[NON-CONFIDENTIAL VERSION]

Fixed Narrowband Market Review and Network Charge Control

Call for Inputs

Response by TalkTalk Group

28 June 2012

Introduction

TalkTalk Group ("TalkTalk") welcomes the opportunity to comment on the call for inputs from Ofcom ahead of the formal consultation on the fixed narrowband market review and BT network charge controls.

TalkTalk operates the largest next generation network (NGN) in the UK and is approaching 2,700 unbundled exchanges. Over the past few years, we have engaged with Ofcom on virtually all of the key issues raised in this call for inputs. In many respects, the questions posed by Ofcom are materially the same as those considered in the 2009 narrowband market review, 2009 NCC and two policy projects regarding NGNs[1]. To date, TalkTalk has been disappointed by the lack of progressive policy thinking by Ofcom and particular its continuing policy of setting interconnection charges based on legacy TDM technology which creates an environment that discourages investment in more efficient NGNs and distorts competition. We think that this approach has been heavily (and inappropriately influenced by Ofcom's unjustified (in this case) policy preference to base BT's charges on the basis of the technology that BT happens to be using rather than the most efficient technology.

The 2012/13 fixed narrowband market review therefore offers Ofcom the opportunity to repair its past mistakes and adopt a policy framework that supports innovation and investment (in NGNs) and encourages operators to abandon costly TDM networks in an efficient manner. TalkTalk believes this policy framework must consist of the following cornerstones:

(i) The network charge controls should be based on NGN topologies and NGN costs. Since BT has not yet built a national NGN, Ofcom needs to create a bottom-up NGN cost model. The network charge controls should ensure that relevant interconnection rates move to NGN costs over the three-year charge control period.
(ii) Fixed termination rates should be set using (pure) LRIC and should apply reciprocally to all fixed operators in the UK.

[1] Next Generation Networks Responding to recent developments to protect consumers, promote effective competition and secure efficient investment (Statement 28 January 2010) and Fair and reasonable charges for fixed geographic call termination Statement and final guidance (Statement 27 April 2011).

(iii) Common costs (i.e. NGN common costs) that are not recovered in the fixed call termination cost stack should be recovered through BT call origination i.e. CPS and IDA charges.

(iv) BT (and other operators) should be required to offer IP interconnection at a maximum of **[CONFIDENTIAL]** handover points in the UK. The requirement should apply as from 1 October 2013 and could be met either by an operator's own IP interconnection solution or through the purchase of a commercial wholesale IP interconnection solution.

By adopting a forward-looking and future-proof policy framework, Ofcom will ensure that existing competition distortions are removed and that ultimately consumers do not pay more for phone calls to fixed networks than they should have to do. An NGN-based network charge control is in the best interest of competition and consumers and the only one that fully discharges Ofcom's statutory duties.

Lastly, it is important to note the European context to this. The European Commission recommends that fixed termination rates are based on NGN costs (and pure LRIC) and several countries member states have implemented this approach. [2] It would be quite extraordinary for the UK to risk becoming a laggard by continuing to base termination charges on legacy TDM costs.

<u>**Responses to Ofcom questions**</u>

Section 2: Scope of the market review

Question 1: What are the main issues we should examine in this market review?

In this market review, the fundamental issues for Ofcom to examine are whether BT network charge controls should be modelled on NGN topology/costs (rather than TDM) and whether termination rates should be set using LRIC (rather than LRIC+). These are by no means new issues and Ofcom will be very familiar with the arguments both for and against. It can be expected that BT will lodge strong objections to using an NGN cost modelling approach since the current situation of TDM-based interconnection charges means that NGN operators subsidise BT (and other operators using TDM). This means Ofcom would be required to set BT's network charge controls based on a bottom-up NGN cost model that is independent of BT's own costs. However, there is overwhelming evidence that this is the right approach to drive the right behaviour in these economic markets.

From the above, there follows a number of other issues that Ofcom will need to consider, including:

- requirement to provide IP interconnection and according to what time scales;
- question of allocation of common costs not recovered in call termination cost stack due to use of (pure) LRIC; and

[2] Analysys Mason Report for Ofcom, Study of approaches to fixed call origination and termination charge controls, 15 May 2012.

- impact on pivotal network services, in particular the average porting conveyance charge (APCC), that are not formally subject to (current) network charge controls but nonetheless use some of the same BT network elements.

Question 2: Are there particular problems or issues in these markets that this review should address? Where you identify a problem, please explain why you believe regulation to be an appropriate response?

