Verizon 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"

Introduction

1. Verizon Enterprise Solutions ("Verizon") welcomes the opportunity to respond to Ofcom's "Further Consultation in the Narrowband Market Review consultation regarding price notification remedies in the WCT markets and regulation of BT's interconnect circuits".[1]

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. This submission covers:

    - Wholesale Call Termination (WCT); and
    - Interconnect circuits.

Response to consultation proposals

Wholesale Call Termination (WCT)

5. Verizon does not agree with Ofcom's proposal to remove the price transparency condition on wholesale call termination providers. The current obligation to provide advance notification of changes to fixed termination rates (FTRs) remains appropriate.

6. Advance notification is necessary for providers who purchase Wholesale Call Termination (WCT) as it allows them to plan their costs, scrutinise compliance before harm occurs, and allows them to adjust the charges to customers in advance. As we tend to operate on monthly billing cycles, our strong preference

[1] https://www.ofcom.org.uk/__data/assets/pdf_file/0021/103935/Further-consultation-Narrowband-Market-Review.pdf

is for a 30-day advance notification requirement for changes to rates, and we urge Ofcom to consider the benefits of this approach. This system is currently in place in the Mobile Call Termination Market and we find this to strike a fair reasonable and effective balance.[2]

7. 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:

    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 customers at an earlier point.

    II. A price increase – a WCT 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 e.g. by agreeing reciprocal lower rates which would ultimately be better for both sets of customers.

8. 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.

9. We also note that Ofcom says that interconnecting providers would have contracts in place governing the appropriate notification period.[3] In fact it is likely that Ofcom's changes will encourage providers to amend contracts and remove advance notifications requirements. For example, we would be concerned if BT were to seek to remove the notification period in relation to the charges for interconnect at the transit level (currently at 56 days in the Standard Interconnect Agreement (SIA)).

10. We would also like greater clarity on the way in which FTRs will have to be reported to Ofcom. We acknowledge that Ofcom has proposed the following wording "the Dominant Provider must notify Ofcom in writing of the level of the Call Termination Charge or Charges it made to each third party during that

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[2] The current notification period for changes to MCT rates is 28 days. See Condition M4.3 for MCT providers in Annex 3 of the MCT 2015 statement:
hhttps://www.ofcom.org.uk/__data/assets/pdf_file/0034/79369/annex_1_to_annex_6-final.pdf
[3] See paragraph 2.14 of the Further NMR Consultation 2017.

Relevant Period" in the revised SMP conditions.[4] 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). We understand that it is Ofcom's intention to forbid this practice.

11. 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 300+ notifications (which would include multiple lines of charges). We are very concerned that Ofcom will not be able to enforce the cap in a proactive manner. We therefore request that Ofcom sets out how it intends to monitor and enforce compliance both proactively and effectively under an annual notification framework.

12. 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.

13. In any case, we consider that the termination rates notified to Ofcom would be confidential. **[✂]** We therefore seek Ofcom's assurance that the notification details would be kept confidential and be used internally for ensuring and enforcing compliance with the maximum FTR cap.

14. Finally, Ofcom may believe that this proposal will lighten regulatory burdens on terminating operators. However we do not agree with this view. It is comparatively simple for an advance notification to be built into the internal approval processes for new prices and the burden is smooth across any given year. Furthermore, it is a factor to consider when implementing a change to the rates, which given the timing of which is within the CP's control, means that resource can be better planned internally. A requirement to notify Ofcom at the end of the year, by contrast, would require CPs to build and entirely new process. The administrative burden in a single notification at a specified time is peaky – it requires significant resource at a single point in time. We would argue that this is inefficient.

Interconnect circuits

<u>Interconnect at the DLE</u>

[4] See Annex 4 of the Further NMR Consultation 2017.

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15. Firstly, while we appreciate that Ofcom has taken account of the concerns of a number of providers in relation to interconnect, we regret that Ofcom's proposals are unclear, and on the face of it, appear to be ineffective.

