Dear Ciaran,

OFCOM Charge Control Review for WLR and LLU Services

Global Crossing welcomes the opportunity to offer our comments in response to Ofcom's review of BT's charges for LLU and WLR services. We appreciate the brief extension that Ofcom has afforded. While we do not currently make direct use of LLU services, other than space in BT exchanges, they do however form an input component of the EFM services on which we rely in supporting our business customer base. We also make extensive use of WLR 3 and our comments below are set in this context.

Our main area of concern surrounds the potential for RPI +7.5% increase in Co-Mingling and ancillary services ✂

✂ If UK inflation remains around the 5% level, the consequence of an RPI + 7.5% annual increase could mean that prices for co-mingling and ancillary services might double each 6-7 years and the implication of such a rapid price increase in accommodation costs would, in our view, have unwelcome consequences for the managed service market. We therefore urge Ofcom to pay particularly close attention to this issue when considering the extent of any permitted rebalancing.

There follows our comments in response to the specific questions set out in the consultation:

Question 3.1*: Do you agree with Ofcom's proposal to set synchronised charge controls for LLU and WLR?*

> We support Ofcom's agreement to interim charge caps as the best practical means of dealing with the overrun from the end of the previous charge control period. Likewise, we support Ofcom's proposal to shorten the notification period to 28 days for the commencement of the new control period once Ofcom's final Statement is published later this year. We also support the synchronisation of this initiative with related work on WBA and ISND 30 WLR.
>
> ***Question 3.2****: Do you agree with Ofcom's proposal to set charge controls for LLU and WLR to expire on 31 March 2014?* We agree that the new charge control period should conclude 31 March 2014. The current analysis is required to address several 'moving parts' which are not yet mature and the picture will become much more clear by 2014.

Question 3.3*: 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 give reasons for your answer. (Note that respondents are also invited to comment on continuation of the RAV approach in Question 3.5 below.)*

We agree with use of CCA FAC (adjusted as appropriate) as the economic cost basis for the analysis.

Question 3.4*: Do respondents agree with our proposal to apply anchor product pricing as a guiding principle in setting the charge controls, whilst including economies of scope which result from the allocation of costs in our financial modelling? Please give reasons for your answer.*

We agree with 'Anchor customer pricing' as a means to safeguard existing customers. In this case, however, we anticipate that new technology will be inherently more economical to supply and maintain, hence we anticipate that future charges will fall below this mark. We would not expect the charge model to create any disincentives for switching to suitable modern equivalents and would expect that migration costs from current technology to the NGA equivalent should be borne by BT in order to increase the incentive for switching.

Question 3.5*: Do you agree with our assessment that the decision on the treatment of pre-1997 duct assets set out in the 2005 Valuing BT's Copper Network remains appropriate for this set of charge controls? If not, why do you consider that the basis of valuing pre-1997 assets should change and what valuation basis should be used?*

We agree with Ofcom's observations in relation to the significance of BT's audit by PWC and that BT appears to have significantly over-estimated the Net Replacement Cost for its duct network. While we also agree with Ofcom's identification of the issues, we believe that this issue is of such significance and affects such a wide range of regulated services, that it may have warranted a separate consultation in its own right.

Question 3.6*: We note that we would expect that the difference between the charges for MPF and PIA should be at least as great as the difference in their respective incremental costs. Thus, if we maintain the RAV adjustment in copper based access services, we would expect that any assessment that we make of duct access charges would reflect a consistent approach to asset valuation, recognising the RAV adjustment. In reaching this view we have taken utmost account of the European Commission's recommendation on NGA. Do you agree with this assessment of the need to recognise the RAV adjustment in the setting of duct access charges? If not, please give your reasoning.*

While Ofcom's reasoning does appear to be logical, our lack of firm commercial/pricing information somewhat impairs our ability to make a fully reasoned submission on this point.

Question 3.7*: Do you agree that it remains appropriate to value post-1997 assets on a replacement/CCA basis? If not, please give your reasoning.*

✂ on balance we support Ofcom's reasoning in favour of CCA for post-1997 assets.

