Fixed access market reviews: Approach to setting LLU and WLR Charge Controls

Consultation on market definition, market power determinations and remedies

Response of EE Limited

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Non-Confidential Version

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Introduction

EE Limited ("EE") notes that it is also responding to Ofcom's consultation on proposed markets, market power determinations and remedies in relation to the 2014 – 2017 fixed access market review ("FAMR") ("the FAMR Consultation") and Ofcom's consultation on the 2014-2017 Wholesale Broadband Access ("WBA") market review ("the WBA Consultation"), in addition to this response to Ofcom's consultation on its approach to setting Local Loop Unbundling ("LLU") and Wholesale Line Rental ("WLR") charge controls ("the Consultation").

EE welcomes the opportunity to respond to these important consultations and asks that all of these responses are considered in a holistic manner, given the clear interaction between them.

Those parts of this response marked with [✂] and highlighted in blue contain commercially sensitive confidential information, which should not be published without EE's prior written consent.

Policy context for the WLR and LLU charge controls

EE supports the policy objectives for this charge control review that Ofcom has set out in its Consultation[1]), namely to:

- prevent BT from setting excessive charges for LLU and WLR services where it has Significant Market Power ("SMP") while providing incentives for it to increase its efficiency;
- promote efficient and sustainable competition in the delivery of downstream retail services based on LLU and WLR services;
- encourage BT to maintain service quality and innovation and ensure that continued service delivery by BT is sustainable, whilst ensuring that prices are still subject to appropriate controls;
- encourage efficient investment and innovation; and
- provide a stable regulatory environment for the industry.

EE considers that the charge control proposals set out in the Consultation go a long way towards achieving these objectives. However, EE considers that some further adjustments need to be made in order to ensure that Ofcom achieves its principal objective of promoting the best interests of UK consumers, where appropriate by promoting competition.[2]

As Ofcom will be well aware, the UK retail broadband market is currently dominated by four large players. Within this market structure, smaller WLR+SMPF based players such as EE offer a very important competitive constraint.

The current market structure has in a large part been caused by Ofcom's deliberate skewing of the competitive playing field in favour of MPF players,

[1] §2.30
[2] Communications Act 2003 ("the Act"), s 3(1).

since Ofcom's decision in 2004 to introduce **entry** assistance for such players. This entry assistance is still in place almost a decade later, in the form of an array of regulatory advantages for MPF players, who now have significant and stable market shares. By contrast, WLR+SMPF players continue to suffer major regulatory disadvantages and many have found it difficult to compete, such that they have exited the market or been acquired by the increasingly strong MPF players.

Despite a number of disadvantages arising from the prevailing regulatory framework, which creates a favourable environment for MPF based players, EE and other smaller WLR+SMPF based players continue to compete aggressively and have consistently been found to offer some of the best value packages in the market.

To support the sustainability of this important form of competition in the UK, EE considers it critical that the ongoing distortive adjustments in favour of MPF players are removed with **immediate effect**. EE considers it completely untenable for Ofcom to prolong the correction of this imbalance beyond the beginning of the next charge control period. Ofcom's persistent inaction has already resulted in the exit of yet another independent WLR+SMPF player, as O2's broadband business was sold to Sky in April 2013. O2 had previously been recognised for the good value of its broadband offers and the quality of its customer service, and yet clearly found it impossible to continue to compete on a distorted playing field.

Over the next charge control period, customer migration from standard broadband ("SBB") to superfast broadband ("SFBB") is likely to grow, and therefore it is even more urgent that both efficient investment signals and fair competition in SBB are established as soon as possible. In this context, EE notes that the incremental cost to a WLR+SMPF player of supplying NGA services is lower than that of a MPF player, as WLR+SMPF players will consume NGA **instead of** SMPF, whereas MPF players will need to purchase NGA **in addition to** MPF. It is essentially more efficient to use NGA in conjunction with WLR than with MPF, as there is no duplication of the broadband capability. As Ofcom itself acknowledges in the FAMR consultation,[3] the relative attractiveness of MPF may well decline as take-up of SFBB increases. The situation being as it is, it is likely that operators who have invested heavily in legacy MPF infrastructure will have less incentive than WLR+SMPF based providers to start investing in the delivery of NGA services. Furthermore, these incentives are compounded by the current regulatory environment, which enables MPF providers to earn **artificially high returns** on their legacy MPF infrastructure. In this context, it is illogical and runs directly counter to Ofcom's objectives to promote efficient investment for Ofcom to continue to slant the regulatory framework in favour of MPF players, thus continuing to give them incentives to invest in additional roll-out of less efficient

[3] Paragraph 11.431 of the FAMR Consultation.

MPF infrastructure[4], rather than encouraging market progression towards take-up of SFBB.

It is also very important that the legacy of the regulatory imbalance imposed by Ofcom in SBB is not transferred to competition in the supply of retail SFBB services. Generally speaking, customer inertia means that it will be easier for a CP to migrate its existing customers to a new product, than to win customers from another player. As such, in order to facilitate SFBB take-up and market development over the next charge control period, it is important that Ofcom's regulatory approach to SBB does not result in undue erosion of the market shares of WLR+SMPF players, reducing their existing customer base and therefore making it more difficult for them to then encourage SFBB take-up.

As regards EE in particular, EE reiterates that Ofcom's regulatory inaction in correcting the SBB regulatory imbalances is the fundamental factor in [✂][5].[✂] Despite the regulatory imbalances maintained by Ofcom, EE continues to be a vigorous competitor in the market. In fact, it is one of the only sizeable competitors remaining outside the four large players, following Sky's acquisition of the O2 broadband business.

EE continues to offer an important competitive constraint on the larger four operators. It continued to see net additions to its customer base in H1 2013. It consistently offers prices at the lowest end of any available from the top five operators and continues to offer good quality of service. Indeed, Ofcom's recent study of UK fixed-line broadband performance highlighted that EE's broadband speeds performed well in the context of the other UK ADSL operators, and its average speeds were faster than those of Sky and TalkTalk.[6] EE is also encouraging dynamism in the market, by actively promoting the take-up of SFBB through an above-the line marketing campaign, direct marketing and innovative retail offers such as 'Try Fibre for Free' (offering customers three months of free fibre broadband plus free installation). EE's unique brand positioning alongside its extensive 4G mobile services, means that it is well-placed to promote SFBB in conjunction with its mobile offering. All we ask from Ofcom is to allow us to compete on our merits, by removing the remaining inappropriate regulatory cost burdens that WLR+SMPF based providers continue to face, with immediate effect from March 2014.

Summary of key issues

- We consider that the proposals need to go further to prevent BT from setting excessive charges when it provides WLR and shared metallic path facility ("SMPF") services simultaneously. In particular, we consider that when providing WLR and SMPF simultaneously in certain key home move and migration scenarios which remain unaddressed under Ofcom's

4 A recent example can be seen in Sky's acquisition of O2's WLR+SMPF based and migration of that base to MPF. Likewise The Post Office are in the process of migrating their service from BT Wholesale to TalkTalk's MPF wholesale network.

5 [✂] [✂]

6 P.17, Ofcom report on UK fixed-line broadband performance, May 2013: http://stakeholders.ofcom.org.uk/binaries/research/broadband-research/may2013/Fixed_bb_speeds_May_2013.pdf

proposals, additional charge controls need to be put in place by Ofcom to ensure that:

- the efficiency savings that Openreach achieves from simultaneous provision are passed on WLR+SMPF based communications providers ("CPs"); and
- the serious competitive disadvantage in this regard that WLR+SMPF based CPs are placed in vis a vis their MPF based rivals is urgently removed.

- Given the important market context we describe above, we believe that it is imperative for Ofcom to take **urgent action** to ensure the sustainability of WLR+SMPF based competition to BT Retail and the large MPF and cable based operators. Currently, the regulatory framework put in place by Ofcom continues to saddle WLR+SMPF based operators with a number of unfair and inappropriate regulatory cost disadvantages. It is patent that this has distorted competition in favour of MPF based CPs and has caused harm to and exit from the market of a large number of important WLR+SMPF based competitors. Ofcom's proposed immediate removal of the unfair directories cost subsidy currently borne by WLR+SMPF based CPs is a very important step towards levelling the playing field and giving these CPs the ability to compete on their merits. However EE strongly believes that more needs to be done. In particular, EE considers that the current distortive adjustments in respect of line lengths and Test Access Matrices ("TAMs") need to be removed **immediately**. EE also strongly objects to Ofcom's current proposed pooling and equal allocation of broadband line testing costs amongst all MPF and SMPF lines. To the extent that it is more expensive for BT to test MPF lines than SMPF lines then it goes completely against Ofcom's stated principle of aligning its charge controls with incremental cost differentials for SMPF lines to be required to continue to effectively subsidise these MPF line testing costs.
- EE welcomes Ofcom's proposals to align the various single migration charges with their incremental costs at the start of the charge control period. EE strongly believes that this is the best way to achieve Ofcom's stated policy objectives of preventing excessive charging by BT and promoting efficient and sustainable competition. EE is mystified as to why Ofcom is proposing to delay the equivalent adjustment to bulk migration charges so that this will only be done by the end of the charge control period. EE strongly believes that this inconsistent proposal will cause clear harm to the competitiveness of the market at the wholesale level in the intervening period, with no obvious countervailing benefits.
- EE's response to the FAMR Consultation deals in detail with the important issue of BT's current unreasonably high charges for providing its Caller ID service. For the reasons set out in that response, [✂].[✂] In the event that it is established that, whilst there is no cost to BT to providing this service at current levels[7], it is necessary to maintain a charge for the service purely to deter increased usage, then EE believes that it is fundamentally important and appropriate that BT is not simply allowed to

[7] Beyond the depreciation and other costs related to its switches, which are already fully recovered through the Openreach WLR charges.

enjoy a windfall profit as a result of this. EE would accordingly strongly suggest that Ofcom acts on its current unimplemented suggestion that the charges BT receives for this service from WLR based CPs (worth circa £25m per year) are netted off the WLR cost stack, so as to at least mitigate to some extent the competitive harm suffered by WLR based CPs as a result of these charges and in order to meet Ofcom's stated policy objective of preventing BT from making excess profits where it has SMP.
- As a matter of basic principle and as set out in further detail below, EE does not believe that WLR and LLU customers should be required to fund **any** additional work required by Openreach to meet the minimum acceptable performance standards set by Ofcom.

