



4<sup>th</sup> March 2017

## **Response to OFCOM's consultation "Automatic Compensation" dated 24<sup>th</sup> March 2017**

TxRx Communications Ltd is a small fixed-wireless ISP (WISP) in the South of England.

### Executive Summary

The proposed level of compensation at £10 per day (after the first two days) seems totally disproportionate to the value of the product being sold e.g. £24 per month incl VAT.

The proposal to automatically require ISPs to compensate consumers for missed appointments is in principle something over which we have control, but should be a matter for resolution with the consumer directly.

The proposal to pay compensation for delayed provision of service does not reflect the complexity of delivering service via wireless in rural areas and the final survey frequently takes place at the time of installation.

### Applicability

It is not entirely clear from initial reading as to whether this consultation applies only to services provided over fixed cables (twisted pair, coax or fibre). From a telephone conversation with OFCOM it is apparent that the current intention is that it also applies to 'Fixed Wireless Access' (FWA) offered by internet service providers such as ourselves.

Consequently this response presumes that at this point the intention is to include 'Fixed Wireless Access' operators in the scope of the consultation.

### Background

Fixed Wireless Access networks generally use a mix of fibre ethernet and/or Ethernet over FTTC leased lines to provide backhaul connectivity from major data centres to rural locations. The use of microwave licensed fixed links is also commonplace amongst bigger networks to provide sections of backhaul where cost of installing fibre leased lines would be prohibitive.

The 'last mile' is generally delivered to customer premises using narrow bands of permitted licence-free or light licensed spectrum in the 5.5 – 5.8 GHz band. This has both advantages and disadvantages. The advantage is that suitable equipment, based on existing WiFi chipsets is readily available and very cost-effective. The disadvantage is that the spectrum is shared, making it totally impossible to guarantee any form of meaningful service level agreement (SLA). We share the 5.5 to 5.8 GHz allocation with weather radar and a few other groups. This means that all equipment we

**TxRx Communications Limited**  
29 Belmont Heights, Hatch Warren, Basingstoke RG22 4RW, United Kingdom  
Telephone +44 1256 810630 Fax +44 1256 830088

Registered in England and Wales Number 6260998  
VAT Registration Number GB 916 6673 95  
Directors: T J Robinson and C M Robinson

use has to be radar-aware, and retune if radar is detected. This has given us a lot of service issues, primarily due to (what we presume to be) false radar detection. Some 'last mile' access is also delivered via fibre. In some cases there are hybrid fibre-FWA-fibre topologies that mix unlicensed links and fibre in order to get round obstructions.

Many WISPS operate in a very local area, start with a few customers (5 to 10) to meet a need, and grow organically. WISPs also use unlicensed/light licensed 5GHz links for backhaul as they represent an extremely cost-effective solution, but this is also subject to the same problems regarding 'shared spectrum'. Generally it works fine but we are unable to guarantee an SLA.

FWA operators generally cultivate a desperately grateful (and thus very loyal) customer base which has been built on a foundation of local goodwill and a genuine desire to deliver a viable broadband service where the 'big operators' decline to go.

Getting now to some specifics of the document I will outline the major problems associated with the current proposals on compensation.

### Spectrum.

There is no spectrum that is made available by OFCOM for FWA on a licensed basis. Consequently we operate in the narrow bands of unlicensed spectrum. Anyone is permitted to make use of this radio spectrum, and it is shared on a non-interference basis with the primary users that include weather radar. To make matters worse, we have to give way to these primary users, which by OFCOM mandated requirement causes intermittent connectivity for our customers and sometimes extended periods of downtime (30 mins in some cases) but can be ongoing for days. So we could easily be prevented from offering a service by anyone else quite legally with no recourse. If we can find no available channels due to interference from competitors, radar, amateur radio, etc we basically cannot provide service.

Clearly this would represent 'Matters Beyond our Reasonable Control' (MBORC) over which we cannot hold anyone legally accountable, so it seems totally unreasonable to expect operators to compensate customers for something that is not their fault and not anyone else's either.

In fact it is worse than this: OFCOM have refused to allocate any spectrum for use on point-to-multipoint 'last mile' systems on a licensed basis to WISPS, but at the same time are proposing to penalise us if we fail to deliver a service! This clearly does not pass the 'reasonableness' test. We would thus strongly oppose mandatory compensation in these circumstances.

Were OFCOM to provide WISPS with suitable licensed spectrum with guarantees of non-interference, it would be less unreasonable for us to be expected to offer an SLA of some kind, subject to the other caveats and objections raised in this response. But No Spectrum = No SLA.

