom – in other words, it can materially increase the price for copper provision to a given premises because it has fibre availability based on some definition of the word concocted by BT with nefarious intent. BT will be able to abuse the system with some form of "technical availability", while engaging in a constructive refusal to supply and enjoying a super-normal profit on copper products.

This cannot be allowed to happen.

Ofcom must specify "available" to be more definitive (and we say that it means it can be ordered and delivered within the SLA as a standard install with no civil works or specialist teams or equipment) to avoid the potential for gaming by BT.

This cannot wait for disputes or complaints to be resolved in the years to come, while harm is being perpetrated to consumers.

### **Vulnerable Users**



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ITSPA notes and welcomes the Third Threshold which requires vulnerable users to be protected prior to having copper services turned off, but that only address one potential for harm – being cut off from a service they depend upon.

If a vulnerable consumer depends on equipment which requires 48V on the line<sup>1</sup> or equipment where Voice Band Data does not work over-the-top, there are risks. BT making fibre “available” to that consumer, depending on their Ultrafast progress elsewhere in the exchange area, affords BT the ability to abuse that consumer through super-normal pricing.

ITSPA does not believe that a statutory framework should be provided within which BT can determine whatever charge it likes to provide copper to a vulnerable elderly person. Given that services such as red pull cord alarms will be impacted by this, we believe that this is particularly important<sup>2</sup>.

We say that the effect of the Second Threshold notice should be qualified with “where fibre is available and where End Users in the Relevant Premises are not vulnerable” to ensure the charge control still applies to protect users of those circuits in those situations.

### Repairs

The effect of the stop-sell is to remove the obligation on providing *new* copper based network access; that demonstrably does not include forced migrations to fibre in lieu of repairs, especially given the potential impact on the vulnerable, and we would welcome a clear and unambiguous policy position from Ofcom’s in that regard.

### Net Neutrality

The EU legislation on the subject<sup>3</sup> which, as it stands, will be part of the snapshot taken into domestic law on 31<sup>st</sup> December 2020, is clear about the rights to access content and services which accrue to citizens.

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<sup>1</sup> Noting that fibre to the premises, in our opinion, does not meet the legal threshold in the EECC for PSTN replacement without BT offering power on the line <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>

<sup>2</sup> Assuming our rehearsal of the process at the beginning is correct, these charge controls could fall away *before* Ofcom has satisfied itself that vulnerable persons are sufficiently protected so Third Threshold Notices can be issued.

<sup>3</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (Text with EEA relevance) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2120>



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We do not believe that any major Internet Service Providers (“ISPs”) core networks are configured in such a way to give concerns with respect to compliance with these rules, however, the Network Terminating Equipment (“NTE”) they provide can interfere with voice services.

In some cases, this can be switched out, however, some ISPs validate the data connection on the MAC address of the router, which renders that option ineffective. Others do not give access to the required feature set to allow the user to turn off functions such as SIP ALG.

Our members are aware that this issue became acute during the start of the COVID-19 pandemic, however, that does not mean it is resolved. As millions of households migrate from their existing products as part of BT’s upgrade programme, they may find their choice of voice provider extremely limited – indeed, they may find themselves only able to consume voice from their data provider, to whom they may be locked into an existing contract when forced to move to FTTP or SOGEA.

This subject has not been given sufficient airtime to date in BT’s upgrade programme. The various industry forums, are to our knowledge, deadlocked on the subject with a reluctance from some operators to replace or upgrade existing NTE. While we note that some more modern routers from these operators are less likely to interfere with voice applications and that the NICC did some work in this area, the timescales of BT’s upgrade programme (with a stop-sell imminent in Salisbury) are incompatible with waiting on natural wastage of legacy NTE. This becomes especially important when this NTE may not need replacing in various migration scenarios either.

ITSPA considers that the industry (and primarily certain parts of the residential vertical market) need a clear and unambiguous policy statement from Ofcom on the subject – that providing NTE that interferes with lawful applications is itself unlawful. We also consider that guidance on the GCs should be updated to make it clear that an end user should be afforded a penalty free exit in such circumstances.

### **The Trials**

Our current understanding is that BT are proceeding with a stop-sell in Salisbury as soon as December 2020, without any “wash-up”, report or discussion with the industry on the matter. To date, we have not seen any success criteria, risk registers or documentation that any reasonable person would anticipate being published as part of a trial.

Some of our members are vociferous in their comments that this is not an industry trial, it is a BT initiative where industry is merely spectating.

ITSPA and other stakeholders have commented to Ofcom previously that it is strange to formulate SMP conditions for a PSTN closure until the full impact of Salisbury and Mildenhall are known (and indeed, many of our other concerns are addressed). This is also one of the key reasons that our members are unable to communicate effectively with end users. Even if they were so minded doing so before Ofcom published a final Statement, there are too many fundamental questions unanswered on the subject.



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To that end, we reiterate that the existing remedies in the market should be extended until such time that the results of Salisbury and Mildenhall are known, the industry has convened to discuss them, and BT has given the appropriate assurances and/or demonstrated it as addressed issues – with Ofcom consulting on any consequential amends to the regime needed. For the avoidance of doubt, we do not consider that will result in the entire market review being redone – merely that the position Ofcom would otherwise be minded to issue a Statement on being set to one side as a “near final draft” pending a go-no go decision following the trials.

Some of ITSPA's more vocal members consider that Ofcom is not giving BT sufficient challenge and oversight on its plans, with the effect being a regulator that is too readily adopting the monopolist's proposals. This view is not helped by the prospect of the PSTN closure regime being “baked into” Significant Market Power conditions for five years before the trials are close to being completed.

### **Out of Hours**

At present, there is no set process or product from Openreach on out of hours support for various migration scenarios. This will be of importance to larger business customers, or those with critical applications. As it stands, we are anticipating cease and re-provide (with a period of parallel running) to be the only means by which such businesses will be able to reconcile their need for assurance with BT's limited portfolio.

In normal circumstances, these businesses are usually happy to pay a premium, but given that the migration may be forced by BT (either economically as the charge controls fall away, or through the stop-sell), this sentiment may not apply and we consider there may be demands for BT to absorb the cost, given BT is the beneficiary of the upgrade programme.