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Section 3: Retail Markets

Question 3: What are your views on the current state of competition in the market for retail narrowband services in the United Kingdom (excluding the Hull area)? How do you think this might change over the next 3 to 4 years?

It is reasonable to assume that the retail markets (excluding the Hull area) would be no less competitive now than they were in 2009 at the time of the previous narrowband market review. The retail narrowband markets are likely to become (marginally) more competitive over the next 3 to 4 years.

Question 4: What are your views on the state of retail competition in the market for retail narrowband services in Northern Ireland?

We are not aware of any developments that would alter Ofcom's conclusions from the 2009 market review that Northern Ireland should be considered as part of the rest of the UK market.

Question 5: What are your views on the state of retail competition in the Hull area?

TTG does not provide retail services in the Hull area so is unable to comment on this question.

Section 4: Wholesale Markets Definition and SMP

Question 6: To what extent have changes in wholesale charges (such as for wholesale call origination and termination) affected the pricing of retail services, including line rental charges, number of bundled minutes, bundle composition and call prices? Please distinguish between residential and business packages where appropriate.

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Question 7: Do you consider there has been a sufficient increase in the competitive constraint from mobile and/or VoIP on wholesale call origination since the last market review such that they should now be included in the same relevant market? Please distinguish between the direct and indirect constraints from each where appropriate.

In relation to mobile, Ofcom's market analysis shows an increase in mobile connections and minutes versus a decrease in fixed connections and minutes. It is difficult to say without more detailed market research as to whether end-customers consider mobile and fixed to be substitutable. We would observe that mobile phone still suffer from lower quality and reliability compared to fixed-line phones. There is very little that has changed in this regard since 2009. It is also interesting to note that the total mobile and fixed minutes showed a decrease in 2011. This may be a sign of end-customers shying away from making calls altogether in favour of other methods of communications, e.g. instant messaging, social media applications, text and email. In any event, we believe much stronger evidence would be needed (e.g. market research) before one could draw any sensible conclusions as to whether mobile and fixed-line services can be considered to be substitutable.

In relation to VoIP, it is difficult to tell from Ofcom's analysis whether so-called unmanaged VoIP (e.g. Skype where the provider of VoIP services does not offer the broadband connection to the customer) is increasing in usage. The market data is based on interviews with customers as to whether they are using VoIP services over their broadband connection. It does not show the number of minutes of VoIP usage to enable a comparison with normal fixed telephony usage in the same way as Ofcom is presenting data in relation to mobile. It might be argued that VoIP over broadband is more prone to be or become substitutable with fixed telephony compared to mobile telephony because VoIP is more likely to be considered akin to fixed line (in the future may be because customers might not be able to tell the difference).

Question 8: As the deployment of LLU has increased, should services provided over LLU be considered in the same relevant market as wholesale fixed call origination services provided by BT?

We agree with Ofcom's proposal to use a similar approach as in the 2009 review when considering the constraint from LLU on wholesale call origination.

Question 9: To what extent do you think that competitive conditions vary materially in different areas, or is fixed call origination subject to broadly similar competitive conditions across the country?

We do not believe that competitive conditions for fixed call origination can be said to vary "materially" in different areas of the country. Although the take-up of full LLU has increased since 2009, it is very likely still the case that cost of fixed call origination forms only a small part of the total cost of the line rental and call bundle.

Question 10: To what extent do you think there has been a material change in competitive conditions that would impact our SMP analysis for wholesale call origination on fixed networks?

We do not believe there has been any such material change in competitive conditions since 2009.

Question 11: Do you consider that individual CP's number ranges are a relevant factor in defining the relevant market in fixed call termination?

We are not sure that it would make any material difference to the market definition whether one considers the number ranges of individual CPs. We will offer further views in response to the consultation document.

Question 12: Do you consider that there have been any changes in the markets for fixed call termination that would be relevant in our assessment of SMP in these markets?

We are not aware of any such changes.

Question 13: Does the deployment of NGNs by a number of CPs change the way we might define the markets of wholesale call origination and termination? For example, should the definition of these markets take into account the reduced number of points of interconnection that would exist in an NGN?