Response to consultation questions

Economic and regulatory background to the setting of cost-based charges for LLU and WLR

Question 3.1: Do you agree with our proposal to impose an inflation indexed price cap? Please provide reasons to support your views.

EE's views on the detail of the proposed charge control are set out in response to other consultation questions below. Use of inflation indexed price caps is well established in the UK regulatory landscape and represents a continuation of the current regime. EE considers that there is value in regulatory stability in relation to the broad approach used and therefore agrees with the continued use of a price cap pegged to a general inflation index in the absence of there being any compelling reasons for a change.

Question 3.2: Do you agree with Ofcom's proposal to use a CCA FAC methodology to establish the cost base for the next LLU and WLR charge controls? Please provide reasons to support your views.

EE has no specific comments on the continued use of the Current Cost Accounting ("CCA") Fully Allocated Cost ("FAC") cost standard for setting these charge controls. As stated above, there is value to regulatory stability where there is not a good reason for changing the existing regime. However, EE stresses that the use of such a cost standard should not preclude also taking account of the Long Run Incremental Cost ("LRIC") differential between services provided to operators using different types of infrastructure. In particular, the need to take account of the competitive impacts and ensure a non-discriminatory technology neutral approach makes it important to have regard to the LRIC differential when setting the appropriate charge controls for WLR+SMPF and MPF products and considering the relative levels of these charge controls. EE notes that is in line with previous statements by both Ofcom and the Competition Commission.

Lastly, in relation to Ofcom's comments on basket price controls at §3.26 of the Consultation, EE is concerned by Ofcom's suggestion that the flexibility afforded by this type of charge control mechanism might make it permissible for

BT to set individual prices within the basket materially above FAC. Without the protection of a basis of charges condition (and associated reporting requirements) CPs will be at a serious informational disadvantage to BT and it is far from clear how any individual sub caps would ensure that prices remained within reasonable cost bounds over time. As can be seen in relation to BT's current bulk migration charges (§§4.412 to 4.418), if left unchecked the flexibility which BT has in relation to basket controlled prices has the potential to distort competition and be adverse to the long term interests of consumers.

Question 3.3: Do you agree with our proposal that, for the purposes of these charge controls, BT's pre-1997 duct assets should continue to be valued on an indexed historic cost ("RAV") basis? Please provide reasons to support your views.

The framework for valuing BT's pre-1997 duct assets is now well established and the Competition Commission found no reason to overturn Ofcom's approach. EE considers that there is no new factual or analytical basis on which to revisit this approach in the context of this charge control. As such, EE agrees with Ofcom's current proposal in this respect for all the reasons set out in the Consultation (including Annex 5) and in EE's previous responses to the charge control consultations in the previous charge control process.

Question 3.4: Do you agree with our proposal that, for the purposes of these charge controls, BT's post-1997 duct assets should be valued on a CCA basis based on capital expenditure indexed by RPI? Please provide reasons to support your views.

In principle, EE supports a continuation of Ofcom's established approach to valuing post-1997 duct assets using actual expenditure indexed by RPI. This is for all the reasons, as tested in front of the Competition Commission in the recent appeal, set out in Annex 5 of the Consultation.

We note, however, that this approach uses forecasts for RPI during future years. As such, the efficient level of **costs** used in setting the charge control will be based on these forecasts. **The charge control**, however, will be set by reference to future forecasts for the CPI index. Further, **actual charges** will be set by reference to the **outturn** CPI. In principle, and as long as these differences are correctly taken into account in the calculations setting the charge controls, this does not impact the relevant charge control. However, it is not clear how Ofcom will take into account differences between the forecast difference between CPI (used for setting charges) and RPI (used for setting costs on which those charge controls are based). While this is an issue for the next charge control, EE considers that Ofcom should provide some guidance about how it would plan to deal with such differences as this is relevant as to whether it is appropriate to use the different indices in different contexts now.

Question 3.5: Do respondents agree with our proposal to apply the anchor pricing principle by means of a model of hypothetical all-copper network? Please provide reasons to support your views.

[✂] [✂]

Question 3.6: Do respondents agree with our proposal that the contribution to common costs should be the same for each wholesale access line service by the end of this control period? Please provide reasons to support your views.

Yes, for the reasons set out in the Consultation. EE further agrees with Ofcom's conclusion that some form of Ramsey pricing is neither appropriate nor pragmatic. EE expects that any small allocative efficiency gains that such an approach may provide in theory would be far outweighed by the competitive costs of such approach and the harm to the incentives on all operators to promote the take up of next generation broadband.

Question 3.7: Do respondents agree that we should remove the TAMs price adjustment by the end of the charge control period? Please provide reasons to support your views.

EE wholeheartedly agrees that Ofcom should remove the TAMs price adjustment, for all of the reasons that EE has previously set out in response to Ofcom's consultations on the current WLR and LLU charge control, the Call for Inputs for the 2014-2017 FAMR and in detail in EE's submissions to the Competition Commission in relation to BT's appeal of the current WLR and LLU charge control. We accordingly support Ofcom's conclusion that "…*for the purposes of this review, the appropriate question is therefore not whether to remove the adjustment but when…*" (§3.92).

On the question of *when* Ofcom should remove this adjustment, for the reasons set out at the beginning of this response, EE strongly believes that it is vital to the ongoing sustainability of WLR+SMPF based competition to the "big 4" voice and broadband providers in the market for Ofcom to remove this adjustment **up-front, at the start of the charge control**.

In further support of this position, EE attaches to this response a report by the Competition Economists Group ("CEG"), providing CEG's expert economic assessment of this issue. In summary:

- CEG conclude that there is a strong case for the *immediate* removal of this adjustment. In terms of efficiency, CEG observe that the longer the period over which an inefficient price adjustment is signalled to be retained, the less likely the signalling would promote dynamic efficiency. As CPs base their investment decisions on the total expected return to their investments, allowing MPF based CPs to enjoy an additional 3 years of inefficient charges will still have the potential to distort investment decisions at the margin. To the extent that Ofcom believes that retaining the TAMs adjustment until 2017 will not have a negative effect on dynamic efficiency because of the advance signalling that it will be removed by this date, Ofcom cannot logically simultaneously hold the view that retaining the adjustment is important to provide any additional stimulus to LLU competitors during this intervening period. In either case, the interests of efficiency are best promoted by immediate removal of the adjustment.

- CEG also disagree with Ofcom that immediate removal of the adjustment would cause any harm to regulatory stability. In this regard, CEG conclude that price stability should be distinguished from, and accorded much less weight, than stability in the overall regulatory *framework.* What Ofcom should aim to do is follow a consistent and transparent regulatory framework in which the precise level and nature of the regulation is changed as appropriate as market conditions change. Immediate removal of the TAMs adjustment would fully accord with this regulatory best practice. All players have by now recognised that the rationale for the adjustment has already ceased to apply. By the start of the 2014 charge control it will have been **10 years** after the original policy was introduced and in which the LLU players have become well established. Furthermore, communications providers were made aware in **2009** of Ofcom's intention to align charges with the LRIC differential (or a proxy of it) by 2012/13. In 2009, Openreach estimated the payback period for MPF investment as being around **4 years**. Accordingly, MPF investments made prior to Ofcom's 2009 statement would already have been recouped if charges are aligned with LRIC differentials immediately in 2014. There is accordingly no benefit to be gained by extending this recoupment period for yet another 3 years which would outweigh the harm to competition and allocative and productive efficiency this will cause. The removal of the TAMs adjustment is readily explained by the maturity of the LLU competitors making it obsolete. It defies credibility to argue that it is necessary for a TAMs adjustment to continue in new charge controls commencing in 2014 because otherwise potential future investors in the UK telecoms sector will be deterred by Ofcom gaining a reputation as a wild and capricious regulator.

Question 3.8: Do respondents agree that we should not make an adjustment to MPF charges to allow for shorter than average line length? Please provide reasons to support your views.

Based on the factual information set out in the Consultation, EE agrees that it would clearly appear to be no longer appropriate (if it ever was) for Ofcom to reduce MPF charges based on line length. In seeking to promote the best interests of consumers as well as fair, technology neutral competition between WLR+SMPF and MPF based providers this adjustment should be removed. .

Given Ofcom's conclusions in the Consultation that removing this adjustment will promote efficiency and remove the risk that the adjustment currently causes of distorted choices between MPF and WLR/WLR+SMPF (§3.104), EE considers that this adjustment should be removed **immediately**, at the beginning of the charge control period, rather than only gradually by 2017.

The CEG report attached to this response provides CEG's detailed expert economic support for this approach. In particular, CEG note that removing this adjustment immediately has no negative impact on the incentive properties of the glide-path controls otherwise set by Ofcom, as the adjustment does not reduce the pool of costs to be recovered by BT but only their allocation between the MPF and WLR services. CEG also conclude that immediate removal of this adjustment will best promote both efficient future investment decisions by operators and efficient future pricing decisions by BT. Conversely, allowing these charges to continue to depart from costs for an extended period will cause allocatively inefficient non-cost based investment decisions by CPs in the intervening period, and may and lead to charges and costs diverging for inefficiently long periods as well as future inefficient price setting.

Question 3.9: Do you agree with our proposal to remove printed directory costs from WLR rental, and to do so immediately? Please provide reasons to support your views.

Given EE's longstanding position on this issue, it will come as no surprise that EE warmly welcomes Ofcom's proposal to remove immediately printed directory costs from the WLR cost stack at the beginning of the 2014 charge control. For all of the reasons set out in EE's previous submissions, EE strongly believes that this move represents an important step in enabling WLR based providers finally to be able to avoid paying unnecessary costs and compete on a level playing field with MPF and cable based providers in this regard, to the benefit of UK consumers.