16. Given that Ofcom has deemed it necessary to take some form of action in relation to IP interconnect, we urge Ofcom to conduct a full review now before implementing ineffective remedies for the next three years.

17. If Ofcom continues to focus its regulation on TDM interconnection at the DLE, there is a risk that this could be undermined in the period of this market review by an increased move to IP interconnection.

18. Currently, it is unclear whether BT is planning to move to IP interconnection as the only form of DLE access and retire its TDM version, and there has been no industry engagement on the ongoing changes. We are very concerned about the lack of transparency that this causes for providers that rely on access to BT's network, as it makes it very difficult for us to make robust informed investment and strategic decisions. Therefore in combination with the fact that regulated TDM interconnect product is the most cost effective and most secure option; it is extremely unlikely, if not impossible, for operators to plan and invest effectively in IP interconnection despite this being a more efficient technology. Of particular concern to us is that operators who are migrating to IPX albeit on individual unique terms may be considering, or be in the process of retiring their TDM network. Once this occurs, they will only have an unregulated product without stable terms and conditions, and will have to negotiate with a stronger BT who will have gained a more dominant position on their side. BT is clearly aiming for this to happen, and we see that BT is exerting pressure in other markets to "force" providers to migrate to IP (for example, in the transit market).

19. We note that in the past Ofcom has tried to balance the incentives for investment and regulation in other markets. For example, this is true of the Wholesale Local Access market for superfast broadband where in the early stages of the market review process Ofcom introduced light-touch regulation to allow BT a "fair bet" in terms of the returns on the investment it was able to realise, before proposing to move to a charge control regime in order to protect purchasers as the product reached maturity.[5] The issuing of this consultation suggest to us that, Ofcom recognises the need to protect purchasers in relation to IP interconnect; .and as migration to IP increases, but we are concerned that at this stage, Ofcom is failing to do so by not imposing concrete remedies (even light touch ones).

[5] 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/Vol1-Market-review.pdf

20. Similarly, we note that in the past there was a large programme of industry engagement when BT was working on the move to 21CN.[6] However with the current IP migration we see no evidence of similar industry engagement, despite the very significant commercial and strategic implications this will have for industry. Instead BT are making the decisions and implementing them without industry concurrence. Indeed, it appears that the migration to IP interconnect is being carried out in a very inward-focused fashion with minimal transparency, which is not consistent with the objectives and Commitments that both Ofcom and BT have set out in their negotiations over the legal separation of Openreach. Furthermore, BT has not engaged with industry in other markets related to IP, such as the transit market, where BT changed its pricing methodology with minimal warning **[✂]**.

21. This lack of transparency and engagement will manifest itself in the choices Verizon will make on how to roll-out our network to achieve the level of interconnection and cost which is appropriate to our business. Currently, in the TDM interconnect space, there are clear cost-network deployment options which incentivise operator's 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 there is less need for 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.[7]

22. This is not the case for IP, where things are far less certain. One factor which makes moving to IP interconnect and consequentially withdrawing TDM assets a somewhat risky proposition is that currently charges and terms are commercially negotiated with no regulatory protection whatsoever. There is no charge control, no access requirement and no requirement not to unduly discriminate between providers. The pricing structure is unclear, as BT has not been transparent on whether the interconnection points for DLE access will be indeed at as many points as the TDM network. Contractual terms are relatively short, and there is no regulatory pressure on BT to negotiate fairly at the time of renewal. If operators do retire their TDM networks, they would be left with only an unregulated product and a highly dominant BT who could exercise that dominance to introduce high charges and/or unfair terms and conditions. In practice, IP interconnect charges

[6] In the 21CN engagement, BT communicated its plans to close its DLE and move interconnect to the Metronode layer. There were industry wide discussions about new products (for example VIC and MSIL), new interconnect nodes, new charging structure based upon metronode, stranded assets etc.