This is a very important question which goes to the heart of the debate into which Ofcom needs to enter as part of this market review. In 2009, Ofcom opted to use TDM rather than MEA since, we fear, Ofcom was persuaded by BT that it was going to deploy its NGN network (21CN). As Ofcom points out, this did not happen and we would argue that one of the reasons that BT did not deploy NGN was that Ofcom shied away from using NGN as the modern equivalent asset when setting charge controls thereby weakening BT's incentives to migrate. If BT had been allowed to charge only NGN cost-based origination and termination rates, we might well have seen a very different behaviour by BT and one which very likely would have involved the deployment of an NGN in the current charge control period. It is important that Ofcom avoids falling into the same trap in this narrowband market review and adopts NGN as the modern equivalent asset in line with the Recommendation from the European Commission.

TTG believes that the definition of the markets for wholesale call origination and termination will need to be based on the topology of a typical NGN network which, as Ofcom correctly observes, will have far fewer points of interconnection than a network build using now outdated TDM technology. **[CONFIDENTIAL]**

In essence, TTG envisages a scenario where the network charge controls are calculated using a bottom-up model of NGN costs. It could not be based on BT's costs because BT has not built an NGN yet (and even if BT had, Ofcom would still need to build an independent model to ensure that BT's costs were efficiently incurred and that any charge controls were set independently of BT's costs to ensure the appropriate cost reduction incentives exist).

The new network charge controls would have to go hand-in-hand with an obligation on BT to accept traffic handover as IP at a specified number of locations in its network (these locations would have to be specified in a sensible way based on standard engineering practices). It would be up to BT how it sought to arrange its network accordingly. If it chose to build an NGN network, it could naturally do so. However, if BT chose to maintain its TDM network (even for a shorter period of time), it would still need to accept IP handover traffic and convert the traffic to and from IP (and bear any conversion costs) and receive NGN based charges. Anything short of these principles will only play into BT's hands who will delay its transition to NGN for as long as possible and work against the interests of innovation, investment and ultimately consumers' interests.

Question 14: To what extent has competition in the Single Transit market changed since the 2009 Review?

TTG's main concern with single transit is that it is an unavoidable service when a call is routed via the BT network for termination on our network because the number has been ported. If the call is handed over to BT at the tandem layer, the average porting conveyance charge (APCC) is effectively the single transit charge.

As the number importing operator, TTG has no way of avoiding this charge even if we interconnected directly with originating operator because of the way in which number portability currently works in the UK. The originating operator would always need to route the call to BT in line with the number portability routeing rules. In this context, it is a fallacy to argue that single transit is a cost that can be avoided through direct interconnection. TTG does not have this option.

Ofcom has previously argued that the APCC is regulated separately through GC18. It is true that this provision requires the APCC to be fair and reasonable but we would nonetheless be concerned if SMP regulation was lifted from single transit because it would give BT freedom to increase its charges without any external insight as to the justification for such increase. This would inevitably have an impact on the level of the APCC and quite possibly trigger a dispute that would need to be resolved by Ofcom.

Question 15: Do you think that conditions in the LTC/LTT market have changed materially since the 2009 Review? Please explain why.

We have no evidence to suggest that the conditions in the LTC/LTT market would have changed materially since 2009.

Section 5: Non-Price Remedies

Question 16: What general non-price remedies do you consider appropriate and proportionate to address an SMP finding (for the services covered by this review, including in Hull)? Please give your reasons.

TTG considers that all the general non-price remedies that are currently imposed on BT remain appropriate and entirely proportionate. These remedies are all essential building blocks in ensuring that providers can be confident that BT is offering fair and reasonable terms in a transparent way.

Question 17: Where there is SMP, what do you consider to be an appropriate notice period for the services covered by this review?

TTG remains of the view that the current 90-day notification period is appropriate for the reasons outlined by Ofcom in 2009, e.g. the need for providers to be able to cascade down any price increases to its customers whose contracts normally require at least 30 days' notice. We fail to see how these commercially sound reasons would be any less valid today than Ofcom found them to be only 3 years ago.

We note that Ofcom refers to industry discussions concerning the notification periods within the SIA. Ofcom does need to be aware that these discussions are highly fragmented without any real degree of consensus between providers, including BT. TTG has made clear in these discussions that it favours maintaining the current 90-day notification period for regulated services.

