

Markham Sivak
4th Floor
Competition Policy
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

14 August 2009

Dear Markham

Charge controls for Wholesale Line rental and related services

This response has been prepared on behalf of the Fixed Service Providers group of the Federation of Communications Services, which represents more than 140 service providers and resellers of fixed telephony services including Wholesale Line Rental (WLR), calls packages and broadband. A list of our members can be found on the FCS website - www.fcs.org.uk

We welcome this consultation from Ofcom as Openreach's Service Harmonisation programme provides a timely opportunity to review the way WLR services are provided, reflecting how the product is now consumed by end users. We are broadly supportive of Ofcom's proposals, but in our opinion the consultation lacks detail regarding the implementation of the proposals.

The delivery of Service Harmonisation by Openreach is, in principle, a step towards disaggregating an integrated product into its component parts which is welcome as it offers CPs greater potential flexibility.

However, on a specific point, paragraph 3.9 of the consultation refers to an element of the existing line rental product where a cost differential is identified and in this context we seek further clarification on the "cost" of providing a directory entry. We note that paragraph 2.17 of Ofcom's consultation entitled "Telephone directory information obligations and regulations" (published on 10th March 2008), states the following:

"BT acquires data from Communications Providers about their subscribers for inclusion within OSIS on terms set out in Schedule 11 of BT's standard form of contractual terms, known as the 'Standard Interconnect Agreement'. This Agreement also determines the charges BT itself pays for the receipt of data. Currently, BT seeks to acquire information from all Communications Providers issuing telephone numbers - in other words, BT aggregates all data received to produce OSIS."

The above statement suggests that directory information provided by Communications Providers when they order WLR services from Openreach has a value that should be recognized in the product cost stack. However, this appears to conflict with paragraph 3.9 which portrays this as a pure "cost" (unless Ofcom are using the term "cost" to mean the difference in value of the payment to Openreach for a residential directory entry compared to a business directory entry.) We would welcome clarification from Ofcom on the precise meaning of the word "cost" in this paragraph.

Putting aside the specific issue of this ambiguity around directory entry value, as set out above, FCS fully supports moves to disaggregate, where appropriate, the elements that currently make up the WLR Basic and Premium products, in order for a core WLR service to be defined, which then grants Communications Providers greater flexibility in how they consume the product.

We also welcome Ofcom's focus on ensuring that the pricing of WLR and MPF is appropriately balanced to reflect Openreach's cost of provision.

Below are the answers to the specific consultation questions. We have also provided, in Appendix A, our thoughts on how implementation of the new core product might be achieved, bearing in mind changes will be required to Openreach's systems and at present there is a lot of competition for their development resources. In essence this provides for a gradual migration of all lines to Premium status which then becomes de facto the core WLR product.

Question 3.1 *Do you agree with our preferred option to set a control on a WLR core rental service to be available both to residential and business customers with the option for number entry to residential and business directories? Or do you consider that the alternative use of a basket would be a more appropriate control?*

We agree with Ofcom's preferred option for the pricing of a core WLR service.

Question 3.2 *If we are setting the control on a core WLR rental service are there any other features of the WLR Premium service, other than entry in a business directory, that would be required in the revised core rental service so that it would be suitable as a basic business product?*

Yes, we believe an NTE or NTP termination type should be available on a line that is being considered as a basic business product. As noted in paragraph 3.9 there is no cost differential between supplying the two different termination types, therefore we believe any core WLR rental service should have the option of either termination type.

Question 3.3 *Please provide your views on the requirement for and if necessary, duration of any transition period for the implementation of a core WLR service?*

The ability to implement a core rental service will depend on two factors – the amount of changes required to deliver the outcome determined by this consultation process and Openreach's capacity for delivering that change. A large part of the system changes required by Openreach, in the form of Service Harmonisation, have already been committed to by Openreach starting from November this year – it would be sensible that any other changes identified which have a system impact be delivered in the same timeframes. As mentioned

previously, we have included our specific thoughts on implementation and how it might be achieved in Appendix A.

Question 3.4 *What is your view on the appropriate basis of charges (cost orientation) regime for WLR Premium and other higher care level services? Do you consider that the other obligations on Openreach (perhaps supplemented by guidance on interpretation) are sufficient control on the WLR Premium charge without an additional basis of charge condition?*

In principle we believe that the pricing of ancillary services and features is best controlled by a cost oriented approach. Notwithstanding that in this case other obligations on Openreach (supplemented by guidance on interpretation) may provide sufficient control on the WLR Premium charge without an additional basis of charge condition and that Openreach has become a lot more commercially sensitive (as evidenced by the various special offers that have been made available to WLR providers recently, which appears to demonstrate that Openreach are very aware of the demand profiles for their products at different price points) we believe that the principle of cost orientation should apply.