As the bundling of directory delivery activities with WLR is not part of the remedies that Ofcom has imposed in the wholesale fixed analogue exchange line ("WFAEL") market (§3.112); given that there is clear and immediate demand from EE and other WLR based providers (such as various Federation of Communications Services ("FCS") members) for a WLR service that is unbundled from any printed directory delivery service (in order that they may meet customer demand for this); and given that for unrelated commercial reasons BT currently chooses to go beyond its WLR contractual obligation in delivering a free of charge BT Phone Book to virtually all premises in the UK (§3.107), EE considers that the position is clear that removing these costs from the regulated WLR cost stack is the right policy decision for Ofcom to make.

EE considers it equally clear that the correct position for Ofcom to take, and the one which best accords with Ofcom's six principles of pricing and cost recovery, is for Ofcom to remove these printed directory costs from the WLR cost stack **immediately**, rather than over any elongated period. This is for the following reasons:

- It is not presently clear that removing these costs will cause any change whatsoever to BT Retail's current commercial printed directory distribution business. Because of the national brand recognition for BT Retail created by universal national distribution of the BT Phone Book and because of the revenue it generates from advertisements and priority listings in the Phone Book (and motivated by the preferences of advertisers who value the reach of a universal UK-wide distribution footprint), BT may simply continue with its current business model as is. In this case, there will be no change to the present ability of BT Retail, non-BT WLR based providers, and MPF and cable based providers to meet their obligations under General Condition 8 ("GC8").
- Whilst EE does not presently consider this outcome is likely, EE accepts that it is possible that removal of the subsidy to BT Retail's

printed directory business currently being received from non-BT WLR based providers may cause BT to wish to revise its current free at the point of delivery national distribution model. If, when and how BT may choose to do this to its best commercial advantage whilst ensuring that BT Retail continues to meet its regulatory obligations under GC 8 is ultimately a matter within BT's control. Obviously there may be a knock on effect on other communications providers. However, at least in terms of MPF and cable based customers, the position would be no different than if BT decided tomorrow to restrict distribution of the BT Phone Book to WLR customers. In either case, EE would expect commercial drivers towards a mutually beneficial and acceptable arrangement for the industry would motivate BT to give due warning to other communications providers and engage constructively in working to develop an acceptable solution for all. Options in this respect will include (but are not necessarily limited to):

  - BT continuing to offer the ability to request delivery of a printed phone book on demand for £10;[8]
  - Use of the standalone "Supply of The Phone Book by BT" service that BT offers under Annex C, Schedule 152 of BT's Standard Interconnect Agreement ("SIA");[9] and/or
  - BT making the Phone Book available without copyright and then outsourcing printing and distribution to any one of a number of print on demand services[10], which would allow CPs to, e.g. order phonebooks on behalf of end users (either free of charge or for a reasonable fee); order and hold sufficient stock at various premises, such as shop fronts to cover their customer requirements; and/or provide a link to end users to order their own directories.

- In this context, EE firmly believes that the important principle of **cost minimisation** will be best achieved if directories costs are removed from the WLR cost stack at the *start* of the 2014 charge control. Concerns by WLR CPs regarding the inclusion of directories costs in the WLR cost stack have been public since July 2011[11]. By March

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8 See https://www.openreach.co.uk/orpg/customerzone/products/wlr3/directoryinformation/productinformation/downloads/Directory%20Entries%20Phonebooks%20Product%20Description.doc and http://www.bt.com/pricing/current/Exch_Lines_boo/0009_d0e5.htm#0009-d0e5 We understand from BT that there is currently no significant demand for this service. However, EE does not expect any future demand for the service to be particularly significant either, given the strictly limited number of customers for whom having access to a printed directory remains valuable (the majority of which are likely to be existing BT retail customers in any event).

9 See https://www.btwholesale.com/pages/static/Pricing_and_Contracts/Reference_Offers/Telephony.html; https://www.btwholesale.com/pages/static/Library/Pricing_and_Contractual_Information/carrier_price_list/cpl_sectionb3ancillaryservice.htm and https://www.btwholesale.com/shared/.../phone_book_manual_v9.doc

10 See for example Amazon's print on demand service - http://www.amazon.co.uk/gp/help/customer/display.html?nodeId=200286790

11 See EE's public response to Ofcom's 2012 WLR and LLU Charge Control consultation dated 20 July 2011.

2014, BT will have had nearly **3 years warning** regarding these concerns. A full 12 months will have elapsed since CPs officially raised the proposal for the decoupling of the WLR service and the printed directory service as a part of BT's 2013 WLR contract review and at the Copper Process Commercial Group ("CPCG") in March 2013, and 9 months will have elapsed from the publication of Ofcom's current consultation proposals. EE considers that this is ample time for BT to have considered the potential commercial impact of the removal of the WLR subsidy to its directories business and to come up with amended / alternative distribution models, should this be necessary. So far, BT's engagement in any such process has been virtually non-existent. This is consistent with the fact that BT has no commercial motivation to consider moving to any kind of amended or alternative model unless and until the current windfall subsidy to its directories business that it is enjoying from non-BT WLR based providers is removed. EE considers that all that will happen, if the date for removing these costs from the WLR cost stack is delayed, is that the date for BT having to consider whether/what alternative arrangements to move to will be prolonged – at the expense of WLR based competitors and their customers in the interim.

- As a matter of principle, EE considers that the assessment of which wholesale charges it is appropriate for Openreach to be able to recover under the WLR and LLU charge controls is a distinct matter from the question of how to ensure that CPs meet any retail level regulatory obligations that do not form part of the wholesale SMP remedies imposed on BT. However, in terms of the likely impact at this level, even in an "Armageddon" type scenario where removal of the directories charge from the WLR cost stack caused BT to immediately cease supply of the BT Phone Book on a temporary or permanent basis, EE considers that the impact at the retail level would overall be a positive one and no cause for concern:
    - As indicated by Ofcom's research referred to in the Consultation, for 75% of consumers, there would be little or no impact if the BT Phone Book was only available online. Whilst GC8 currently requires communications providers to supply customers with a printed directory on request, we note that Article 5 of the Universal Service Directive allows a choice between "printed, electronic, or both" in terms of directories. It would be open to Ofcom to amend GC8 at any time to reflect majority customer preferences / the need to allow some regulatory flexibility during any transitional period if Ofcom considered it important to maintain the current obligation to supply a printed directory on request for a reasonable charge.
    - For the circa ¾ of consumers who have no particular need or desire for a printed phone book, removing the charges for this service from the WLR cost stack will enable WLR based providers to pass through material cost savings and/or invest the money saved on this unnecessary service in providing new

and improved services that these customers are likely to value more.

- For the very limited number of customers to whom having access to a printed directory remains important, these customers would still have their 2013 printed BT Phone Book to which they could continue to have access during the course of any transitional arrangements being worked out by BT and the industry for future supply of printed phone books. Of course, they would also still have access to up to date printed classified directories such as the Yellow Pages and Thomson directories. In addition, these customers would have access to up to date telephone and online directory services.

Question 3.10: Do you agree with Ofcom's proposal to set charge controls for LLU and WLR to expire on 31 March 2017? Please explain your reasoning and propose an alternative approach with supporting information if applicable.

Yes, for the reasons set out in the Consultation.

Question 3.11: Do you agree with our proposal to use glide paths to align charges with costs for these charge controls? Please provide reasons to support your views.

No. EE accepts that in many cases setting charges according to a glide-path over the charge control period will be an appropriate mechanism for achieving Ofcom's objectives of providing efficiency incentives to BT and providing regulatory stability to the industry. However, the importance of these objectives may be outweighed where the charges under consideration are causing both immediate competitive and consumer harm and distortion to efficient investment. The balance of considerations in favour of an immediate adjustment is even clearer when all that is required is an adjustment to the cost allocations *between* different regulated services, involving no change to overall cost recovery by the regulated firm – hence havaing no impact on the regulated firm's efficiency incentives.

In the present case, EE considers these counterbalancing factors make it **vital that Ofcom effects an immediate adjustment** to prices in the case of:

- Removal of the TAMs and line length adjustments (inappropriately favouring MPF based competition to the detriment of WLR+SMPF based competitors and encouraging inefficient MPF based investment, and with no impact on BT's efficiency incentives);
- Aligning bulk migration charges with incremental costs (immediately removing the competitive distortions created by the current charges and reducing an important ongoing barrier to effective wholesale competition);
- (As proposed by Ofcom), removal of directories costs from the WLR cost stack (inappropriately favouring MPF and cable based competition

to the detriment of WLR+SMPF based competitors and encouraging inefficient MPF and cable based investment);

- (As proposed by Ofcom), to align the various single migration charges with their incremental costs (immediately removing the current distortions to efficient switching behaviour and removing a key barrier to competition on the merits in the acquisition of customers by WLR+SMPF based CPs);
- Certain key connection services - (i) Start of Stopped MPF Line + SMPF Simultaneous provide and (ii) WLR Connection + SMPF Simultaneous provide – these services are essential to the ability of WLR+SMPF based providers to compete for customers on a level playing field with MPF based providers in certain key migration and home-move situations. EE therefore considers it imperative that they are regulated under the charge control in the same way as Ofcom is proposing for single migration services involving jumpering (immediately removing the current distortions to efficient switching behaviour and removing a key barrier to competition on the merits in the acquisition of customers by WLR+SMPF based CPs).

Further details are provided in EE's responses to the individual questions dealing with these aspects of the charge control, as well as in the CEG economic paper attached to this response.

Question 3.12: Do you agree that CPI and RPI are the main indices to consider for the LLU and WLR charge controls proposed in this consultation? Please provide reasons to support your views.8

EE agrees that the current experimental status of the RPIJ index (including the lack of a long official "history" and there not yet being significant independent forecasts for this index) mean it is not an appropriate index to use for charge control purposes.

Question 3.13: Do you consider that we should use CPI to index the LLU and WLR charge controls proposed in this consultation? If not please explain why using the factors identified above, or any others you consider important.