Finally, we note that Ofcom says it has accepted a dispute in relation to the notice periods applicable under the SIA. We do not understand this reference. There is only one published dispute concerning the SIA but, according to the Ofcom website, the scope of this dispute is as follows:

> *"Whether the operation and/or effect of paragraphs 12 and 13 of BTs Standard Interconnect Agreement ("SIA") is such that they constitute fair and reasonable terms or conditions as between the parties to the dispute; and*
> *Whether, in light of Ofcoms conclusions on the above question, Ofcom should exercise its powers to give a direction under section 190(2)(b) and/or section 190(2)(c) of the Communications Act 2003."* [3]

We are reasonably familiar with the background to this dispute but we fail to see how it relates to the specific issue of <u>notification periods</u> under BT's SMP obligations. It would be useful if Ofcom could clarify this point.

[3] http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01083/

Question 18: Were we to find that BT has SMP in wholesale call origination, do you consider that CPS and IA remain appropriate remedies?

We believe that CPS and IA remain appropriate remedies in the event Ofcom finds that BT continues to enjoy SMP status in the wholesale call origination market. Although the number CPS lines have decreased (currently stands at 2.43million lines[4]) mainly due to the impact of LLU MPF, CPS is an important regulated access method in areas where a large LLU operator like TTG has not been able to unbundle (because it is uneconomic to do so). Also CPS and LLU MPF are not direct substitutes and there is a market for customers who do not want or need a line rental / calls / broadband bundle but only calls which only CPS can serve.

We do not believe that it would be sufficient simply to fall back on a general network access obligation on BT as this would not provide the same regulatory certainty (e.g. BT may choose to withdraw CPS and require a provider to make a request for network access with no guarantee that this would be made on the same commercial terms as CPS after years of regulatory intervention and dispute wrangling).

Question 19: If we find that BT has SMP in wholesale call origination, do you consider that specific remedies are required for NTS call origination?

We believe it would be appropriate to retain a simple obligation on BT to originate NTS calls to ensure that BT given its continually strong market position does not have any distorted incentive not to originate calls to certain NTS numbers. Assuming that the proposals set out in the 2012 NGCS consultation are eventually implemented, there would be no apparent need to impose any more complex obligation on BT. Indeed, under the proposals, the link between BT's retail price and retailing costs (discounts, PRS bad debt, etc) would no longer exist such that BT would not be able to influence the level of the termination charge (or service charge as it is called under Ofcom's proposals. The key thing is that Ofcom ensures the two move in tandem, i.e. that the NGCS programme is completed before or at the same time as the narrowband market review. It would be unacceptable to lift BT's existing NTS call origination obligation ahead of the conclusion of the NGCS review.

Question 20: Should operators of TDM networks be required to provide an IP Interconnection service?

Yes we believe IP interconnection (where the handover of traffic between networks is done using IP technology and format) would be a necessary and proportionate requirement to impose on all TDM operators in the UK (although in particular BT). IP interconnection should be provided at one or more points of interconnection depending on where the TDM operator wished to receive the traffic. In commercial reality we do not believe this is a particularly onerous requirement since there are providers who are able to convert traffic IP-TDM-IP by way of a wholesale service (e.g. BT IP Exchange) if the TDM operator felt that it would be unfeasible to develop an IP interconnection service themselves.

[4] http://www.offta.org.uk/updates/otaupdate20120612.htm

Question 21: If so, at how many points of interconnection should this be provided and how would this relate to the currently defined wholesale markets?

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In some more detail, we believe an IP interconnection regime would need to meet the following key requirements:

- The benchmark FTR would be set as the cost of conveying traffic in an efficient NGN from a point of interconnect (POI) to an MSAN (at an MDF site).
- Other operators wishing to terminate traffic on BT's network would need to handover traffic at the right POI (i.e. the parent POI) of **[CONFIDENTIAL]** (max) POIs.
- BT could accept traffic at other POIs but would be able to charge transit fee to get from POI to parent POI.
- BT could have more than **[CONFIDENTIAL]** POIs if it wanted (but other operators would not have to use more than **[CONFIDENTIAL]** to cover termination in the whole of the UK).

When a TDM operator offers an IP interconnection service, they would be able to charge no higher than the "benchmark FTR" in order to create the right incentives to migrate their own network to IP. In other words, the TDM operator should not be able to charge any form of additional transit rate for conveying the call from the IP point of handover to the point of termination.

In addition, it would be a poor and unacceptable outcome if the IP (local) termination rate under the new charge controls would end up higher in absolute terms than the current BT DLE rate. BT should not be able to argue that its IP termination rate must be higher to cover conveyance across a greater distance in its network since this is precisely what TalkTalk has effectively been denied by Ofcom from doing in TalkTalk's existing NGN.

