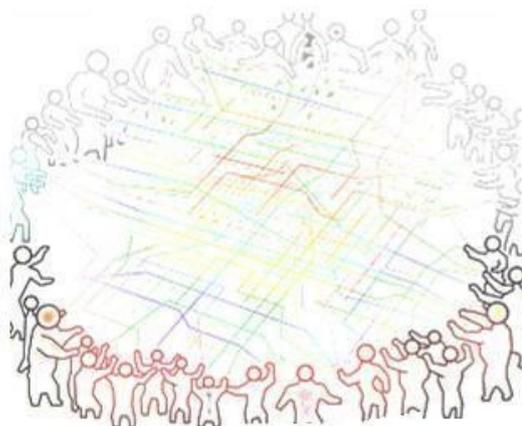


The Bit Commons Response to the Ofcoms WLA consultation. May 2017.

Thank you for the opportunity to respond to the WLA consultation.

The challenge to this consultation process is unusual. The change in the market since the last review has been very dramatic in terms of the scale of Government subsidies, huge customer take up and a response from BT Group which was such that following demands from Parliament, Ofcom have felt the need to call for the further separation of Openreach from BT Group. This consultation for the most part wishes to work in isolation of these events rather than embracing them and acting upon them.



Overall the consultation in seeking to do the minimum possible in terms of an intervention, it fundamentally fails to respond to Ofcom's desire for 'more fibre' as articulated in the Digital Communications Review and fails to support the goals of Government for more 'full fibre'. The lack of a context for discussing 'more fibre' or a capacity to order it leaves this consultation lacking.

Furthermore, Ofcom are continuing to refuse to provide an independent public assessment of the impact of some £1bn in state aid receipts received by BT and whether BT has made a full and fair capital contribution to the subsidised rollout consistent with Ofcom's fair bet assessment outlined in Annex 8 of this consultation. Given the latter determines the proposed pricing, it is even more peculiar that the assessment of the state aid contribution is not a pre-condition to the price setting process.

These weaknesses in the consultation tend to ignore the principal events and learnings in the last number of years. These include, Fibre to the Cabinet had fundamentally lower costs than portrayed by the 2009 BSG/Analysis Mason report, £2.5bn compared to the £5bn outlined in the report. BT has consistently attempted to mislead Parliament and indeed Ofcom about its costs and its capital commitment to Next Generation Access programme. As late as 2016 BT was portraying to Parliament costs of £500 per premise passed for FTTC, where the actual costs for phase 1 of the subsidised areas was less than £130 a premise passed. Ofcom have nothing to say on these matters and it means this industry sector are much weakened by the inability to acknowledge and deal with what are exceptional circumstances.

The Ofcom consultation has ignored the status of direct access connections and has ignored the need to establish the notion of 'reasonable demand' where SME and Business customers could order an affordable broadband service using a direct fibre connection. This is especially relevant in places where subsidised infrastructure is already in place and subsidised for that purpose. Ofcom should not ignore that Government have made available some £1.7bn in state aid and are now proposing to make a further £200m in connection vouchers to further a common Ofcom and Government objective of more or full fibre. This consultation needs to include the status of 'full fibre connections' and customers right to order such a connection in a form different to that of a private circuit. This will be explained more fully in the responses below.

Volume 1

Question 3.1: Do you agree with our proposed product and geographic market definition? Please provide reasons and evidence in support of your views.

There is significant hole in Ofcom's proposals. It arises from the success of the current NGA upgrades. Ofcom needs to establish the future regulatory and legal status of full fibre connections and customers right to request such a service. The notion of defining reasonable demand for direct fibre connections should feature in this consultation.

It is not enough that after £1.7bn of state aid, £446m of a Capital Deferral (April 2016), and unknown capital balances owed to Local Authorities that customers in the UK cannot make a reasonable request of a direct fibre connection.

The example of Cambridge Science Park may help explain the shortcoming. The cabinet data in Figure 1 shows BDUK funding for 14 FTTC cabinets.

