Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Charge control review for LLU and WLR services

To (Ofcom contact): Ciaran MacCann

Name of respondent: Aileen Boyd

Representing (self or organisation/s): Scottish and Southern Energy plc

Address (if not received by email):

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Name/address/contact Details/job title No

Whole response No

Organisation No

Part of the response No

If there is no separate annex, which parts?

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Name Aileen Boyd

Signed (if hard copy)

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Our Reference:
Your Reference:

Date: 8 July 2011

Dear Ciaran

Charge control review for LLU and WLR services

SSE welcomes the opportunity to comment on the proposed charge control for the local loop unbundling (LLU) and wholesale line rental (WLR) services provided by Openreach.

SSE has a retail business providing fixed line telephony services and uses WLR as an input to this retail offering. We do not use LLU products and have therefore concentrated, in the attached appendix, on responding to the questions in section 5 of the consultation document, which covers proposals for WLR charges until 2014.

Our main concern about the issues that Ofcom has raised for consultation relates to the effect on competition of applying a range of charges to the switching process that enables customers to move between different suppliers of retail products. In order to promote competition in the retail market, which furthers the interests of consumers in this market, we believe the costs of the WLR switching process should be recovered in a standard “per customer” charge such as the main WLR rental charge itself. This would mean that the costs of the switching infrastructure were borne proportionately across all suppliers in the market according to their customer base and not faced predominantly by suppliers who were growing their customer base – a situation which we think has a distorting effect on competition.

We are therefore very concerned that Ofcom is considering a significant increase to the existing WLR transfer charge. I am copying this response to Gavin Daykin in the Ofcom Consumer Policy team as we believe that this proposal and our responses to the questions are relevant to Ofcom’s work on the strategic review of consumer switching.

I hope that these comments are helpful and would be happy to discuss them if you have any queries.

Yours sincerely

Aileen Boyd
Regulation Manager

Appendix

Consultation Questions

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?
Yes – as this is consistent with Ofcom's approach to setting charge controls more generally.

Question 5.2: Do you agree that WLR transfer should be subject to a separate charge control? Please give reasons for your answers.
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.
SSE has consistently advocated that, in order to promote competition, Ofcom should place a cap of zero on charges made to Communications Providers (CPs) for the service of transferring customers between suppliers. The costs of this service – which we believe would be minimal on a transaction basis once appropriate IT systems are set up – should in our view be covered in the core line rental, which is then competitively neutral between different suppliers.

Other network-based industries such as energy supply take this approach, ensuring that a customer considering switching supplier does not directly (or indirectly via minimum contract periods and liability for early termination charges) face a charge (for this reason) for changing supplier. Part of the rationale for this is to make switching as easy as possible for customers, since a fluid market where switching is easy benefits all customers as suppliers have to be and remain responsive to customers' needs in order to retain them. This establishes a completely different competitive dynamic in a market than a situation where suppliers can rely on "tied in" customers facing cost and hassle to leave them. Ofcom itself has commented on this in some recent statements and consultations around switching processes[1].

We are therefore very concerned about Ofcom's consideration of Option 2, whereby migration charges would be allowed to move to a view of fully built up costs (some £11 to £16 over the period of the charge control) and are wholly opposed to this.

The current level of the WLR transfer charges is relatively low at around £3 and even at this level, it adds unnecessarily to the costs faced by a new entrant or smaller supplier in the communications market seeking to grow its business. Our favoured options in order of preference are:

- **Remove the charge completely and recover the costs through line rental;**
- **Reduce the charge from its current level;**
- **Keep the charge at its current relatively low level.**

Ofcom's Option 1 is worse for us than any of these, in that it proposes increasing the charge by applying indexation of RPI to the current charge. This is unwelcome but, compared to Option 2, if this is the only other option on the table then Option 1 is preferable to Option 2.

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[1] For example, on the strategic review of switching, available at http://stakeholders.ofcom.org.uk/consultations/consumer-switching/

Question 5.4: Do you think that the cost orientation obligation should be removed from WLR transfer services? Please give reasons for your answers.
If this move would support the position of maintaining a low level (preferably zero) of WLR transfer charge, then we support Ofcom's proposal to remove the cost orientation obligation for this charge. In our view, cost orientation is not always necessary to support the consumer interest, especially where that can best be served by promoting competition.

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?
Yes – as this is consistent with Ofcom's approach to setting charge controls more generally.

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.
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?
As discussed above, we would advocate that there is no charge for conversions between MPF and WLR. Ofcom mentions at paragraph 5.33 that there is a low volume of MPF to WLR conversions – the fact that there is a significant charge for the transfer might actually be having an effect on the volumes. To some extent, a competitive distortion does still exist in this market if customers are going to be charged from moving off or onto BT Openreach infrastructure. Other aspects of a customer's experience in moving between these two segments of what – from a customer's perspective – is a single retail market are being considered in Ofcom's strategic review of consumer switching[2]. We urge Ofcom to take the opportunity of market reviews to consider what measures can be taken to promote consumer benefit or address customer detriment as identified by these other pieces of work.

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 have some concerns with this approach. Network and calling features are an integral part of the service a customer expects to receive in this retail market and an unfettered ability for the only provider of those services to increase wholesale charges is not desirable. We accept that it may be difficult to set a robust control on the services due to the fact that use of the features does not incur incremental activity. However, to provide reassurance to the many wholesale customers that charges will not be allowed to increase unreasonably over the life of a control, then perhaps "safeguard caps" at the current price levels could be implemented. We do not see how such a move would limit the ability of Openreach to efficiently recover costs as these have been stated as difficult to identify robustly. Openreach could make the case at each successive market review for amending these wholesale charges if it could demonstrate good reasons for wishing to do this.

Question 5.9: Do you agree with that pre-validation charges should not be charge controlled? Please give reasons for your answers.
In our view, a pre-validation charge is similar to a transfer charge and, following the logic set out in our response to question 5.3, we think it should be set to zero, with the actual costs recovered through the rental charge.

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[2] See previous reference

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 answers.
No comment.

Question 5.11: Do you agree with that cancellation charges should not be charge controlled? Please give reasons for your answers.
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?
These are two further categories of charges that suppliers face in using Openreach infrastructure to deliver retail communications services. We do not believe it is satisfactory for Ofcom to leave market participants relying only on "general remedies" from the market review to constrain the pricing policies of Openreach. Suppliers should not be paying over the odds for these services and there is not a great deal of transparency about how charges are set in these areas.

We note that Ofcom is considering providing cost orientation guidance for the time-related charges and think that this would be helpful. We believe it would also be helpful for Openreach to be required to set out its methodology for establishing these charges as a public document to aid transparency and to justify any changes to the charges – these to be signalled well in advance of implementation.