Question 22: If not, what should be the arrangements for interconnection between IP and TDM networks and associated charges?

Not applicable.

Section 6: Pricing Remedies

Question 23: If we find that BT has SMP in wholesale call origination, which, if any, pricing remedy do you believe would be appropriate to address such SMP? Please explain why.

We believe a price control on wholesale call origination will remain a necessary and proportionate SMP remedy on BT. Despite the roll-out of full LLU, BT's position in the wholesale call origination market remains very strong. Indeed we calculate BT still has a market share of wholesale exchange lines of about over 66% (with a similar market share in wholesale call origination).[5] This market share is a strong indicator of BT's continued market power which would justify the imposition of price controls to ensure BT's pricing behaviour does not harm competition.

Question 24: If a charge control remedy is appropriate for call termination, do you agree that we should follow the 2009 EC Recommendation and cap FTRs at pure LRIC?

Yes we agree. There is no justifiable reason that we can see as to why Ofcom should not cap FTRs at pure LRIC. Setting FTRs above pure LRIC has the potential to distort competition since a higher FTR would increase the expected marginal cost to a fixed network operator who needs to consider the possibility that the call will be destined off-net rather than on-net. A relatively smaller network like TalkTalk is likely to have proportionately more off-net calls (compared to say BT) because its customer base represents a smaller proportion of the overall fixed customer base in the UK. A termination rate above pure LRIC therefore disadvantages TalkTalk over BT which has much larger network.

We would also note that setting FTRs at pure LRIC would also remove any distortion there may be in relation to mobile networks whose termination rates are set at pure LRIC (pending any further litigation).

Finally, we would note that what the 2009 EC Recommendation requires is "that Ofcom has the utmost regard to its provisions. Thus, Ofcom may not disregard the Recommendation, nor treat it lightly, and it should have good reasons as to why some other way of exercising its powers has more salience."[6] We fail to see any good reasons in this case as to why Ofcom would or should be able to depart from the Recommendation. We would note that several other European countries had fully adopted the principles of pure LRIC and NGN-based charges as set out in the Recommendation.

Question 25: The 2009 EC Recommendation states that the core network cost model "could in principle be Next Generation Network (NGN)-based". Do you consider this to be an appropriate approach to cost modelling for this review?

We believe that an NGN-based approach to cost modelling is the only reasonable approach that Ofcom can take in this review. It is the single "right answer" that Ofcom must choose in order to meet its statutory duty to promote competition and protect consumers from harm for the simple reason that, as Ofcom accepts, NGN networks are more efficient for new operators <u>and</u> BT (see e.g. "*…we consider that interconnected NGNs are likely to be the most efficient ultimate outcome, …*"[7]). The setting of termination rate according to the cost of

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[5] According to Ofcom's Telecommunications market data tables Q4 2011 and the OTA's latest update, BT had 22,070 exchange lines (retail + wholesale line rental) out of a total of 33,230 exchange lines in the UK (residential and business). Similarly BT originated 78,128 million minutes in the same period (retail + indirect access) out of a total of 116,764 million minutes originated from fixed networks in the UK in the same period. See http://stakeholders.ofcom.org.uk/binaries/research/cmr/telecoms/q4-2011.pdf and http://www.offta.org.uk/updates/otaupdate20120612.htm

[6] Cable & Wireless UK v Office of Communications, *Case 1112/3/3/09, para 2.22. http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/appeals/communications_act/final_determination_excised_version_for_publication.pdf*

[7] §1.11 Fair and reasonable charges for fixed geographic call termination. Statement and final guidance

technologically outdated TDM infrastructure promotes inefficient investment, distorts competition and ultimately forces consumers to pay higher call prices than they otherwise would do.

We would argue that Ofcom's failure in 2009 to adopt an NGN-based approach to cost-modelling gave BT commercial and financial scope to slow down considerably its 21CN programme and opportunity to maintain its inefficient TDM network infrastructure (at least for longer than it otherwise would have). This happened due to a number of factors:

- TDM based charges are higher and BT, as a net recipient, is commercially better off with higher rates.
- Under TDM-based rates egress costs for TDM operators are lower since they are able to terminate traffic on NGN networks by handing over at a few POIs yet only pay the benchmark FTR (i.e. LES rate).
- Under TDM-based rates egress costs for NGN operators are increased since they need to maintain expensive TDM networks.
- Under Ofcom's approach of basing charges on the technology BT happen to be using ('anchor based' approach) BT know that if they migrate to NGN termination charges would decrease. This unequivocally weakens BT's incentive to move.