Question 3.8*: Do you agree with our assessment that as BT's recent valuation of post-1997 assets is not consistent with alternative estimates of replacement values it does not form a appropriate basis for setting charges? If not, please give your reasoning.*

We agree with Ofcom's reasoning ✂

Question 3.9*: Do you agree with our proposal to include a valuation of duct in the charge controls based on indexation of post 1997 expenditure? If so, should this indexation be based on RPI; GCSI or*

GCSI adjusted for either productivity, scale economies or both (the detailed examination of these indices is set out in Annex 4? Please give reasons for your answer.

We disagree with Ofcom's intended continued use of RPI and note the Competition Commission's comments relating to inflation measures as highlights by Of com in its 2008/9 Leased Line Charge Control. We propose that Ofcom should conduct a thorough analysis of the inflation index issue, especially to consider whether (i) GCSI (adjusted or not) and RPI in relation to duct valuations and (ii) more generally, whether CPI would be a more suitable inflation index than RPI in relation to this and all other charge controls.

Question 3.10*: Do you agree with our proposal to discount the indexed value by an estimate of a national roll out of duct? If so, do you consider BT's estimate of 14.5% to be appropriate? If you disagree with our approach please give your reasons.*

We do not believe that the accuracy of BT's clamed 14.5% figure has been rigorously established and we would therefore expect that a thorough examination of this claim should be conducted before reliance is placed upon the figure.

Question 3.11*: Our range for the duct value is defined by the degree to which BT is able to establish contracts with cost below the national average? Do you consider that it is reasonable to expect BT to achieve below national costs on average?*

It most certainly is to be expected that any procurer of a contract on such a large scale as the one being considered here would be able to achieve a lower than vearage charge for at least two reasons. Firstly, the economies of scale that the contractor/s would be able to deploy would enable considerable efficiency gains to be made. Secondly, ✂

Question 3.12*: Do respondents agree with our preferred approach to use glide paths to align charges with costs except in the circumstances discussed above where one-off adjustments may be preferable? Please give reasons for your response.*

Global Crossing broadly agrees with Ofcom's proposal. However, our reasoning is contingent upon Ofcom implementing the other steps that it has proposed in this consultation.

Question 3.13*: Do you agree with Ofcom's proposal to impose the arrangements for charge control compliance and requirements for provision of data set out in Annex 13? Please give reasons for your answer.*

We believe that it is important to maintain an obligation on the SMP party (a) to accept the burden of proof and (b) to ensure to Ofcom's satisfaction that each and every service that is subject to the control is cost-oriented.

Question 3.14: *Do you agree with Ofcom's proposal to use the RPI as the appropriate measure of inflation for indexation? Do you agree that change in RPI for the year to 31 October preceding the start of each Relevant Year should be used? Please give reasons for your answers.*

We disagree with Ofcom’s intended continued use of RPI and propose that Ofcom should conduct a thorough analysis of this issue, especially to consider whether CPI would be a more suitable inflation index than RPI in relation to this and all other charge controls.

Question 3.15*: Do you agree with Ofcom’s proposal to retain provisions for “Carry Over” in the new controls? Please give reasons for your answer.*

While we generally support Ofcom’s proposed ‘carry over’ approach, we propose that Ofcom should give a clear indication that if any service is found to have significantly breached cost-orientation obligations then a strong approach to remedial measures will be considered.

Question 3.16*: Do you agree with Ofcom’s proposal that charge changes made under the new controls prior to April 2012 should be made with a minimum 28 days notice? Please give reasons for your answer.*

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Question 3.17*: Do you agree with Ofcoms proposal that charge ceilings for key services should be set for the 1st period of the new controls – i.e. the period between the first day of the new controls and 31 March 2012? Please give reasons for your answer.*

We acknowledge the question, but do not believe we have sufficient information on which to base an informaed response. However, we note that the charge changes for WLR and, particlarl, LLU services are relatively quickly flowed through into retail offerings so we propose that the solution is guided by analysis of what outcome will be better for the consumer.

Question 4.1*: Do you agree that we should set separate line rental charge controls for (i) MPF rental and (ii) SMPF rental?*

Until the cost stack information has been fully analysed, we are unable to give definitive views. However, we would note that the technical and back office elements associated with shared facilities is likely to be different than for the MPF variant and these cost elements may vary over time at a rate that differs from the external plant- related costs. ***Question 4.2:*** *Do you agree that separate baskets for MPF ancillary services, SMPF ancillary services and co-mingling ancillary services is appropriate and proportionate to mitigate the opportunity for gaming while providing Openreach some flexibility to efficiently adjust prices?*

We agree there is a valid concern here, and do not accept that the use of sub caps is unduly burdensome on either the SMP operator or the regulator.

