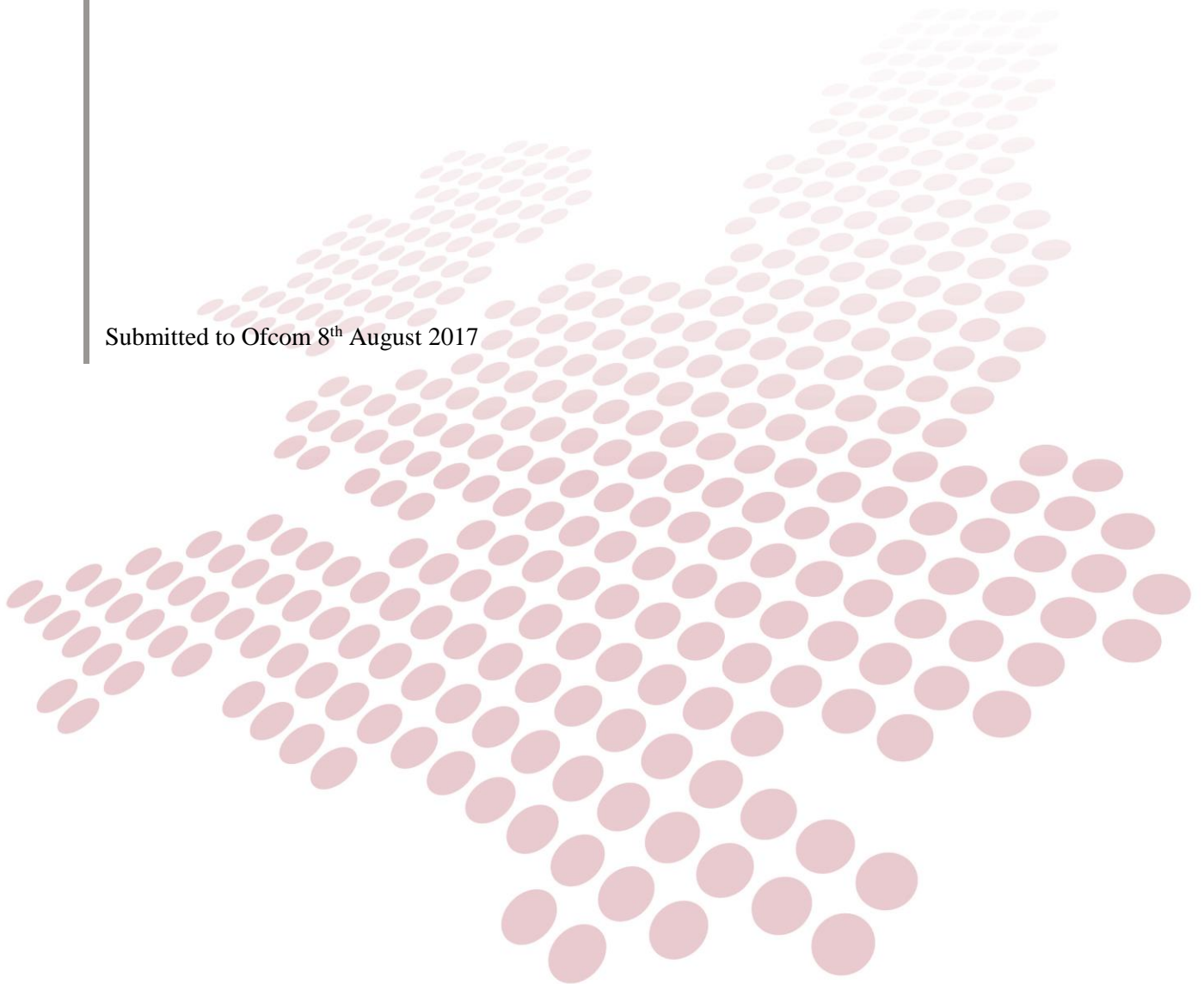


UKCTA response to Ofcom's Narrowband
Market Review: Further Consultation -
Proposals on price notification remedies in
the WCT markets and regulation of BT's
interconnect circuits.