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For a long time, it has been beyond dispute that NGNs are based on proven technology that is much more efficient than TDM.

Question 26: What in your view would be the best way to calibrate such a model, given that BT does not yet operate a national NGN?

We do not believe that the task of calibrating an NGN cost model would present any significant difficulties. There are plenty of sources that Ofcom could use, including models produced by regulators in other EU member states. Ofcom will also have a very good understanding of current traffic volumes in the UK. **[CONFIDENTIAL]**

The key thing with the cost model is that Ofcom must share it in its entirety with all stakeholders (as is done for MTRs). Given that it will not be based on BT's costs, there is no reason why any of it would be confidential. By publishing the cost model, Ofcom will give all stakeholders the opportunity review and criticise it which will ensure that the model is robust and capable of withstanding in-depth scrutiny (e.g. in any possible appeal proceedings).

Question 27: The 2009 EC Recommendation recommends the use of economic depreciation "wherever feasible". Do you consider this to be an appropriate approach to cost modelling for this review?

Economic depreciation tends to smooth network unit costs based on longer-term forecasts of network utilisation over the whole life of an asset. That is, the same present value of capital costs is recovered, but the path of unit costs will differ from that of accounting depreciation if volumes are changing over the investment horizon. For example, with high initial upfront expenditure and low initial volumes on the network accounting depreciation would suggest very high initial unit costs. In principle, we do not see any problem with applying economic depreciation to NCC services although it would be useful to understand Ofcom's reasoning around this issue in some more detail. It might be that declining fixed call volumes is an issue that would need to be considered in any implementation of an economic depreciation model.

Question 28: With termination rates set on the basis of pure LRIC, from which other services should common costs previously recovered from fixed call termination now be recovered?

We agree with Ofcom's statement that under pure LRIC, CPS and IDA operators "will benefit from paying lower FTRs and will not have to rebalance their own prices to continue recovering common costs."[8] There is a strong argument to say that CPS and IDA operators should bear the increased cost burden to avoid creating a competitive distortion in the retail calls market.

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Question 29: How soon would stakeholders consider it appropriate and practicable for FTRs to be aligned to pure LRIC?

FTRs should be aligned to pure LRIC (and NGN costs) as quickly as possible and reasonably no later than using a three-year glide path similar to the current MTR charge control regime (it is in any event too late to meet the deadline of 31 December 2012 as set out in the European Commission Recommendation).

Question 30: Do you agree that we should follow the 2009 EC Recommendation and regulate the termination rates of all fixed CPs at a symmetric level?

Yes, we believe symmetric termination rates for all fixed CPs is appropriate although provided that IP interconnection is available. If a CP does not offer IP interconnection themselves, they need to be responsible for paying for such service from BT (e.g. BT IPExchange).

Question 31: Is it more appropriate to achieve symmetry of fixed termination rates by imposing a 'fair and reasonable' condition or a charge control on all providers with SMP in fixed call termination?

We believe it is sufficient to continue with the current practice of imposing a "fair and reasonable" condition on all providers (i.e. CPs other than BT) with SMP in fixed call termination. We do not believe it is proportionate or indeed necessary to impose a charge control on all providers provided that Ofcom continues with its policy of allowing CPs to

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[8] Call for Inputs, para 6.31.

charge a maximum of the BT local termination rate (DLE currently in TDM or the equivalent in an NGN).

Subjecting CPs to a charge control (which would bring with it an obligation to produce a cost model) would be overly burdensome and would also arguably mean individual termination rates for each CP (even if the variance was small) which would be confusing and unnecessarily complicated.

Question 32: Are different "time-of-day" rates likely to be important in setting efficient wholesale call rates for call termination and origination during the period from 2013-2016?

We believe that time-of-day variations are likely to become unnecessary for traffic management purposes in much the same way as for mobile termination rates.

Question 33: Is there any reason not to adopt a maximum ceiling for regulated wholesale call conveyance rates – similar to our approach in the regulation of mobile call termination?

We do not believe this would be necessary. There is no evidence of "flip-flopping" practices in fixed termination rates. Besides such practices by BT would presumably be rather pointless since all other CPs would effectively be required to follow the same practice due the reciprocity arrangements for fixed termination rates. Besides, fixed termination rates are so low compared to past mobile termination rates such that it is questionable whether "flip-flopping" would be commercially attractive.

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