We also note the content of paragraph 5.45 regarding Calling and Network Feature pricing and also the recent briefing (number WLR051/09) which shows that in the absence of price controls prices will not automatically be increased. In order to continue to be successful in selling Wholesale Line Rental Openreach has to take into account the total cost of ownership compared to similar services offered via competing infrastructure such as LLU and VoIP and we believe these market forces, along with Ofcom's guidance, will continue to act as an informal control on Openreach's prices that are not formally regulated.

Nonetheless, we believe that cost orientation should continue to be the underlying guiding principle and that if Ofcom decides to take a different approach, that it must stand ready to intervene if Openreach behaviours in this area change, leading to increases in charging which are not justified on cost grounds.

Question 4.1 *Do you agree that it is important to ensure consistency between the WLR and LLU charge controls? In this context, do you agree that we will need to consider consistency in considering the impact on any challenges to assumptions when we are setting the final controls?*

We agree with Ofcom's views on ensuring consistency between the WLR and LLU charge controls in general and when considering the impact of any challenges to assumptions made.

Question 4.2 *Do you agree with Ofcom's analysis on the relative charges for WLR and MPF set out here, in Annex 5 of this document and in the Openreach Pricing Framework?*

We indicated our agreement in our response to the preceding consultation, A new pricing Framework for Openreach, and there is nothing in this consultation to change our view.

Question 4.3 *Do you agree with Ofcom's proposal to set a three and a half year period charge control for WLR?*

The telecom's industry does need pricing stability to allow it the certainty to plan ahead and on this basis we would not sanction a period of less than 2 years. In the proposed 3.5 year period for the charge control it is likely that Openreach's plans for Fibre To The Cabinet (FTTC) and Fibre To The Premises (FTTP) will develop significantly and roll out will begin. If, during the charge control period, FTTC and FTTP are rolled out to a large number of homes and businesses then we would ask Ofcom to consider the need for an interim review of the impact of the overall cost in providing WLR services via FTTC or FTTP compared to the cost of a copper based WLR service. It is very likely that fibre based infrastructure will be cheaper to maintain than copper infrastructure so, if cost savings do arise from its deployment, it would be appropriate to assess the overall impact of this on the WLR cost stack which is used to determine the cost-oriented element of WLR pricing.

Before answering the questions in section five we have a few comments on certain paragraphs contained therein:

Paragraph 5.40 – In general FCS supports the concept of cost orientation in setting charges and understands the logic that MPF-WLR and WLR-MPF conversion costs should consequently be closely aligned. However, in the case of MPF to WLR conversion we believe that the current level of charging represents a barrier to switching and that opportunities for WLR CPs to realise savings post transfer are less than for an unbundled line. In this instance, therefore, we believe that there is a case for reducing the transfer charge so that it is closer to the cost of a WLR to WLR transfer. If this approach is adopted, the additional costs of work in the exchange could be recovered via the line rental.

Paragraph 5.49 – the need for a pre-validation charge has been rendered obsolete by the delivery of WLR3 by Openreach, where the "Obtain Installation Details" dialogue service allows Communications Providers to retrieve line information prior to the transfer of a line. Therefore we believe Ofcom can seek to drop the need for regulating this charge once WLR2 has been withdrawn

Paragraph 5.50 – it would be sensible for the ISDN to PSTN conversion cost to be aligned with the cost of a PSTN new provide with number selection, as both processes achieve the same outcome and if there is a price differential then Communications Providers will just exploit the cheaper process of the two.

Question 5.1 *Do you agree that Ofcom should continue with its current approach to setting the transfer charge ceiling, recovering the transfer costs primarily through the line rental? If not, please explain why.*

Yes, we see no reason to change Ofcom's current approach.

Question 5.2 *If we do continue with a low transfer charge do you agree that Ofcom should increase the transfer to £3 with an index? If not, please explain why.*

In principle, we believe that, to minimise any barriers to customer switching, transfer charges should be set as low as possible and suggest that the transfer fee be retained at £2. Any resulting shortfall in cost recovery should be factored into the rental fee.

Question 5.3 *Do you agree that Ofcom should continue to set a charge ceiling for new connections? Do you agree that it is appropriate to impose a one off adjustment in this case given the difference between existing charges and the CCA FAC cost? Do you agree it is appropriate to consider the relative charge of new line for LLU and WLR in making this adjustment?*

Yes, we agree with all of Ofcom's proposals in this area and note that Openreach has already chosen to notify an new install charge of £67 with effect from 1st November in advance of the outcome of this consultation process

Question 5.4 *Do you agree that Ofcom should exclude the remaining migration charges and calling and network features from the scope of the charge ceiling? If not, please explain why.*

Yes, we agree with Ofcom although hope you note our feedback on paragraph 5.50 regarding ISDN to PSTN conversion

Question 6.1 *Do you agree with the approach we have taken to derive the core WLR rental? In particular do you consider the estimates for the cost of the WLR Premium care levels to be reasonable?*

Question 6.2 *Do you agree with an allocation of common costs to the WLR Premium care level service?*

We agree with Ofcom's views for both these questions

Question 6.3 *Do you have any comments on the likely change in transfer or connection volumes in the latter part of this charge control period?*