[7] 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

are still above TDM interconnect for DLE traffic as they are based on the rate for interconnect at the DLE plus an IP Usage Charge (or IPUC) and charges for ports added on top. On the face of it BT is incentivised to take advantage of its dominance here to: raise prices (by increasing the IPUC element), discriminate between operators (those with larger volumes might get better rates than smaller operators with less bargaining power), and vary the terms of access and charges between carriers. While there continues to be a regulated TDM interconnect product which is simple to use and cost-effective, it stands to reason that there will be limited IP migration through customer choice.

23. That said, if BT were to set its IP interconnect prices in a way to encourage or even force migration, leaving operators with no choice but to move to an unregulated product or become uncompetitive, we would have major concerns. This 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.

24. If this situation were to happen in DLE interconnection by BT using its pricing freedom to undercut the regulated DLE TDM interconnect product in the short term, forcing migration and subsequent retiring of TDM assets, this would not only undermine Ofcom's remedy for the interconnect 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).

25. It seems that Ofcom have recognised this risk in the Further NMR Consultation 2017, however the proposed "remedy" is not fit for purpose.

26. Ofcom has not proposed any SMP conditions on BT and the clarification that BT should offer access to BT DLEs via IP interconnect on "fair and reasonable" terms, conditions and charges does not provide adequate protection for the practices highlighted above. Ofcom should act now to ensure that a situation which allows BT to abuse its dominant position over the next three years in an uncontrolled manner does not arise.

27. We therefore urge Ofcom to take a technological neutral approach to interconnect regulation at the DLE, and not restrict its regulation to TDM technology. 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.

28. It is clear to Verizon that we have reached a tipping point between TDM and IP interconnect, but now is the time to act to ensure that the remedies put in place for the next three years achieve Ofcom's goals.

29. Ofcom may consider that a light-touch regulatory approach is appropriate given the untested and new emergence of IP interconnection. However it is clear that not least due to BT conduct in adjacent markets, IP uptake will increase and given BT's market power should be regulated appropriately. After all, it is Ofcom's duty to regulate on a forward-looking manner when necessary. For this reason, we would strongly urge Ofcom to re-consider imposing SMP conditions such as the requirement to offer network access, to not unduly discriminate between customers, and fair and reasonable charges in IP interconnect. This would at least give some confidence to operators (regardless of size) that moving to IP interconnect would be a guaranteed solution, with appropriate regulatory safeguards. It would also ensure that there was no loss of competitiveness due to a change in technology, and that providers were properly incentivised to move to more efficient technology which would ultimately benefit end users. Finally it would also help mitigate the risk of a three year delay in regulation.

<u>Interconnect in transit market</u>

30. We are also disappointed that Ofcom has not taken any action in relation to the tandem layer interconnect issues we highlighted in our response to the first Narrowband Consultation. We consider that Ofcom is wrong to believe that the transit market is competitive as a whole, and that Ofcom has not considered the specific issues in relation to Freephone calls that we previously raised.

31. In summary, in January 2017 BT changed the pricing structure of 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. We have serious concerns with BT's conduct in relation to this matter. The only realistic option to avoid such increases is to interconnect at the IPX, which BT has now priced below double tandem prices. However this triggers the concerns described above.

32. The originating operator, under the current "terminating operator pays the transit costs (TWIX)" system, has no incentive to route the call efficiently to the terminating provider. In addition, BT is likely to offer incentives for greater volumes of calls sent via IPX by offering reduced IPUCs for large volumes of calls (to which Freephone calls could contribute). 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.

33. We believe that action must be taken now. A quick solution for this issue would be for Ofcom to change the rules on which operator pays the charges for Freephone calls from terminating to the originating operator. This would be aligned with current practice for other number types where the originating operator pays TWIX.[8] As a result, originating operators would be incentivised 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.

34. In the medium term, Ofcom should conduct a market review of the transit markets to assess whether deregulation in the 2013 narrowband market review has been effective, and whether there are remaining competition concerns affecting this market. We submit that this is not a competitive market due to BT's ongoing monopoly in the provision of transit services, and it requires a fresh review by Ofcom.

Verizon Enterprise Services
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[8] Such as 01, 02, 03, 07, and 09 traffic.