Figure 1 FTTC subsidies in Cambridge Science Park.. (Source; Code Look)

Fibre Cabinet	Fibre Status	Phase	Properties Passed	Vendor	Approx Post Code
Cabinet P1	FTTC Available from 28th January 2015	Phase BDUK Cambridgeshire 13a	87	Huawei	CB4 0DT
Cabinet P4	Fibre Not Available				CB4 0GZ
Cabinet P5	FTTC Available from 8th July 2015	Phase BDUK Cambridgeshire 12a	149	Huawei	CB24 6AL
Cabinet P7	FTTP from 1st September 2016				CB4 0WU
Cabinet P8	Fibre Not Available				CB4 2PG
Cabinet P9	FTTC Available from 9th October 2014	Phase BDUK Cambridgeshire 12a	625	Huawei	CB4 2SZ
Cabinet P10	FTTC Available from 9th October 2014	Phase BDUK Cambridgeshire 12a	529	Huawei	CB4 1LJ
Cabinet P11	FTTC Available from 25th June 2014	Phase BDUK Cambridgeshire 12a	184	Huawei	CB4 1FE
Cabinet P12	FTTC Available from 2nd June 2015	Phase BDUK Cambridgeshire 12a	717	Huawei	CB4 1BF
Cabinet P13	FTTC Available from 16th February 2016	Phase BDUK Cambridgeshire 15b	560	Huawei	CB4 1NH
Cabinet P14	FTTC Available from 18th December 2015	Phase BDUK Cambridgeshire 12a	261	Huawei	CB4 1RF
Cabinet P15	Fibre Not Available				CB4 0PE
Cabinet P16	Fibre Not Available				CB4 0GA
Cabinet P17	FTTC Available from 7th November 2015	Phase BDUK Cambridgeshire 13b	51	Huawei	CB4 0DW
Cabinet P18	Fibre Not Available				CB24 6PP
Cabinet P19	Fibre Not Available				CB4 0HH
Cabinet P20	FTTC Available from 16th May 2015	Phase BDUK Cambridgeshire 12a	78	Huawei	CB4 0AP
Cabinet P21	FTTC Available from 9th September 2014	Phase BDUK Cambridgeshire 12a	425	Huawei	CB4 2AD
Cabinet P22	FTTC Available from 25th June 2014, being expanded by March 2016	Phase BDUK Cambridgeshire 12a	430	Huawei	CB4 2EZ
Cabinet P23	FTTC Available from 29th January 2015	Phase BDUK Cambridgeshire 13a	599	Huawei	CB4 0AB
Cabinet P24	FTTC Available from 2nd May 2015	Phase BDUK Cambridgeshire 13a	614	Huawei	CB4 1LY
Exchange 2	Fibre Not Available				CB4 1YX
Exchange 3	Fibre Not Available				CB4 1YX
Exchange 4	Fibre Not Available				CB4 1YU
Exchange 5	Fibre Not Available				CB4 0XB
Exchange 7	Fibre Not Available				CB4 0DP
Exchange 10	Fibre Not Available				CB4 1YE

We can see subsidies have funded 14 cabinets in Cambridge Science park. However, customers in Cambridge Science Park do not have an automatic right to request an affordable FTTP connection. This has been withheld artificially by BT as it is likely to prefer to sell private circuits.

From a customer perspective, this seems wrong at several levels and competition even using PIA is unlikely to make a difference. The latter is more likely to lead alt-nets copying BT as PIA is priced on an ethernet minus basis. It seems appropriate at this point that Ofcom supports the notion of establishing a customer's right to order a direct fibre connection for an affordable broadband connection. This would not be based on BT's business connectivity product range but based on its native FTTP product set.

This is not alien to BT, as BT announced it would make Fibre on Demand available at every exchange in April 2014. BT has not done this but it has selectively done so but also changed the definition of the product from one which supported fibre extensions for BDUK to one which presented Fibre on Demand as a business product. BT has made separate representations to Welsh Government promising a capacity to order FTTP services at every exchange. BT representations on this matter create a high level of unnecessary ambiguity for end customers, particularly those yet to benefit from any upgrade.

The Bit Commons is asking Ofcom to use the WLA consultation to establish the notion of 'reasonable demand' for an affordable broadband service using a direct fibre connection.

This may require a broader review of the use of replacement costs for an efficiently run copper network. Copper is not being replaced but being supplanted by fibre access in new builds, refurbishments and BT has announced it will be upgrading town centres as well. Costs look to be similar so there is an opportunity for Ofcom to review its thinking including how the materials used in earlier definitions such as 'metal path facility' should not exclude the use of non-metal materials.

In not acting, Ofcom grants a BT default right to withhold a service and provision an alternative business service using the same materials at a much higher tariff. The decision to price PIA on an ethernet minus basis reinforces this positioning at the expense of the UK economy.

Question 3.2: Do you agree with our proposal that BT holds SMP in the supply of WLA products in the UK excluding the Hull Area? Please provide reasons and evidence in support of your views.

Yes

Question 5.1: Do you agree with our proposed general remedies? Please provide reasons and evidence in support of your views.

The general remedies are minimal in nature. As per 3.1 specific provisions are needed to establish the status of FTTP direct access services and customers right to place an order for an affordable broadband service using an all fibre line.