Question 4.3: *Do you agree that we should set basket-specific controls as opposed to a single control which is applied to all baskets?*

Yes, we also agree that basket-specific controls are appropriate. Any efficiencies gained from a new co-mingling product for example can be reflected back in the appropriate basket and not diluted so that CPs for example that consume Co-mingling products but not LLU MPF or SMPF receive the maximum benefit.

Question 4.4: *Do you agree that measuring compliance of basket controls against prior year volumes (as opposed to current year volumes) is an appropriate and proportionate approach to charge controlling ancillary services?*

✂.

Question 4.5: *Do you agree that inertia clauses applied to the ancillary services baskets should tightened from their current level of 10%? Please give views on the appropriate level of inertia clauses in the range 2% to 7.5%.*

This is, to us, one of the most critical areas under consideration and we have outlined in our introductory remarks that the potentially significant price increases in actual terms could have significantly adverse implications across a range of retail products that depend on BT access products for input.

✂ regarding comingling of 2% to 7.5% has not been adequately justified and is much too high.

We would expect that he existence or lack of an EoI safeguard would be a material consideration and urge Ofcom to cover this issue in its continuing work here.

We also feel the values here should be reviewed in light of the revised co-mingling product offering to be introduced during this charge control period and also because of the possibilities for over recovery for the supply of electricity services referenced in our response to question 4.17 below.

Question 4.6: *Do you agree that we should not align or intervene to narrow the differential in charges for MPF and SMPF expedite?*

We believe that the installation ofSMPF facilities is inherently more complex and hence should be more expensive to supply than the MPF variant.

The Right When Tested (RWT) charge at £81.60 appears unacceptably high. ✂

Please see attached ✂

We note that Industry is concerned that even at this price, BT may be potentially over recovering their costs. We would therefore like Ofcom to take a closer look at the £81.60 RWT charge to understand if there is the possibility this could be happening here.

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in relation to whether the differential between MPF and SMPF should narrow, we note that BT has not yet justified the 35% figure and should be required to do so prior to or in relation with any decision on the differential..

Question 4.7: *Do you agree that we should align the price jumper removals?*

We disagree with the alignment of jumper removal prices since the situation is inherently more complex for SMPF

Question 4.8: *Do you agree that we should use the weighted average of current prices to estimate the 2010 price of the service for jumper removals?*

> *While a weighted average approach may be possible, we would prefer that Ofcom conducts a bottom-up analysis of the actual technician and other costs involved.*

Question 4.9: *Do you agree that option 1, that is ensuring alignment of similar charges at the beginning of the charge control period but not imposing any further obligation on Openreach to keep charges aligned, is the most appropriate and proportionate way to avoid competitive distortion caused by misalignment of prices?*

> Global Crossing supports Option 2, ie continued alignment during charge control period.

Question 4.10: *Do you agree that a charge control in the range RPI-9.9% - RPI-12.9% (base case RPI-11.4%) should be imposed on MPF new provide to bring the charge into line with CCA FAC by the end of the charge control period?*

> There appears to us to be an argument here for a one-off reductionto these charges which are considerably out of line with BT's CCA FAC.

Question 4.11: *Do you agree that charge controls in the range RPI-7.7% - RPI-10.7% (base case RPI-9.2%) should be imposed on MPF transfer and SMPF connection to bring the charges into line with CCA FAC by the end of the charge control period?*

> *Notwithstanding our earlier comments, we certainly believe that there is a considerable differential between BT's CCA and their charges and that significant changes are required either at the outset or during the charge control period to bring the prices into line with costs.*

Question 4.12: *Do you agree that the charge for MPF and SMPF cease should be zero and costs recovered from rental charges?*

> We agree with Ofcom's suggested approach ie to remove cease charges and consume the relevant costs throughout the rental stack.