In terms of the choice between using RPI or CPI for setting the charge controls EE agrees with Ofcom's proposed criteria in paragraph 3.170 of the Consultation with one important caveat. EE does not have firm views on which index is more appropriate, but considers that it is vitally important that Ofcom ensures its decision is consistent across the whole of the charge control (and indeed between charge controls).

In terms of the criteria used to make the choice of index, Ofcom's second criterion is cost causation, expressed as the extent to which the regulated firm's costs move with the index in question. At the very least, EE considers that this should consider the extent to which the **industry's** costs move with the index in question. As noted in paragraph 3.157 of the Consultation, the purpose of using an inflation index in setting charge controls is "to protect the regulated firm **and customers** from forecast error" (emphasis added). Therefore Ofcom's focus only on the extent to which each price index reflects inflationary changes in the cost base of only the regulated company is misplaced.

Further, EE considers this is better expressed differently. The purpose of using an inflation index is to ensure that the relative "tightness" of the charge control remains constant in real terms and that wider inflationary changes do not make an individual charge control more or less tight solely because of changes in the value of money. As such, the price index used should reflect the wider value of money (i.e. a general industry wide price index) rather than specifically the costs of individual regulated companies or customers.

Under either expression of this criterion, potentially both the CPI and RPI are valid indices. EE's understands Ofcom's reasons for proposing a move from RPI to CPI, given the emerging view that CPI provides a more robust measure of inflationary pressures on the wider economy. The only concern about such a move is one of consistency. EE considers that if such a change is deemed necessary it should be expressed as a wider policy intention which would apply across all of the price controls in the electronic communications sector. It is important that different indices do not create any opportunities for arbitrage or competitive distortions. Further, as noted above in the discussion relating to the valuation of post-1997 duct assets, it is important that no distortions are introduced as between inflation factors applied to costs compared to those applied to charges. EE therefore urges Ofcom to include in its assessment the need to ensure that no such distortions arise (and set out in its reasoning for a move to CPI why this is the case).

Charge control design

Question 4.1: Do you agree that we should set separate line rental charge controls for (i) MPF rental, (ii) SMPF rental and (iii) WLR rental? Please provide reasons to support your views.

EE agrees that separate charge controls should continue to be set for each the MPF, SMPF and WLR rental services. This provides both regulatory stability and the opportunity to ensure that the differentials between these key charges are moved to the level of the LRIC differential, which is vitally important to ensure a level competitive playing field.

Question 4.2: Do you agree that the price differences between MPF and WLR/WLR+SMPF new connections should be equal to the difference in LRIC in the last year of the new charge control (i.e., 2016/17)? Please provide reasons to support your views.

EE agrees that the price difference between MPF and WLR/WLR+SMPF new connections should be equal to the difference in the LRIC of providing these connection services. EE further notes that it agrees with Ofcom's proposal to price SMPF at LRIC and to recover the FAC-LRIC difference of SMPF New Provide from the WLR and LLU rental charges on an equivalent per line basis (§4.43).

However, EE is concerned that the approach both to calculating the underlying LRIC figures on which this differential is based (see answer to consultation question 6.5 below) and the method of calculating the "LRIC adjustment" which is applied to the FAC estimates to reach the relevant charges are insufficiently transparent or robust. On the latter issue, this appears to be explained in §4.43, although this explanation is hard to tie to the actual figures presented (for example in Tables 6.9 and 7.1).

Further, EE considers that this adjustment (i.e. ensuring that the price difference between MPF and WLR/WLR+SMPF new connections is equal to the difference in the LRIC) needs to be made **up-front** at the beginning of the charge control, rather than only gradually over the charge control period. The reason for this is because of the very important impact that these charges have on the ability of WLR+SMPF based CPs to compete for customers against MPF based CPs.

Critically in this regard, EE does **not** agree that the price of SMPF New Provide does or will in future only relate to the provision of new broadband connections and not to a migration from one CP to another (§4.41). In particular, EE notes that WLR+SMPF based CPs will still need to use the SMPF Connection product in a very material number of migration and home move scenarios when acquiring a new customer, as set out in the following two tables.

Table 1 – Migrations (to WLR+SMPF operator vs MPF operator)

	From	Products used by WLR+SMPF operator	Current WLR+SMPF price	Products used by MPF operator	Current MPF price	WLR+SMPF price premium
1.	MPF	WLR+SMPF Simultaneous provide	£34.86 + £30.65 = **£65.51**	MPF Migration	£30.65	£34.86
2.	**Cable - stopped MPF line**	**Start of Stopped MPF Line + SMPF Simultaneous provide**	**£40.86 + £30.65 = £71.51**	**MPF Connection - stopped line provide**	**£37.57**	**£33.94**
3.	**Cable - no existing line**	**WLR Connection + SMPF Simultaneous provide**	**£47.11 + £30.65 = £77.66**	**MPF Connection - new provide**	**£45.53**	**£32.13**
4.	Cable - stopped WLR line	WLR Transfer + SMPF Simultaneous provide	£3.39 + £30.65 = £34.04	MPF Connection - stopped line provide	£37.57	-£3.53
5.	WLR	WLR Transfer + SMPF Provide	£3.39 + £30.65 = £34.04	MPF Migration	£30.65	£3.39
6.	WLR+SMPF	WLR Transfer + SMPF Provide	£3.39 + £30.65 = £34.04	MPF Migration	£30.65	£3.39

Table 2 Connecting an incoming home-mover (by WLR+SMPF operator vs MPF operator)

	From	Products used by WLR+SMPF operator	Current WLR+SMPF price	Products used by MPF operator	Current MPF price	WLR+SMPF price premium
1.	**Stopped MPF line**	**Start of Stopped MPF Line + SMPF Simultaneous provide**	**£40.86 + £30.65 = £71.51**	**MPF Connection - stopped line provide**	**£37.57**	**£33.94**
2.	Stopped WLR line	Start of Stopped Line + SMPF Simultaneous provide	£3.39 + £30.65 = £34.04	MPF Connection - stopped line provide	£37.57	-£3.53
3.	Working WLR line	WLR Working Line Takeover + SMPF Simultaneous provide	£3.39 + £30.65 = £34.04	MPR Working Line Takeover	£37.57	-£3.53

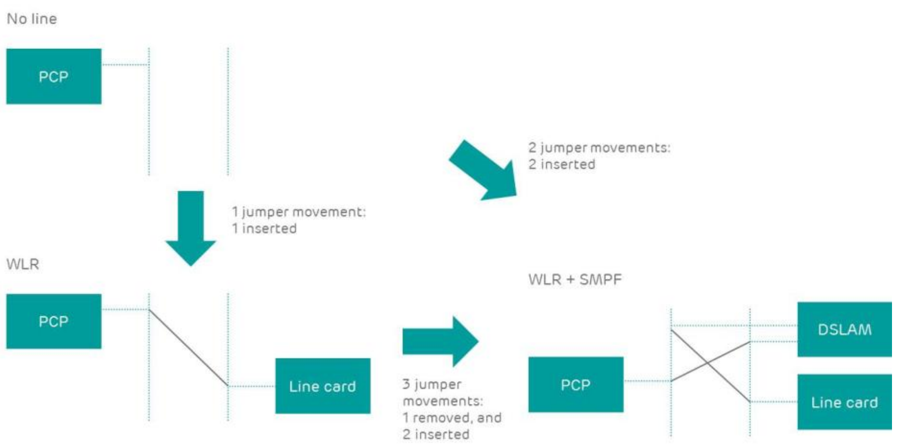
In the majority of the above six migration scenarios and all of the three home move scenarios, it is possible for WLR+SMPF based CPs to order the relevant services to be provided simultaneously. Only migrations between WLR CPs have to be carried out sequentially, although EE notes that BT are able to make use of a "parallel provide" process in some circumstances to achieve a somewhat simultaneous delivery of WLR and SMPF products, which may result in some time/process cost savings for BT.

Whilst EE is not privy to BT's confidential costing information, in each of the simultaneous provision scenarios detailed above, EE expects BT to be able to enjoy some cost savings as a result of simultaneous ordering and provisioning. However (whilst very welcome), under Ofcom's proposed charge controls, in only one of these scenarios (scenario 1 in Table [ ]), will the cost savings that BT enjoys as a result of simultaneous provisioning be reflected in a discount from the separate standalone prices of the two services. EE does not consider this situation to be consistent or appropriate.

In particular, EE notes that in three of these scenarios (migration scenarios 2 and 3 in Table 1 and home move scenario 1 in Table 2), EE would expect BT to be enjoying engineering activity cost savings from simultaneous provision which are very similar to if not identical to those described at §§4.49-4.52 of the Consultation in relation migration scenario 1 (the simultaneous migration of an active MPF customer to a WLR+SMPF service) – which Ofcom is proposing to charge control at a discount in the Consultation. These same scenarios are also those that attract a very large and significant price premium over their MPF counterparts, further indicating that there is a very important competitive disparity to be addressed.

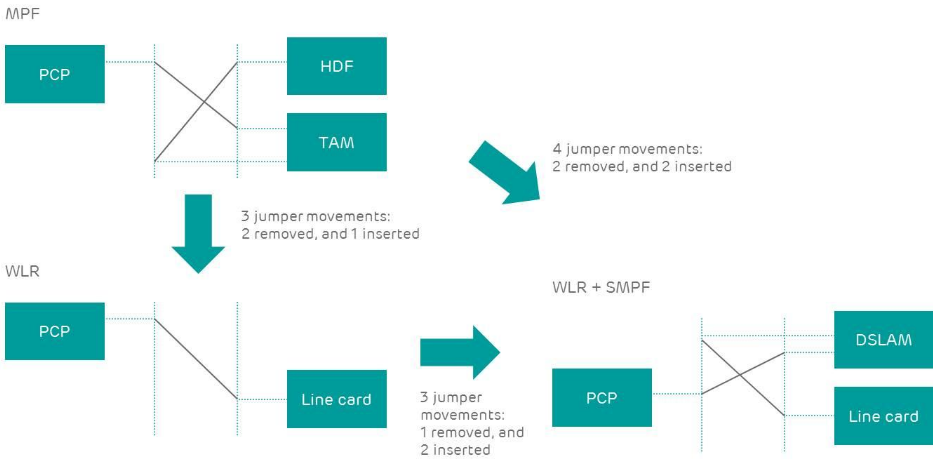
EE explains this further below.