Submitted to Ofcom 8th August 2017



Introduction

1. UKCTA is a trade association promoting the interests of 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.org.uk.
2. This response focuses on the second half of the “2017 Further Narrowband consultation” concerning IP interconnect only.
3. This response represents the views of UKCTA members, with the exception of Gamma, who will be making an individual submission.

Response to consultation proposals

Interconnect at the DLE

4. UKCTA is pleased to see that Ofcom has revisited the issue of IP interconnect following the concerns raised in our response to the December 2016 Narrowband Market Review Consultation.¹ However, Ofcom’s proposed solution is ineffective and does not serve to dispel the uncertainty and instability surrounding IP interconnect. Ofcom needs to conduct a full review of IP interconnect now so as to ensure that there are concrete and effective remedies in place for the next three years.
5. By continuing to focus its regulation on legacy TDM interconnection at the DLE, there is a large risk that Ofcom’s regulation could be undermined as more providers move to IP interconnection and retire their TDM assets. This risk will remain unless Ofcom puts in place regulated conditions on IP interconnect for DLE access.
6. One of the key issues in the interconnect market currently is uncertainty. This manifests itself in the following ways:
 - **Uncertainty over BT’s long-term plans** – There has been a lack of engagement from BT regarding the transition to IP interconnect and the possible retirement of TDM interconnect for DLE access. In the past, BT has tried to work with operators when large new technology changes which affect the whole market are being introduced e.g. the 21CN. This has not been the case for IP interconnect which appears to have been conducted in a very internal-focused manner. Nor has it been

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0016/95011/Narrowband-Market-Review.pdf

the case in other markets such as the transit market, where many operators have been surprised by the pressure being exerted to move to IP interconnect. This clearly goes against the principles set out in the recent BT-Openreach separation Commitments.

- **Uncertainty over contract terms for unregulated IP interconnect** – Given there is no regulated IP interconnect for DLE access, each operator that does agree a commercial contract with BT does so on individual terms, conditions and charges, without the certainty that these terms or even the access itself will continue (unlike regulated TDM interconnect which has a requirement to offer access, not to unduly discriminate etc.²). Furthermore, if these operators do retire their TDM assets, they would have to negotiate with a BT who would have significant power on their side. In this situation, BT would be incentivised to make use of its dominant position to: raise prices (by increasing the IP Usage Charge (or IPUC) and port elements, even if base price of DLE interconnect charge to which these are added remains the same), discriminate between operators, and vary the terms of access and charges between carriers. This is not just theory – it is already happening in the transit market where BT has now rated its IPX originating traffic over TDM interconnect as a double tandem transit call, so operators have little choice but to move to IP.
 - **Lack of regulated IP interconnect product and charges** – With regulated TDM interconnect, there are clear cost-network deployment options which incentivise operator investment i.e. connecting at the deepest level (DLE) entails the most network deployment (to the c600 DLEs) but is rewarded with the lowest charges; whereas further up in the chain incurs less deployment but higher charges to reflect the additional elements used in the chain. Furthermore, the access at DLE is also on a non-discrimination basis, so all operators pay the same.³ While there continues to be a regulated TDM interconnect product which is cost-effective, it stands to reason that there will be limited IP migration through rational operator decisions.
7. There is clear evidence that BT could be creating a dominant market for itself. UKCTA would be concerned if BT were to set its IP interconnect prices in a way to encourage or even force migration and retirement of TDM assets, leaving operators with no choice but to move to an unregulated product or become uncompetitive, as it has been doing in the transit market. This would risk undermining Ofcom’s remedy for the interconnect

² See Conditions placed on BT in the 2013 Narrowband Market Review – Schedule 1 to Annex 1:

https://www.ofcom.org.uk/data/assets/pdf_file/0014/50720/final_statement.pdf

³ See Condition 3 of the Conditions placed on BT in the 2013 Narrowband Market Review – Schedule 1 to Annex 1:

https://www.ofcom.org.uk/data/assets/pdf_file/0014/50720/final_statement.pdf

market, but would also consolidate BT’s dominance and market power in a relatively short period of time (as there is no competition for DLE access).

