

25<sup>th</sup> January 2008

Mr Michael Galvin  
Competition Group  
4<sup>th</sup> Floor  
Office of Communications  
Riverside House  
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London  
SE1 9HA

Dear Michael

### **Service level guarantees: incentivising performance**

This response has been prepared on behalf of the Fixed Service Providers Association (FSPA) a group within the Federation of Communications Services, which represents more than 120 service providers and resellers of fixed telephony services including Wholesale Line Rental (WLR), calls packages and broadband.

We welcome the opportunity to respond to this consultation, which proposes to amend SLAs and SLGs in various Openreach contracts to provide a fairer regime and a more effective incentive on Openreach.

In general we agree with Ofcom's view that the current SLA/SLG regime is failing to provide an effective incentive to improve performance by Openreach. For example, monitoring of WLR performance, as reflected in the monthly Fit-for-Purpose figures (which are the measures seen by our members as most closely reflective of the service they receive) shows that performance in the key areas of provision and repair has fluctuated significantly over recent years but has not shown the sustained improvement which one would expect to see for a product that is now quite mature. This is extremely unhelpful for CPs trying to manage customer expectations.

CPs wish to see improving and reliable levels of service rather than payment of higher levels of compensation. We strongly agree with Ofcom's view that the current processes for compensation act as a disincentive to CPs who wish to claim and would add that many claims appear to be unreasonably refused by Openreach. The resulting "underclaiming" clearly weakens the impact of the current SLA/SLG regime as a means to drive improved performance.

We also agree with the view that the current complexity of the claims process unfairly disadvantages smaller CPs and we are dismayed by the figure quoted by Ofcom that BT Retail has received over ten times per line more in compensation than WLR providers.

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### **The Federation of Communication Services Ltd**

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As a general principle, we believe that, where appropriate, the same approach to payment of compensation should be adopted across all Openreach products.

We also agree that the effectiveness of the new regime should be reviewed periodically and would also suggest that Ofcom should oversee the process of translating these principles into revised contracts so as to ensure they are not watered down, excessively caveated or unreasonably delayed.

Our responses to the specific consultation questions are set out below:

**Question 1:** *Do you consider that the General Principles set out above are appropriate or are there other principles which should be considered?*

We agree that it makes sense to base the amount of automatic compensation to be paid for each failure on average losses sustained by CPs. Ideally, we would prefer these to be increased so as to provide a greater incentive on Openreach.

We agree that CPs must be entitled to claim for additional losses sustained in those cases where such losses exceed the amount of compensation.

We agree that compensation should be paid for every failure by Openreach to meet a contractual SLA.

We agree that there must be no caps on compensation (either in respect of a single claim or cumulatively). As noted by Ofcom, such a cap has the potentially perverse effect of removing any pressure to resolve a problem swiftly once the limit on compensation has been exceeded.

We strongly support the principle of proactive payment of compensation. We would also suggest that CPs must have the right to challenge the amount of compensation proposed by Openreach for any one incident or period and that such a payment cannot therefore be presented as “full and final” settlement. We also require that such payments must be made in a timely fashion (i.e. within the billing month following that in which the failure occurred).

We also have a comment on missed appointments; if a customer misses an appointment then the charge levied by Openreach is £85, if the Openreach engineer misses an appointment then the compensation paid to the CP is £10 for the first missed appointment and £25 for any subsequent missed appointments. We feel that there should be parity between these figures. It does not seem equitable that Openreach charges more when an end user misses an appointment than they pay out when they miss an appointment.

**Question 2:** *Do you consider that the proposed changes to the SLAs and SLGs for WLR services are appropriate?*

We agree that Ofcom has correctly identified Openreach failure to maintain a reliable level of service as a cost burden on CPs. CPs have in recent years experienced numerous instances of a sudden deterioration in the levels of service. This inevitably leads to increased (and unpredictable) costs in managing customer expectations and in some cases loss of business where customers perceive that BT Retail is not subject to such dependency.

We agree with Ofcom’s analysis that where Openreach maintains a level of service above SLA but below 100%, CPs will sustain losses for which they cannot claim and we, therefore, agree with the proposal to pay compensation for every incident of failure (for WLR2 this must not be restricted as currently to Priority 1 orders).

We agree with the removal of caps in all cases.

We would have preferred to see an increase in the level of compensation (to provide greater incentive to avoid such failures) but understand Ofcom's view that the impact of the other proposed changes has not yet been tested. We also note that Ofcom has identified call diversion costs as part of the overall cost burden on CPs and advise that FSPA has recently written to Openreach suggesting that call divert should not be charged where the failure of service was caused by a fault within the BT network.

We strongly support the principle of automatic payment and agree with Ofcom's analysis that the current claims process is the fundamental problem with the current SLA/SLG regime. It will be important to ensure that in designing the systems for calculation of compensation to be paid, Openreach do not unreasonably or arbitrarily exclude valid claims, as appears to be the case currently.

**Question 3:** *Do you consider that the proposed changes to the SLAs and SLGs for access network facilities are appropriate?*

We note that Ofcom has proposed additional payment of compensation for ELF's and would suggest that such payments should also be applied to WLR new installs.

**Question 4:** Do you agree that Ofcom's proposed amendment of the structure of the Ethernet compensation payments is consistent with the loss suffered by CPs? Do you agree that Ofcom's proposed Level of Ethernet compensation is consistent with the loss suffered by CPs?

We agree that the Ofcom proposal for both the structure and level of compensation is consistent with the loss suffered by CPs. We also believe that the compensation regime should be extended to the novation/transfer process of Ethernet services between CPs for that element which is the responsibility of Openreach.

**Question 5:** Do you consider that the proposed changes to the SLAs and SLGs for Ethernet services are appropriate?

We agree that the proposed new SLAs and SLGs are appropriate but should also include appropriate process and measure for the novation/transfer of Ethernet services between CPs.

**Question 6:** Do you agree that Openreach should be required to justify changes to the Contractual Delivery Date which would delay the provision of the Ethernet services beyond the 57<sup>th</sup> day?

We agree that greater clarity and an objective level of review should be introduced where there is delay, or potential delay in the provision of Ethernet services beyond the 57<sup>th</sup> day. We believe that it will be much easier to achieve this if the circumstances in which such a delay is appropriate are clearly defined.

**Question 7:** Do you consider that the proposed changes to the SLAs and SLGs for the Equivalence Management Platform are appropriate?

We agree with Ofcom's proposals for improved compensation for EMP downtime. We suggest that Openreach should be encouraged to reduce as far as possible the duration of scheduled outages.

I trust that these comments are helpful.

Yours sincerely

A handwritten signature in blue ink that reads "Michael Eagle". The signature is written in a cursive, flowing style.

Michael Eagle  
**General Manager**