Figure 1 Migration scenario 2 - WLR Connection + SMPF simultaneous provide



In acquiring a cable customer who has no existing copper line, the WLR Connection and SMPF New Provide products are used. If the products are applied simultaneously, 2 jumper movements are required. If the products are applied sequentially, a total of 4 jumper movements are required, and the end user has to wait an additional 5 working days for their broadband service (the minimum lead time for provision of SMPF). There is then both a cost and customer experience advantage to using the simultaneous process, which should be reflected in the price of the products.

Figure 2 Migration scenario 3 and home move scenario 1 - WLR new line using stopped MPF line + SMPF Simultaneous provide



In acquiring a cable customer or house mover who has a previously stopped MPF line in the premises, the Supply of New Line – using previously stopped LLU MPF line and SMPF New Provide products are used. If the products are applied simultaneously 4 jumper movements are required. If the products are applied sequentially, a total of 6 jumper movements are required, and again the end user must wait an additional 5 days for their broadband service.

The cost savings here are the same as in the MPF to WLR+SMPF migration scenario, and EE considers it inappropriate that the cost savings that BT may be expected to enjoy as a result will not be reflected in the charge controls proposed by Ofcom and thus not passed through to WLR+SMPF based CPs.

Currently, approximately [✂] [✂] % of EE's new voice + broadband customers are switchers from cable (involving one of scenarios 2-4 in Table 1). A further volume equal to approximately [✂] [✂] % of EE's customer acquisitions involve a house move scenario (involving one of scenarios 1-3 in Table 2). Hence, EE believes that the above processes are very material to the ability of EE and other WLR+SMPF based providers to compete effectively.

For the reasons as set out by Ofcom in §§4.89 to 4.91 of the Consultation in relation to the WLR Conversion service, on the basis of the above, EE considers that it is **equally important and appropriate** for the supply of these services to be **charge controlled** by Ofcom.

Finally, EE considers that the factors motivating Ofcom to regulate all migration charges on a consistent basis of **incremental costs** (including relevant incremental cost savings when services are provided simultaneously) set out at §§4.110 to 4.114 applies equally to these sets of services, which are also very important in reducing customer switching costs and promoting competition.[12]

12 EE remains open on the question of whether or not these services should also be aligned with the single target charge being proposed by Ofcom for those services which are used exclusively in a migration context referred to in §4.128 of the Consultation. On the one hand EE would expect these services to involve similar jumpering related costs to those referred to in §4.129. On the other hand, EE acknowledges that these services are not used exclusively in a migration context, and also the concerns regarding the impact on the relationship

In light of the above, EE considers that Ofcom should set a LRIC based charge control requiring BT to provide a discount to WLR+SMPF based providers in each of the above simultaneous provisioning scenarios, and for this discount to be applied to the relevant WLR connection service, in the same manner as Ofcom is proposing at §§4.130 to 4.131 of the Consultation[13].

EE would be happy to answer any further questions that Ofcom may have in relation to EE's response to this question.

Question 4.3: Do you agree with our proposed approach to estimating the costs of the simultaneous provision of WLR Conversion and SMPF New Provide? Please provide reasons to support your views.

Yes. As Ofcom notes in the Consultation, Ofcom has already robustly considered these costs for the purposes of the 2013 WLR+SMPF Dispute Determination regarding the dispute on this matter referred by TalkTalk (§4.55). EE considers that for the purposes of regulatory certainty and consistency, it is appropriate for Ofcom to adopt the same approach to estimating costs as it did in assessing the TalkTalk dispute – which is what Ofcom is proposing to do. EE considers that Ofcom should also be able to take some comfort in the robustness of its analysis that its dispute decision has not been appealed by either TalkTalk or BT.

EE also agrees with Ofcom's approach of using the assumptions that it has applied to the costs of MPF Single Migration consistently to the simultaneous WLR Conversion and SMPF New Provide services (§4.66). EE considers that this approach is important to ensure fair competition between MPF based and WLR+SMPF based CPs in the best interests of consumers and a non-discriminatory, technology neutral regulatory approach.

Lastly, EE notes that it considers Ofcom's assessment of BT's automated billing costs to be reasonable, albeit as EE suggests in response to question 4.2 above, it may be that these costs can be spread across an even greater number of services in the event that Ofcom agrees to extend the simultaneous provide discount model to additional services.

Question 4.4: Do you agree with our proposed approach to estimating the costs of provision of a WLR Conversion? Please provide reasons to support your views and if applicable please explain your preferred approach.

Yes. In the absence of LRIC or FAC information regarding the costs of this service, EE considers that Ofcom's approach of using the costs of SMPF New Provide, which involves the same number of jumper movements, as a proxy (§§4.73-4.74), appears to be fair and reasonable, as does Ofcom's proposed approach to estimating systems development, service centre and sales product management costs.

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between the target charge and costs of the SMPF New Provide service referred to by Ofcom at §4.127 of the Consultation.

13 Assuming that it would be efficient for BT to use its automated billing system to process these discounts as well as those for WLR+SMPF Simultaneous Provides, EE also notes that it would expect this to increase the volumes and hence decrease the unit costs of this billing system as referred to in Table 4.6 of the Consultation.

Question 4.5: Do you agree that we should control WLR Conversion and its simultaneous provision with SMPF New Provide using an indexed type of control? Please provide reasons to support your views.

Yes. For all of the reasons set out in EE's previous consultation responses on this issue and by Ofcom in this Consultation, EE believes that it is necessary to ensure appropriate pricing behaviour by BT given its SMP status as well as fair competition between MPF and WLR+SMPF based providers for Ofcom to set a charge control on WLR Conversion and its simultaneous provision with SMPF New Provide. The current status quo position of no charge control has clearly resulted in BT failing to share relevant cost savings with WLR+SMPF based CPs to the detriment of consumers and competition and it is imperative that Ofcom finally puts a stop to this situation.

EE also agrees that a charge control is likely to provide stronger ongoing cost efficiency incentives to BT than a cost orientation obligation and is important to ensure that the charges set by BT reflect the relevant incremental cost differences in providing the substitutable MPF and WLR+SMPF services that are used by different CPs to provide competing voice and broadband services to consumers (§4.90).

Question 4.6: Do you agree that we should charge control migration services at incremental cost? Please provide reasons to support your views.

Yes. EE agrees that there is merit in Ofcom adopting a consistent and technology neutral approach to the setting of MPF and SMPF Migration charges, WLR Conversion charges and WLR Transfer charges (§4.105). Charge controlling all of these services at incremental cost is more consistent than the status quo with Ofcom's stated policy of aligning differences between charges for substitute services with incremental cost differentials (§§4.106; 4.113). We also agree that setting migration charges at incremental cost has the benefit of promoting competition by lowering switching costs (§4.110). However, in contrast to Ofcom, EE believes that this service should also be charge controlled at incremental cost (cf §4.92), because EE considers that SMPF New Provide remains an important migration service in certain scenarios (see our response to question 4.2 above).

Question 4.7: Do you agree that we should align all migration charges involving jumpering to a single target price ceiling from the beginning of the charge control period in 2014 and throughout the charge control period and set a separate target price ceiling for WLR Transfers to its incremental cost using glide paths? Please provide reasons to support your views.

EE strongly agrees with Ofcom that an alignment of all migration services at the **beginning** of the 2014 to 2017 charge control period (i.e. in 2014), involving a one-off adjustment on the price of WLR Conversion and the price of simultaneous provision of WLR Conversion and SMPF New Provide is the best way to promote fair, cost reflective and technology neutral charges that are also simple and convenient for CPs to use and reflect in their downstream retail pricing (§4.122).

EE firmly believes that this approach is necessary to promote the best interests of UK consumers through the promotion of competition. The likelihood of these benefits being created is clearly established by the impact of the limited period in which just a small portion of the current distortive migration cost disadvantages suffered by WLR+SMPF based CPs were removed under the BT MPF to WLR+SMPF Simultaneous Provide Special Offer (“the Special Offer”). This Special Offer has been proven to [✂].[✂]

EE also agrees that, given the significantly lower cost of providing the WLR Transfer service, it would not be appropriate to seek to align the charges for this service with those of the other migration services set out in Table 4.14 and that this service should instead be charged according to its own LRIC (§4.124).

EE considers that the choice between setting individual charges for each migration service reflecting its LRIC (option 1) and aligning the charges for all of the migration services set out in Table 4.14 apart from the WLR Transfer service (option 2) is finely balanced. In principle, EE continues to have a preference for the charges for all WLR and LLU services to reflect the LRIC differentials in the cost of supplying these services. However, EE appreciates Ofcom’s point that in some cases the LRIC costs that Ofcom has estimated are only proxies, hence setting the five separate charges will add an extra degree of complexity but only potentially spurious extra accuracy (§4.128).

EE strongly supports Ofcom’s proposal to maintain Openreach’s practice during its special offer regarding MPF to WLR+SMPF migrations of applying the price discount for simultaneous provision to the WLR Conversion charge, as this approach is now proven as having been beneficial to competition and end-users during the period of the Openreach special offer (§4.130).

Question 4.8: Do you agree that we should align MPF and SMPF Bulk Migration charges to a single target price based on the volume weighted average forecast LRIC by the end of the charge control period in 2016/17 using glide paths? Please provide reasons to support your views.

EE strongly agrees with Ofcom that the Option proposed by Openreach (option 1) would be an entirely inappropriate mechanism for attempting to meet Ofcom’s policy objectives, for the reasons set out in the Consultation.

EE wholeheartedly welcomes Ofcom’s proposals for bulk migration charges to be separately charge controlled.