8. Ofcom must take action now as we have already reached the tipping point in this market review to ensure that operators are not left in this situation for the next three years. The “remedy” proposed in the 2017 Further NMR Consultation (which does not include any concrete SMP conditions) is not fit for purpose and does not address the concerns raised above.
9. UKCTA proposes that Ofcom should apply SMP conditions to all forms of interconnect for DLE access in a technological neutral way (i.e. covering both IP and TDM). Ideally, Ofcom should apply similar SMP conditions to both TDM and IP interconnect for DLE access as this is the most robust way to ensure that Ofcom’s remedies are not undermined.
10. We understand that Ofcom may be reluctant to put in place stringent SMP conditions on a “new technology”, however, Ofcom could improve the uncertainty in the market by at least mandating more “light-touch” SMP Conditions such as regulated requirements for network access, no undue discrimination, and fair and reasonable, cost-oriented charges for IP interconnect.⁴ This would give greater confidence and stability, and ensure that operators and their consumers are protected over the next three year period. This would also make moving to IP interconnect for DLE access a rational commercial decision, rather than a gamble into an unregulated space.

Interconnect in transit market

11. UKCTA are disappointed that Ofcom has not taken any action to address the concerns raised in our response to December 2016 Narrowband Market Review Consultation around BT’s conduct with regard to charges for interconnect at the tandem layer.
12. Many UKCTA members have been affected by the January 2017 changes that BT made to its pricing structure for its transit calls which results in a significant price increase for calls which are switched via IPX then a TDM tandem switch. Previously these were charged at single tandem transit rates, however these are now charged at double tandem transit rates. As raised above, operators’ only realistic option to avoid such increases is to interconnect at the IPX, which BT has now priced below double tandem prices.

⁴ Ofcom has imposed conditions gradually in other markets – for example in the Wholesale Local Access market for superfast broadband where early in its development light-touch regulation was imposed to allow BT a “fair bet” in terms of the returns on investment it was able to realise, before proposals to move to a charge control to protect purchasers as the product reached maturity. This is summarised briefly in the recent 2017 Wholesale Local Access consultation at paragraphs 1.32 to 1.41: https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99636/Vo11-Market-review.pdf

13. This is particularly an issue for Freephone/NGCS traffic, as under the current “terminating operator pays the transit costs (TWIX)” system, there is no incentive for the originating operator to route the call efficiently to the terminating provider. In addition, BT who negotiates with the originating operator is likely to offer incentives for greater volumes of calls sent via IPX (such as reduced charges for higher call volumes including Freephone/NGCS calls). The terminating provider, who may only have TDM interconnect, does not have a relationship with the originating provider and is therefore at the mercy of the unregulated prices set by BT.
14. In the short term, UKCTA encourages Ofcom to take action. One quick solution for the Freephone issue raised above would be to change the rules on which operator pays the charges for Freephone/NGCS calls from terminating to originating operator. This would align with current practice for other number types where the originating operator pays TWIX.⁵ This would create an incentive for originating operators to choose efficient routes and/or establish more CP to CP interconnects in order to avoid BT’s higher charges. This would improve network efficiency and outcomes for end users by virtue of lower costs offered for such calls by the terminating provider.
15. In the medium term, UKCTA considers that it is time that Ofcom considers the transit market given that it has now been three years since it was deregulated in the 2013 Narrowband Market Review. Ofcom should assess whether this market is truly competitive, and whether any dominance remains, particularly in light of the issues around IPX.

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⁵ Such as 01, 02, 03, 07, and 09 traffic.