Question 4.13: *Do you agree that the 70 low volume products in the co-mingling basket should continue to be charge controlled within the co-mingling basket?*

> *We do agree with Ofcom's proposal and do not see a strong case to remove any of these elements from such a requirement.*

Question 4.14: *Do you agree that time-related charges should remain out of the scope of the charge control and subject to general remedies applied in the WLA market review?*

> We disagree that time-related charges should fall outside of scope.

Question 4.15: *Do you agree that special fault investigations should remain out of the scope of the charge control and subject to general remedies applied in the WLA market review?*

We have a number of concerns around the handling of SFIs and, as for time-related charges above, we believe these should fall within the scope of this charge control.

Question 4.16: *Do you agree that the charges for special fault investigations should remain aligned between MPF and SMPF?*

We suggest that the SFI costs for SMPF should be higher than for MPF since the connection arrangements are more complex by design.

Question 4.17: *Do you agree that electricity charges should remain out of the scope of the charge control but subject general remedies set in the WLA market review?*

No, GC feels that electricity charges should be in scope, it is our understanding that BTs charges are based around allocated power not consumed power. We understand that BT do include provision for the "overbooking " of power allocation to cover this in their calculations however we feel this may leave them susceptible to the possibilities of over recovery in this area.

We also anticipate that BT will gain efficiencies through the Openreach revised co-mingling product: reduced energy costs, carbon emissions, waste etc in addition to scale economies discussed in our introduction.

Question 4.18: *Do you agree that both MPF and SMPF expedited connections should be charge controlled within the MPF and SMPF ancillary services baskets?*

Yes, on balance, we do support the inclusion of these charges in the anciliary baskets.

Question 4.19: *Please indicate which of the Options 1 – 4 you think would be the most effective method of regulation of LLU enhanced care services. Please indicate whether you think Option 4 (removal of the cost orientation requirement and creation of a new requirement that the charges for LLU enhanced care should not be misaligned from those for equivalent WLR enhanced care services) would be an effective remedy.*

✂, we do not feel sufficiently informed on this issue to offer a considered view.

Question 4.20: *Do you agree that new services which partially or fully replace existing services should be included in the charge controls****?***

Yes we do support the inclusion of replacement/substitution products in the charge control provisions. We do not consider that this would act as a significant disincentive on BT to offer innovative products.

Question 5.1: *Do you agree that the core rental should be subject to a charge control which sets the price of the WLR core rental on a glide path to ensure it recovers CCA FAC costs by the end of the charge control period?*

Subject to our comments elsewhere, Global Crossing supports this proposal.

Question 5.2: *Do you agree that WLR transfer should be subject to a separate charge control? Please give reasons for your answer.*

We do not think this service should necessarily be subject to charge control, provided Ofcom is fully satisfied that the proposed charges are fully justified on a cost orientation basis and that provision is duly made for bulk transfers at a lower pro-rata charge.

Question 5.3: *Do you think that Ofcom should adopt Option 1 or 2 above as its approach to the pricing of WLR transfer during the next charge control? Please give reasons for your answer.*

Our preference is in support of Option 1, subject to our comments above in relation to the continued use of RPI as an inflation index and 5.4 below.

Question 5.4: *Do you think that the cost orientation obligation should be removed from WLR transfer services? Please give reasons for your answer.*

We think that, in practice, the transfer prices should be fixed for the duration of the charge control period and not index linked. This, we believe, can be justified because in future years, the service will be undertaken at an almost insignificantly low marginal cost.

Question 5.5 *: Do you agree that the price for WLR new provide should be subject to a separate control which ensures that the price is aligned with FAC by the end of the charge control period?*

We generally support this proposed approach.

Question 5.6: *Do you agree that a charge control would not be practical for MPF to WLR conversion given the low volume of services?*

Yes, although if there is ever to be a bulk transfer, then we would expect this to be undertaken at a charge which does not penalize the BT customer.

Question 5.7: *Do you agree that charges for MPF to WLR conversion should not be aligned precisely to the charge for WLR to MPF?*

We do not have sufficient information or experience on which to base an informad response.

Question 5.8: *Do you agree that charges for calling and network features should not be charge controlled? Please give reasons for your answers.*

We agree that the remedies identified in the Wholesale Narrowband Market Review should provide adequate protection.