EE agrees that Ofcom’s preferred option (option 2) should be designed to mimic Ofcom’s proposed approach to charge controlling Single Migrations (§4.154; §4.159). In this respect, assuming Ofcom follows through with its proposed approach of charge controlling Single Migrations according to a LRIC based volume weighted target charge, EE agrees that Ofcom should adopt the same approach for Bulk Migrations (§4.159). Critically, EE believes that the alignment to the target charge must, as Ofcom is rightly proposing in relation to Single Migration charges, be **made up-front** at the beginning of the 2014-2017 charge control period (see §4.122).

It is not clear to EE whether Ofcom’s contrary proposal at §4.154 to align Bulk Migration charges to the target charge only at the *end* of the charge control period according to a glide-path is simply mistaken, rather than being a deliberate policy choice by Ofcom, given that in the same paragraph Ofcom suggests that its approach mimics its approach for Single Migrations and at §4.160 states that its approach will "*ensure a consistent treatment across all migration services*". EE sincerely hopes that this is a simple error on Ofcom's part and that this will be corrected with a proposal to consistently align both Single and Bulk Migration charges to the relevant volume weighted targets at the beginning of the 2014 charge control period. For the policy reasons set out in the CEG paper attached to this response, and as submitted previously, EE strongly believes that adopting this approach will be the best way to promote efficient pricing and investment signals; competition in the LLU market at the wholesale level (i.e. competition for the business of wholesale customers such as EE) and to ensure that no inappropriate behavioural incentives are provided to BT regarding its pricing. In particular given Ofcom's conclusions at §4.145 of the Consultation, EE notes that if Ofcom were to apply a glide path this would inappropriately signal that even where distorted prices come about inadvertently or as a result of deliberate behaviour by the regulated firm adversely impacting competition, Ofcom will retain that distortion into the future.

Question 4.9: Do you agree that the charge for MPF and SMPF cease should be zero and costs recovered from MPF and WLR rental charges on an equivalent per line basis? Please provide reasons to support your views.

EE has no views on this question at this point in time.

Question 4.10: The complete list of ancillary services considered in the MPF, SMPF and Co-Mingling baskets for the charge control period 2014/17 is included in the "Legal Instruments" Annex. Do you agree with our proposal to control three ancillary services baskets and with the proposed lists of ancillary services for the MPF, SMPF and Co-Mingling baskets? Please provide reasons to support your views.

EE agrees with Ofcom's conclusions that putting a number of services such as new provides, migrations, Working Line Takeover and Stopped Line Provide services in the same basket would not increase efficiency and would increase the risk of gaming by BT (§4.196). We also agree with Ofcom that migration services should be separately charge controlled (§4.196). As Ofcom notes in the Consultation, in certain circumstances the MPF Stopped Line Provide and WLTO products can and are being used by MPF based CPs as migration products (§§4.193-4.194; §§4.255 to 4.259). In these cases, Ofcom's proposed basket price controls (i.e. the ancillary service basket controls covering the items "MPF Connection Charge Stopped Line Provide" and "MPF Working Line Takeover (WLTO)" referred to Part 1 of the Annex to Condition 7A of Ofcom's draft legal instruments), including the explicit sub-cap on the MPF Stopped Line Provide service, constrain the prices of the relevant migration products used by MPF based CPs.

In contrast, the equivalent products used by WLR+SMPF based CPs are not subject to any form of direct price control. For the reasons set out in response to question 4.2, EE believes that Ofcom should individually charge control these important services to WLR+SMPF based CPs in order to ensure that the charges reflect their costs of provision (including when these products are provided simultaneously with SMPF New Provide by BT).

Question 4.11: Do you consider that X in CPI-X for the ancillary service baskets should be determined as: the same X for both SMPF and MPF ancillaries baskets based on the pooled costs and pooled revenues of SMPF Ceases, MPF Ceases and MPF New Provide; and X for Co-Mingling ancillaries basket based on the pooled costs and pooled revenues of Room Build, Hostel Rentals and Tie Cables? Please provide reasons to support your views. If you consider a different basis is more appropriate please set out what this approach would be and why.

EE has no views on this question at this point in time.

Question 4.12: Do you agree that sub-caps applied to the ancillary services baskets should be tighter than CPI-X+7.5%? Please give views on the appropriate level of sub-caps in the range 5% to 7.5%. Please provide reasons to support your views.

EE has no views on this question at this point in time.

Question 4.13: Do you agree that the sub-cap on MPF Stopped Line Provide should now be set at the same level as the sub cap for other services in the MPF ancillaries basket? Please provide reasons to support your views.

EE has no particular views on the level at which any sub-cap for MPF Stopped Line Provide service should be set. However EE repeats its concerns raised in response to questions 4.10 and 4.2 regarding the fact that, whilst this product is charge controlled to the benefit of MPF based providers, there is no equivalent charge control protection for WLR+SMPF based providers when they acquire a customer with a stopped MPF line at its premises.

Question 4.14: Do you consider that LLU Expedite charges should be based on Option 1 (maintain MPF Expedite and SMPF Expedite in the respective ancillary baskets) or Option 2 (remove MPF Expedite and SMPF Expedite services from the ancillary baskets and impose a safeguard cap on each Expedite service charge)? Please provide reasons to support your views. If you consider a different basis is more appropriate please set out what this approach would be and why.

EE has no views on this question at this point in time. However EE is quite concerned about Ofcom's proposals not to impose equivalent price regulation on the equivalent WLR Expedite services now offered by BT to WLR customers (§§4.285-4.290). Whilst BT Retail is a key user of WLR products, this does not necessarily ensure that the interests of BT will be aligned with those of its WLR based competitors (cf §4.287). In particular, past experience has shown that BT Retail's concerns tend to be focussed on products which help it to *protect its existing legacy WLR base*, rather than on connection and migration related products necessary for *acquiring new customers* – which are absolutely critical to the ability of BT's smaller WLR competitors to thrive and grow. As the WLR Expedite service is essentially an acquisition tool, EE does not believe that BT's interests regarding the service will necessarily be aligned with those of its WLR based rivals.

EE appreciates that WLR Expedite is a new service. However, given that BT's proposed prices for WLR Expedite and MPF Expedite are the same, in the absence of any clear costing information from Openreach to the contrary, EE considers that Ofcom should assume that it is fair and appropriate to impose an identical safeguard cap on both services. EE considers that such an approach is proportionate, given the risk of market distortions that may otherwise arise as a result of a non-technology neutral approach to the regulation of expedite charges.

Question 4.15: Do you consider that MPF/SMPF single/bulk jumper removal charges should be based on Option 1 (status quo) or Option 2 (separate charge controls for single/bulk jumper removals)? Please provide reasons to support your views. If you consider a different basis is more appropriate please set out what this approach would be and why.

EE has no views on this question at this point in time.

Question 4.16: Do you agree that the existing obligation to align LLU Enhanced Care service charges with WLR Enhanced Care service charges should be retained? Please provide reasons to support your views.

EE has no views on this question at this point in time.

Question 4.17: Do you agree with our view that it is not necessary to impose a separate charge control on Special Fault Investigations? Please provide reasons to support your views.

EE has no views on this question at this point in time.

Question 4.18: Do you agree that the charges for special fault investigations should remain aligned between MPF and SMPF? Please provide reasons to support your views.

EE has no views on this question at this point in time.

Question 4.19: Do you agree that we should not align the SMPF and MPF services set out in Table 4.27? Please provide reasons to support your views.

EE has no views on this question at this point in time.

Question 4.20: Do you agree that with basket controls coupled with sub-caps on individual services, a cost orientation obligation is unnecessary for the ancillary services? Please provide reasons to support your views.

EE agrees with the responses to the Call for Inputs by Sky, TalkTalk and Virgin on this issue, summarised by Ofcom at §§4.334-4.340 of the Consultation.

Quality of service review and fault rate effects

Question 5.1: We would welcome the views of stakeholders on our proposed approach to estimating the cost of changes to service levels.

As a matter of basic principle, EE does not believe that there should be **any** additional funding required from WLR and LLU customers under the charge control as a result of the additional work that may be required by Openreach to meet the minimum acceptable performance standards set by Ofcom.

The normal commercial incentive driving businesses to continually improve their service quality is that this in turn drives increased usage and satisfaction with their products and services – hence volumes, revenues and profits. To the extent that Openreach's monopoly position means that it has not faced these normal commercial forces to continually improve, this is obviously not something that it is fair appropriate to ask CPs to compensate Openreach for.

Clearly, it is the case that volumes on the Openreach copper network are tied to its service levels. This can be seen directly from Openreach's very poor performance in the "wet summer" of 2012, with the consequent impact on increased Virgin uptake vs Openreach customers as set out below.

Figure 3 - Broadband net adds, 2011-2012

It is accordingly clear that improved quality of service is likely to drive higher volumes on the Openreach network, resulting in higher revenues and scale savings for BT. It is extremely important that any assessment of this issue factors in this volume impact – which may easily be expected to off-set any increased costs of improved performance levels, and indeed even reduce Openreach copper per line costs below current levels.

Furthermore, in determining the cost to BT of providing any increased service levels, we do not think that it is at all the right approach to consider these costs as being the cost of A (existing service levels) plus B (the cost of providing the extra service levels). Given enhanced service level targets of A plus B, we think that it is highly likely that BT will be able to reorganise its operations in an efficient way so as to be able to meet these new targets at no or very limited extra cost (cf the suggestions in the Consultation at §§5.9 to 5.16). Such matters are entirely within BT's control. Accordingly, consistent with Ofcom's principle of pricing and cost recovery of *cost minimisation*, EE considers that the only way to ensure that BT manages these costs efficiently so as to minimise them is to ensure that BT bears the full financial impact. Otherwise, EE considers that there is a very high risk of these costs being overestimated, resulting in inefficiently high prices being paid by CPs, to the detriment of consumers.

Question 5.2: We would welcome the views of stakeholders on our proposed approach to analysing fault rates. In particular do stakeholders believe that fault rates should differ between MPF, WLR and SMPF?