We are uncertain that BT's projections, detailed in paragraph 5.34, are reasonable, bearing in mind the substantial drop in the last year of the price control period and share Ofcom's unease with this figure. We believe that there are several factors which are likely to support the volume of new connections towards the latter end of the period:

- The lack of a successor product to WLR (we're assuming that VoNGA will be treated as a WLR product)
- The desire of the UK population to move house will remain, and it is likely that the embryonic recovery in the economy and house price inflation will have developed a lot further by 2012
- With an improvement in the economy will come a greater amount of activity by businesses, which will drive new connection volumes
- Government targets for house building still remain with a volume of 240,000 new homes per year by 2016, a figure that is currently being fallen short of

On the basis of the above we believe it is unlikely that the forecasted drop in volumes will materialise to the extent predicted

Question 7.1 *Please set out your views on the proposals set out in Section 7, together with the potential implications of those proposals for CPs and for consumers, and the factors you consider we should take into account when determining the final pricing regime.*

We accept the need for a glidepath and welcome the focus on ensuring consistency between WLR and LLU charges. As noted in our response to the Openreach pricing Framework review we have some concerns about multiple price changes and trust that these will be minimized to the extent possible.

Question 7.2 *Do you agree with our treatment of the first year RPI adjustment to ensure consistency with the LLU proposals?*

We understand why Ofcom has allowed a higher factor of x in this instance (to avoid distortion in the relative charges between WLR and MPF) and accept that this is justified.

Question 7.3 *Do you agree with the proposed 28 days implementation period? If not please state your reasons and a preferred period?*

We believe that some CPs will need to make changes to and billing and other systems to accommodate these changes and would suggest that the normal 90 day notification process is used.

Question 7.4 *Do you agree with our assessment that the proposed changes to conditions and directions meet the tests set out under the Act?*

No comment.

Question 7.5 *Please provide any other comments you may have in response to the proposals set out in this document.*

As mentioned in response to question 4.3 we believe Ofcom needs to take into account the implications of the deployment of FTTC and FTTP on the overall costs of managing the access network and whether this will have a material effect within the proposed timeframe of the price control. See Appendix A for a discussion about implementation and the possible need to remove the conversion charge for changing between a WLR Basic Single Line and a WLR Premium Single Line.

We trust that the above comments are helpful and would be keen to meet with Ofcom to discuss some aspects of our response and the issues raised in greater detail.

Yours sincerely

Michael Eagle
General Manager

Appendix A – Our views on implementation of a core WLR service

Whilst the deployment of Service Harmonisation in EMP release 1200 is a big part of delivering the move to a core WLR service there are still other aspects to consider. The primary consideration is that in Openreach's systems it appears that there will remain two PSTN line rental products for single lines – WLR Basic Single Line and WLR Premium Single Line. We have not seen any plans that would affect the existence of these two discrete line types in Openreach's systems. Therefore it seems that the creation of a "core" WLR service will be achieved by the disaggregation of the service level from the line rental and an alignment of pricing between WLR Basic and WLR Premium, yet the assets would still be recorded in the same way in Openreach's systems and Communications Providers would still have the choice of which line type to order in future.

Following the approach above does give Communications Providers and end users more flexibility over the service they choose, but does not move us much closer to a truly core WLR service, where all assets are recorded the same way in Openreach's systems. This could be achieved by defining a new core WLR service asset type and mandating Openreach to make the necessary changes to their systems to achieve this, however with much competition for Openreach's development resource this may impact on other planned developments Openreach has for industry's benefit. It therefore seems prudent to suggest that the existing approach of maintaining two line types in Openreach's systems be maintained for the foreseeable future, however Communications Providers should be encouraged to move to a WLR Premium line only asset base over a period of time. This could be achieved by withdrawing WLR Basic lines from new supply at a point in future, as well as removing the cost of migrating from a WLR Basic Single Line to a WLR Premium Single Line from the date that the price controls come into effect.

The benefits of the above approach are:

- Provides manageable process to moving to one core line type in Openreach's systems
- Can be achieved without a large amount of development resource on the part of industry and Openreach
- Immediately sets the WLR Premium Single line as the de facto core WLR service, with the option of either NTE or NTTP termination types and the option of either Residential or Business Directory Entry, without any need to make a change to existing systems

The only potential drawback is that this does not address the statement in paragraph 3.9 that there is a differential in cost between providing a Business directory entry compared to a Residential directory entry (bearing in mind our request for clarification on this matter). In fact, taking it one step further, there must be in theory a further difference in cost for a line that has no directory entry (i.e. not even ex-directory). At present it would appear to be a task too big to be tackled in the timescales of this consultation, however if Ofcom do wish for a true "core" WLR to be available then the disaggregation of the directory entry pricing must be investigated and, if a directory entry does in fact attract a payment from BT to the Communications Provider for the provision of such data, then any new pricing regime for provision of directory entries must not become a perverse incentive for end users to request unnecessary directory entries as a means of subsidising their line rental costs.