Question 5.9: *Do you agree with that pre-validation charges should not be charge controlled? Please give reasons for your answer.*

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Question 5.10*: Do you agree with that ISDN to WLR conversion charge should be subject to cost orientation obligation but should not be charge controlled? Please give reasons for your answer.*

While we acknowledge the low volumes and generally support the proposed approach, we are also concerned that the current £70 conversion charge is intuitively high and may be worthy of a slightly deeper investigation.

Question 5.11: *Do you agree with that cancellation charges should not be charge controlled? Please give reasons for your answer.*

While we generally support the exclusion of cancellation charges from controls, we are nevertheless concerned that in recent months, Openreach has displayed an appetite to seek additional technician-related charges (eg when the end user denies access). We therefore urge that vigilance and caution is applied in Ofcom's approach to this issue.

Question 5.12: *Do you agree that time related charges should remain out of the scope of the charge control and subject to general remedies applied in the WAEL market review?*

We accept much of what Ofcom suggests, however, we do not accept that it would be disproportionately complex and/or onerous to require BT to report the revenues it receives from TRCs. Such reporting may indicate whether TRCs area an area that should be further investigated in future and immediate reporting obligations may ✂

Question 7.1*: Do you agree with our general approach to estimating costs?*

While we agree with the general approach, we would counsel that any significant discrepancies with the RFS be adequately investigated.

Question 7.2*: Do you consider the task times to be reasonable? If not, please provide your reasons and alternative view, together with supporting evidence where possible.*

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Question 7.3*: Do you have any views on our proposed assumptions regarding Openreach's ability to reduce costs through efficiency gains.*

We anticipate that BT will gain efficiencies through the Openreach revised co-mingling product: reduced energy costs, carbon emissions, waste etc in addition to scale economies from using a single base product to replace the existing portfolio. ✂

Question 7.4*: Do you have any views on our proposed assumptions regarding the impact of inflation on Openreach's costs through efficiency gains.*

We observe that in past charge control exercises, ✂

. In relation to the inflation measure, we have given our views above.

Question 7.5: *Do you have any comments on our proposed approach to dealing with the changes in the cost of replacing the copper assets?*

We accept that the value of copper has risen in recent years and that, other things being equal, a holding gain may be appropriate. However, in practice, it is likely that any requirement for a copper replacement would be met with the use of optical fibre cable. We therefore believe that fibre costs is more appropriate for use in this analysis.

Question 7.6*: Do you have any comments on Ofcom's approach to projecting costs relating to Openreach's assets.*

We have nothing specific to add in relation to Ofcom's proposed approach.

Question 7.7*: Do you have any comments on the proposed regulatory adjustments to be made in determining the recoverable costs?*

Please refer to our comments above (re Q7.5) in relation to the dropwire issue.

Question 7.8: *What issues should we consider when deciding whether to exclude costs relating to evoTAMs from the regulated cost stacks? If you consider that the costs should be excluded, please provide your reasons. If you consider that they should be included, how should they be allocated across services?*

We would observe that evoTAM costs should apply only to those services for which their use is appropriate.

Question 7.9: *With reference to Annex 12, do you have any comment on our approach to calculating Openreach's cost of capital.*

We observe that BT's asset revaluation in respect of its access network infrastructure (notably ducts and copper) will result in a lower cost of capital that we would expect to see reflected.

Question 7.10: *With reference to Annexes 8 and 9, do you have any comment on our approach to allocating costs*

We have no additional comments in relation to cost allocation.

Question 7.11*: Do you agree with the proposed adjustments to the cost stacks for pricing purposes?*

Subject to our other comments above, we generally support Ofcom's approach.

Question 7.12: *Do you agree with our approach for deriving the glide paths?*

Subject to our other comments above, we generally support Ofcom's approach.**Question 8.1:** *Do you agree with Ofcom's proposal to base charges on CCA FAC provided that this results in differentials between the core rental charges that are not less than the likely differences in LRIC and not significantly greater than the likely differences in LRIC?*

Yes we generally agree with Ofcom's approach here.

Question 8.2: *Do you agree with Ofcom's assessment of the likely differences in LRICs between MPF and WLR/WLR+SMPF?*

Yes we generally agree with Ofcom's approach here.

- End -