EE considers that it is too early to be able to express any views in response to this question, given that Ofcom and the OTA are yet to complete their relevant fact gathering exercise. However, as a matter of principle, EE considers that the issue of whether or not Openreach is reporting and allocating faults accurately and in compliance with its non-discrimination obligations is a separate matter to the costs of repairing such faults to be allocated under this charge control. In setting the charge controls, EE considers that Ofcom should operate under the assumption that all such faults have been properly allocated and reported. Accordingly, if it is the case that MPF lines generate more or less faults than WLR lines, then EE considers that it would be appropriate and efficient for Ofcom to continue to reflect this in its charge controls. Separately of course, if it does emerge that BT is engaging in conduct prohibited under the Undertakings or its SMP conditions, then Ofcom should act to remedy this situation in its enforcement capacity.

Charge control cost modelling

Question 6.1: Do you agree with our proposals for forecasting operating costs using CVEs based on BT's LRIC model? Please provide reasons to support your views. If you do not agree, please propose alternative approaches with supporting information.

EE broadly supports Ofcom's new approach to modelling the relevant costs and believes it has the potential to be significantly more transparent and easier for stakeholders to understand than previous approaches. While we take some comfort from the reconciliation Ofcom has undertaken between different approaches to cost modelling (which shows that both approaches to cost modelling are currently coming out with broadly consistent figures), EE notes that overall costs have been historically falling materially. Given that Ofcom has undertaken significant adjustments which are only relevant to this charge control to correct historic distortions (for example, the removal of directories costs from the WLR cost stack), it is notable that the reduction between the Ofcom Cost Forecast ("CF") and Ofcom Cost Allocation ("CA") cost model figures for 2013/14 and Ofcom's proposed rental cost figures for 2016/17 are not as significant as previous falls.

As such, EE is concerned with the degree of scrutiny which Ofcom appears to have applied to the cost volume elasticities ("CVEs") and asset volume elasticities ("AVEs"), given that these are central variables in determining the relevant costs. As discussed in §§6.89-6.92 and 6.109 of the Consultation, Ofcom's approach appears to have simply taken a broad view on whether the individual CVEs and AVEs appear reasonable. Only where these variables have looked manifestly wrong or illogical has Ofcom investigated further. EE considers that these variables warrant a more detailed investigation as to their suitability and appropriateness (for example, potentially comparing them with relevant international benchmarks or investigating the extent to which the relevant cost categories have in fact moved in relation to volume changes in the past to the extent possible).

Question 6.2: Do you agree with our proposals for forecasting capital costs? Please provide reasons to support your views. If you do not agree, please propose alternative approaches with supporting information.

See EE's response to question 6.1 above.

Question 6.3: Do you agree with our proposed estimates of inflation for BT's pay, non-pay costs and asset price inflation? Do you consider that using a longer time series to analyse the correlation of input prices with general inflation indices would provide more robust estimates of input price inflation? Please provide reasons to support your views.

EE does not have any specific comments on the input cost inflation figures which are proposed in the Consultation. Given on-going continuing macro-economic uncertainty (and the fact that price changes over recent years are unlikely to be a good predictor of future changes in what will probably be a significantly different macro-economic environment) Ofcom's approach appears suitably conservative. A conservative approach is proportionate and appropriate to provide reasonable incentives on BT to manage and minimise its input costs.

Nonetheless, EE considers that it is important that any input price inflation assumed is applied consistently with the inflation factors used for setting the charge control itself and are appropriate given the approach to estimating efficiency gains. For example, if a longer view were to be taken in relation to input price inflation, then it would be consistent to also take a longer historical view on efficiency gains and therefore the future potential for further such gains.

Question 6.4: (a) Do you consider that the broadband line testing unit cost figures for MPF and SMPF in BT's 2011/12 RFS are reasonable? (b) What should Ofcom assume for broadband line testing costs for 2016/17? Please give reasons to support your views.

EE supports a number of the proposals set out in the Consultation in relation to broadband line testing costs, as follows:

- EE wholeheartedly agrees with Ofcom's proposal that TAMs costs "*should now all be recovered from MPF, with **no TAMs costs recovered from SMPF**, given that TAMs are only used by MPF*" (§6.140, emphasis added). As set out above in our responses to Consultation Questions 3.7 and 3.11, the only remaining difference is that EE strongly believes that the price adjustment for TAMs costs should be removed at the **start** of the next charge control period, rather than only by 2017.

- EE also fully agrees with Ofcom's proposals to only recover EvoTAMs costs from SMPF lines, rather than also making an allocation of these costs to WLR lines as under the current charge control. EE supports this proposal for the reasons set out by Ofcom at §§6.149-6.150, which comply with Ofcom's stated principles of pricing and cost recovery.

- EE agrees with Ofcom that any broadband line testing costs allocated to the cost stacks under the charge controls should be reasonable (§6.141) and that Ofcom should fully investigate these (§6.146). EE considers that this should be as much the case with EvoTAMs costs allocated to SMPF lines as with TAMs costs allocated to MPF lines.

However EE also has some **very significant concerns** with Ofcom's proposals. In particular, EE is concerned with Ofcom's current proposed approach of simply adding up total TAMs and EvoTAMs costs and then spreading these equally across all MPF and SMPF lines. To the extent that the use of TAMs by MPF lines does in fact cost more per line than the use of EvoTAMs by SMPF lines, taking this approach effectively re-introduces something akin to the TAMs pricing adjustment by another means. As such, whilst this may be a convenient temporary way for Ofcom to allocate costs on a working basis whilst it is trying to better understand the reasons behind the cost allocations in BT's RFS and to determine whether or not these allocations are appropriate, EE considers that it is **clearly not a valid basis on which to actually allocate costs** under the final charge control.

Based on the explanation set out in §6.144 of the Consultation, EE considers that the cost allocations set out in Table 6.4 appear to be logical, reasonable and appropriate, except that the allocation of EvoTAMs costs to WLR should now be made to SMPF in view of Ofcom's updated policy on this issue as set out in §6.150 of the Consultation. EE accepts that these allocations result in higher broadband line testing cost allocations to MPF than was the case under BT's 2010/2011 RFS. However, to the extent that the historic allocation of these costs has in fact been an incorrect reflection of the broadband line testing costs caused by the use of the MPF technology, then EE considers that it would be wrong for Ofcom to base its future cost allocation policy on this inaccurate historical approach.

EE does not otherwise have a particular view on the figures proposed by Ofcom in relation to broadband line testing costs.

Given Ofcom's continuing investigation of this issue (§6.146), EE believes that Ofcom should consult in some form with relevant stakeholders on this issue before reaching a final conclusion, once it has reached a robust view in relation to the costs incurred by BT in relation to the testing of MPF and SMPF lines. EE considers that this is especially important, given that this was one of the issues subject to appeal in the previous charge control and is clearly of key significance to relevant stakeholders.

Question 6.5: Do you agree with our proposed approach to estimating the LRIC for relevant services in 2016/17? Please provide reasons to support your views.

No. In theory the difference between a LRIC figure and an FAC figure should be the common costs allocated to different services. Our understanding of the discussion at paragraphs 6.153 to 6.164 of the Consultation is that:

- Ofcom would prefer to calculate LRIC directly in a bottom up way (i.e. by adding up the relevant incremental costs of different cost components for each service as was done in the 2012 Statement);

- Data limitations on the information BT has been able to provide, including that the relevant information was providing counter-intuitive results, means that this has not been possible to date; and
- Therefore Ofcom is simply calculating a relevant proportion of the service FACs which are incremental and applying this percentage to the service FACs to calculate service LRICs.

However, paragraph 6.164 appears to be stating that Ofcom will continue to keep this under review (and importantly may change its approach) in light of any new information which comes to light including updated information from BT. Given the central importance of these figures to the charge control, if Ofcom does proposed to change its approach, then EE considers that it is important that any changes are both transparent and properly consulted upon (e.g. through a supplementary consultation

To the extent that Ofcom decides to maintain the approach used in the current Consultation and the LRIC:FAC ratios set out at §6.163, EE has some significant reservations about these. *Prima facie*, EE considers that these need to be subjected to a greater degree of explicit cross checking and verification. For the avoidance of doubt, EE continues to believe that the differential between the LRICs for MPF and WLR are now very small, towards the bottom of Ofcom's range, if not in fact zero. We believe that a proper bottom up assessment of the difference in these cost measures would result in this outcome.

EE also notes that these ratios were 59% for MPF but only 53% for WLR in 2011/12, suggesting significant volatility on the percentages on which Ofcom is relying from BT's cost modelling (§6.160). If it is correct that the difference is due to the allocation of broadband line testing costs (§6.160) then this raises serious questions about the historic ratios, given the evidence received from BT that in 2010/11 it had historically incorrectly pooled and spread TAMs and evoTAMs costs over all MPF and SMPF lines (§6.144), which may have resulted in historically incorrectly artificially depressed MPF LRIC:FAC ratios. Rather than simply dismiss the figures for 2011/12 as anomalous, Ofcom should instead have taken this as an indication of a serious issue with its overall approach, which appears to be increasing the LRIC differential based on shaky foundations.

EE also notes that Ofcom considers the figures for the LRIC differential calculated during this process to be consistent with those derived for the last charge control process (for example, see tables A6.1 and A6.2 and the surrounding text). As the Consultation notes, direct comparison of these figures is difficult given the different basis of calculation and that the figures are nominal in different years' prices. However, it would appear that despite the adjustments impacting on only one or other of the relevant cost stacks for the different services (directories, test equipment and line length) the revised differential is only slightly below the differential calculated at the last market review. A priori this result suggests that **the differential is being calculated on a generous basis** and, given its overall importance to the final results, it is important that this figure is robust.

As such, while EE supports the principle of setting charges in order to reach the appropriate LRIC differential, it is concerned that the actual LRIC figures on which it is based are not themselves robust and appear to be over-stating the extent of this differential. On the basis of the figures in Table 6.9 Ofcom is now suggesting that the LRIC differential is **greater** than the FAC differential which does not seem appropriate.

Efficiency

Question A7.1: Do you agree with our proposed approach to modelling efficiency, both in general and in particular in applying a single efficiency target to both operating costs and capital expenditure? Please provide reasons to support your views.