### Backhaul Connectivity.

Most fixed line ISPs are using wholesale connectivity from the likes of BT, TalkTalk etc and have a very diluted risk. A fibre fault on a BT circuit in one area could affect relatively few customers as a percentage of the whole customer base. This is very different for WISPs. As mentioned previously, we generally focus on a small, hard-to-reach area, and will often only have one leased line delivering service very adequately for some hundreds of customers. Diversity on a leased line in many cases is very expensive or not available, and not commercially justifiable for the very rare occasions we experience a fault.

This therefore does leave smaller providers very exposed. One tractor through a BT fibre could affect 100% of our customer base. We cannot retrospectively renegotiate with BT, Virgin, SSE etc

on SLA and consequential liability for any existing circuits. Even if we take on a new circuit, no provider will take on consequential liability, so we would end up having to take the whole risk.

If BT have to close a main road to re-splice a fibre we could be down for weeks, and the level of compensation that is currently proposed would quite literally bankrupt a small WISP. It would also give an unfair advantage to big providers (who are also competing against us) – delaying the repair of a fibre could be a tempting way to liquidate local competition.

### Case Study Example of ‘Matters Beyond our Reasonable Control’

WISPs sometimes face other problems which are totally beyond our control. In our case, we had around 20 very loyal customers fed from a 5GHz backhaul link running happily for 4 or more years. Recently we observed that a new housing development was being built – with a block of flats going up right across our main backhaul link. This would have totally obstructed the signal causing sudden, complete failure with no easy resolution.

In this case we observed the problem before it caused a failure, but this is not always possible to do as modern buildings go up very quickly. Fortunately we have managed to resolve things with a lot of goodwill from a local business who let us move some aerials onto their land to bypass the obstruction, and we also needed to deploy a new backhaul feed via a different route to feed some of the customers.

But had this not been physically possible, we could, under the new proposals, have had to pay compensation to these 20 customers at £200 per day. How long would our obligation continue? For the duration of the contract with the customer? If so, this could potentially be £6000 per month, which is more than the total monthly revenue for our whole wireless operation.

### Economies of Scale and Spreading of risk

Most WISPs are small scale operations ranging from 10 to a few thousand customers. The big operators benefit from economies of scale that are impossible to replicate in smaller organisations. As explained above, one fibre break could potentially ruin a small business if the currently proposed levels of compensation were to be enforced, whilst in a much bigger company covering a wider geographical area the risks (as a percentage of turnover) are much lower. A lot of WISPs operate on part-time or community funded basis, in order to deliver something to the last 5% of homes and businesses. Anything that discourages entrepreneurial spirit and local goodwill may end up raising the barrier to entry beyond that which is viable.

### Missed and delayed appointments

Missing an appointment is very bad manners, and a local business like ours would not get very far if, unlike some of the bigger telephone companies, we had a reputation of missed appointments. Our view is that this should be purely a commercial arrangement between us and our customers. This proposal is a very blunt instrument clearly aimed at the very largest incumbent monopoly and should not apply to small providers.

From the customer’s perspective it is no more inconvenient to miss a broadband appointment than any other domestic appointment (boiler service, parcel delivery, domestic appliance repair) and it should be emphasised that no contract exists between us and the customer until we have actually

provided the service.

The idea that we should automatically be forced to compensate a potential customer or existing customer more than if we were going to repair the dishwasher or fix the roof does not pass the 'reasonableness' test in our view and we strongly feel that OFCOM is going beyond its remit.

Furthermore, in the case of WISPs there are frequently unforeseen issues which crop up during installation which could not be anticipated from the survey. e.g. obstacles in the way of a radio link that were not visible from ground level, radio interference that was not present during survey, bad weather, high winds, slippery roof, etc. and we always state that a final survey will be done on the day of installation prior to commissioning the service. We feel it is totally unreasonable for there to be a penalty for delay for a service we have not yet committed to supply.

### Proposed Compensation

The proposed level of compensation at £10 per day (after the first two days) seems totally disproportionate to the value of the product being sold, which can be as low as £24 inc VAT per month.

The proposal as it currently stands effectively forces ISPs into accepting virtually unlimited 'consequential liability' which could, in extremis, be many hundreds of times the value of the service being provided. We think this is totally unreasonable, and needs to be significantly redrafted.

### Exemptions

Based on the above, we strongly feel that small ISPs (e.g. with less than 250K subscribers) should be exempt, in similar vein to the current mandatory content blocking obligations that the biggest ISPs are required to provide.

Any attempt to force small WISPs to adhere to the same obligations as the large fixed-line companies would have a serious detrimental effect on innovation. Startup WISPs would in all likelihood struggle and this would lead to the closure of many small operators who got 'bitten' by an event outside their control. Other small operators who were simply not prepared to take the risk of having to pay out compensation levels that were potentially multiples of their annual turnover may very reasonably decide to exit the business leaving all their customers without any service, and we believe that this is not in the interest of the consumer.