The general approach of using a number of potential indicators of the efficiency gains which BT should be able to achieve to derive a reasonable range of such potential improvements appears sensible. EE agrees that Ofcom should not be micro-managing the extent to which such gains can be achieved from different types of cost (i.e. opex and capex) but rather that it makes sense to set a single efficiency target to costs overall.

However, EE is disappointed that Ofcom has not considered the extent to which it makes sense to apply different efficiency targets to different groups of **services** as opposed to different types of **cost.** As noted in EE's response to the previous charge control[14], BT has been achieving significant efficiencies specifically in relation to the introduction of WLR 3 as opposed to WLR 2. For example, the average time to install WLR3 is 4 hours quicker; WLR3 results in 12-18% fewer rejections; repeat faults are reduced by up to 50% compared to WLR2; WLR3 has better testing and diagnostics; and fault handling improved by around 20% through the move.

EE therefore remains of the view that there is a case for applying greater efficiency savings specifically in relation to WLR products.

Question A7.2: Do you agree with our proposed net efficiency range of between 4% and 6% and base figure of 5%? Do you agree with the levels proposed? Please provide reasoning to support your views.

Ofcom's proposed range for net efficiency gains of between 4% and 6% appears broadly to be around a feasible and appropriate level. These efficiency targets are consistent with Ofcom's assumptions in the previous charge control and, very importantly, consistent with the levels of efficiency BT has been able to achieve during the 2012 charge control.

Ofcom's final conclusion on this issue in its 2012 Statement was an assumed gain of 4.5%. As per Annex 7 to the current Consultation, it appears that BT has been able to out-perform this target. EE therefore believes that 5% is a target which BT should be able to achieve and that it would be inappropriate for

[14] See answer to consultation question 7.3 in EE's response to Ofcom's 31 March 2011 consultation on Ofcom's Charge Control review for WLR and LLU services.

Ofcom to set any lower target, as this would only be likely to result in unnecessarily high prices to the detriment of consumers.

Volume Forecasting

Question A8.1: Do you agree with our proposed approach to forecasting volumes as set out in Annex 8 and Annex 9? Please provide reasons to support your views.

Ofcom's new approach to forecasting the relevant volumes represents a significant improvement on the approach used in the last market review. The greater detail and transparency of the approach used in the Consultation (as set out in Annexes 8 and 9 especially) is to be welcomed.

While EE supports this evolution of the overall approach used, we do not believe that the specific outputs from this modelling being proposed by Ofcom are appropriate. In particular, EE has the following detailed concerns.

- First, in relation to mobile only households, Annex 9 of the Consultation sets out two potential scenarios. Ofcom's base case scenario assumes that the percentage of mobile only households remains flat over the years of the charge control, while the alternative scenario posits a small increase in the number of such households. Ofcom's base case scenario therefore simply extrapolates the most recent three years of a flat mobile only percentage (as set out in the most recent Communications Market Report).[15] However, the use of only one alternative scenario, with an *increasing* percentage of mobile only households gives an unrealistic impression that the risk here is solely a downside one for total numbers of fixed lines. Given the increasing prevalence of consumers using smart mobile devices on WiFi networks, EE considers that it is at least as likely that the number of mobile only households could fall. This is further borne out by considering the declining percentage of mobile *broadband* users (as shown in Figure 5.55 of the most recent Communications Market Report).
- Second, and on a similar basis, the simple extrapolation of previous year's falls in the average number of fixed lines per household does not seem credible as the only set of scenarios. It is worth noting that the Communications Market Report reports a flat percentage of fixed and fixed and mobile households for the last two years.
- Third, the overall increase in the number of households forecast in Annex 9 of the Consultation could also be a significant under estimate. Ofcom's assumption is for a constant increase of 270,000 households per annum, based on the most recent information from the Department of Communities and Local Government. Ofcom undertakes no sensitivity analysis on these figures, and EE considers that there is a significant risk that these figures will prove to be underestimates. On the basis of a recent speech from the relevant minister, these figures are based on relatively low net immigration figures of 100,000 per annum,[16] yet these figures are already proving to be

15 See Figure 5.52 at http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr13/UK_5.pdf
16 https://www.gov.uk/government/speeches/housing-the-next-generation

lower than reality[17]. Further these figures take no account of conversions/re-instatement of existing housing stock. As such, EE considers that Ofcom's scenarios should include potential for greater total growth in the number of households, which should then also be reflected in the relevant cost ranges which result.

- Fourth, in Annex 9 Ofcom assumes that the percentage of households taking broadband lines will remain broadly flat. EE does not consider this an appropriate assumption. Government policy is to increase the number of people online and the Government is devoting resource to achieving this aim. The Government's digital strategy stresses the cost savings which can be achieved by putting public services online and the consequent need to help people who need it to get online.[18] The Government's stated target in 2010 was to achieve a 60% reduction in the 12.5 million people who are not online by 2014.[19] The overall goal of reducing those who are digitally excluded has continued to be a key Government objective. This can be seen, for example, in the fact that the Government created the "Digital Inclusion Team" in June 2013.[20] These initiatives have had some success over time, reducing the percentage of UK adults not using the internet from over 17% in Q2 2011 to around 14% in Q2 2013.[21] Clearly there is still room for such initiatives to further increase the proportion of internet users[22] which would logically lead to an increase in internet connections. Given the success to date of attempts to increase digital inclusion, EE would expect that the percentage of households taking a broadband connection will increase over the period of the charge control, rather than decrease as per Ofcom's current Volume Forecast Model assumptions.
- Finally, when forecasting volumes for the range of other relevant services (not rentals) in Annex 9, Ofcom's approach appears to be based simply on extrapolating the average changes from the past 2-3 years. However, in the case of many of these specific products the last two or three years' figures are extremely volatile. Large increases / falls in these volumes will clearly have been influenced by specific one-off factors (such as the migrations of individual operators from one technology to another for various reasons). This means that they are unlikely to be a reliable or reasonable predictor of future volumes for these services. At the very least Ofcom needs to investigate the likelihood of further significant shifts between technologies (arising from operators with significant volumes

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17 http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/august-2013/index.html

18 http://www.publications.cabinetoffice.gov.uk/digital/strategy/

19 http://webarchive.nationalarchives.gov.uk/+/web.bis.gov.uk/news/features/2010/3/government-drive-7-million-people-online and http://web.bis.gov.uk/assets/biscore/corporate/docs/p/plan-digital-participation.pdf. Initiatives announced to achieve this goal included Home Access, Race Online 2012, Age UK/Ability Net and Get Digital. This included subsidising PCs and internet connections for low income families.

20 http://digital.cabinetoffice.gov.uk/2013/06/14/introducing-digital-inclusion-team/

21 Source: ONS Internet Access Quarterly Updates, 2011-2013 http://www.ons.gov.uk/ons/rel/rdit2/internet-access-quarterly-update/q2-2013/stb-ia-q2-2013.html

22 The charity Go On UK, of which EE is a founding partner, estimates that there are still around 10-11 million non users of online services (http://www.go-on.co.uk/challenge/who-were-helping).

switching in this way). At the present time this seems unlikely. An alternative more robust forecasting approach is therefore required.

Detailed cost modelling assumptions

Question A13.1: Do you agree with our proposed approach to calculating SMPF unit costs? Please provide reasons to support your views.

It is important that the charge control appropriately takes into account BT's internal consumption of SMPF, ensuring that BT only recovers efficiently incurred costs across both internally and externally supplied services (based on an imputed internal cost for equivalent inputs). This is vital to ensure competitive neutrality across the sector.

EE does not have further comments on the proposed approach to setting SMPF unit charges themselves as long as this fundamental requirement is met.

However, the related question also arises of the common costs which are included within the SMPF FAC which, given that SMPF charges will be set at the SMPF LRIC, need to be reallocated across WLR and MPF rental services. This is set out in the formula within paragraph A13.18 of the Consultation. EE is concerned that this will result in an over-recovery of these common costs from WLR and MPF charges as the "excess cost to be reallocated" is calculated based on the SMPF LRIC as calculated for 2016/17 specifically (given that the LRIC for this service is declining over the course of the charge control period). EE considers that this calculation should be undertaken on a year by year basis for the charge control period (based on the FAC, LRIC and volume figures for SMPF as forecast for each year of the charge control period).

Question A13.2: Do you agree with our proposed approach to BT's pension deficit repair payments? Please provide reasons to support your views.

EE does not have any comments on Ofcom's proposed approach towards deficit repair payments.

Question A13.3: Do you agree with our proposed approach to adjusting BT's linecard costs? Please provide reasons to support your views.

EE does not currently have any comments in response to this question.

Question A13.4: Do you agree with our proposed approach to calculating dropwire costs for the purposes of forecasting to 2016/17? Please provide reasons to support your views.

EE has no views on this question at this point in time.

Question A13.5: Do you agree with our proposed approach to allocating repair costs to services in the Cost Model? Please provide reasons to support your views.

EE has no comments in response to this question, other than those already provided in response to the proposals set out in sections 5 and 6 of the Consultation.

Question A13.6: Do you agree with our proposed approach of excluding any pair gain adjustment for the purposes of forecasting D-side and E-side copper capital costs to 2016/17? Please provide reasons to support your views.

EE has no views on this question at this point in time.

Treatment of cumulo rates within the charge control

Question A14.1: Do you agree with our proposed approach to the treatment of BT's cumulo costs in the calculation of regulated charges for WLR and MPF? If not please explain why and tell us how you would propose to treat these costs and outline the calculations that would be involved.

EE does not have strong views in relation to the continuation of the pre-existing approach to cumulo costs in the calculation of regulated charges for WLR and MPF given that this issue has been considered previously by the Competition Commission. However, EE does not that cumulo costs are essentially a common costs between the two services and cannot see a justification in the Consultation for therefore using a different approach to other common costs which are simply equally apportioned between MPF and WLR services.

Cost of capital

Question A15.1: Do you agree with our proposed approach to estimating the cost of capital of BT Group, Openreach and Rest of BT? Please provide reasons to support your views.

EE does not have any comments on the cost of capital figures Ofcom is proposing to use.

Annex A – Competition Economists Group Report