Question 6.1: Do you agree with our proposals for access regulation in respect of LLU, SLU and VULA? Please provide reasons and evidence in support of your views.

Yes

Question 7.1: Do you agree with our proposal to impose a quality of service SMP condition? Please provide reasons and evidence in support of your views.

Yes,

Question 8.1: Do you agree with our proposals for the price regulation of VULA? Please provide reasons and evidence in support of your views.

The construct by Ofcom serves its purpose, but Ofcom needs to extend the Fair Bet analysis in Annex 8 to include the state subsidies of some £966m and check that BT has made a uniform capital contribution, consistent with the £100 per premises passed used by Ofcom to the BDUK programme. This is in addition to the claimed clawback sums which are in addition to the required capital contribution.

Ofcom have calculated a ROCE of 15% on BT's first £1bn of investment covering the first 10m premises or a £100 per premises passed. BT's ROCE could be extremely high if BT has not contributed £100 for each of the some 6.5m customers passed by BDUK so far or the 4.5m of which get a greater than 24Mbps service.

If Ofcom do not verify BT's capital contribution, then they are effectively consenting to BT using state aid to distort this and adjacent markets while withholding upgrades to those yet to receive an upgrade in rural areas. This is based on the simple observation that £966m of state aid, paying for some 28,000 street cabinets is unlikely to include adequate capital contributions from BT to comply

with the gap funding principle. Note, the clawback declared is in addition to the required BT capital contribution.

If BT's capital contribution is not present, or even if the BDUK contracts permit a lower BT capital contribution, then this should either lead to lower wholesale prices, or BT is provided with the option to increase its capital contribution in line with the ROCE calculation completed by Ofcom. BT should not benefit by its ability to control supply and bully government officials needing to execute Government policy through a dominant market player who controls the only complete rural access network.

Question 9.1: Do you agree with our proposals for the price regulation of LLU and SLU? Please provide reasons and evidence in support of your views

Yes

Question 10.1: Do you agree with our proposals for BT's regulatory financial reporting? Please provide reasons and evidence in support of your views.

The reporting of how state aid receipts and BT's contributions to BDUK should not be the subject of secret reports, but publicly reported upon in full.

Volume 2

Question 2.2: Do you agree with our proposal to use CCA FAC to establish the cost base for WLA services and to use LRIC+ to estimate the costs of MPF services and 40/10 GEA services? Please provide reasons and evidence in support of your views.

Yes, provided Ofcom's fair bet assessment is extended to include the BDUK state aid and a verification of BT capital contribution. Where BT's capital is missing or not verifiable in the BDUK process then additional sums need to be added to the BT Capital Deferral owed to Government, or the proposed wholesale prices can be reduced further.

Question 2.3: Do you agree with our proposal to apply the anchor pricing principle by means of an ongoing copper network with an FTTC overlay? Please provide reasons and evidence in support of your views.

This thinking needs to be modified. Ofcom should make clearer its thinking on the cost recovery assumptions for FTTP. The current definition of an MPF (Metal Path Facility) include the ability to count FTTP lines in the MPF cost recovery process. This suggests there is an equivalent LRIC for both access methods and thus little justification for attempting to treat fibre access as a premium service. The latter continues to be the default unstated position of Ofcom and BT.

Ofcom seem over burdened by the use of replacement costs for an efficiently run copper network. Given new builds and refurbishments will be planned as fibre only installations, the notion of copper replacements costs is outmoded as there is not a replacement of copper with copper but an increasing use of fibre to replace copper. Part of the case of the will be potential to remove copper and create space in ducts for more fibre including the use PIA.

Question 2.4: Do you agree with our proposal to set charge controls for MPF and 40/10 GEA services that expire on 31 March 2021? Please provide reasons and evidence in support of your views.

Yes, provided the Annex 8 analysis is extended to show the impact of the BDUK funding and verify that BT has made its capital contribution in full to the BDUK projects.

If that analysis is not completed, then Ofcom risk contributing to an unnecessary distortion in this and adjacent markets while failing to do all it can to help improvements in rural areas.

Question 2.5: Do you agree with our proposal to use a one-year glidepath to align charges with costs in 2019/20 for these charge controls? Please provide reasons and evidence in support of your views.

Yes.

Question 3.1: Do you agree with each of our proposals in relation to the design of charge controls for BT's LLU and GEA services? Please provide reasons and evidence in support of your views.

Yes, provided the work is extended to include all investment, including public investment.

Question 4.1 Do you agree with our proposed conceptual modelling approach? Please provide reasons and evidence to support your answer.

Yes, but it is peculiar the conceptual modelling is restricted to the first £1bn of BT investment when Ofcom has available all investment, including BT's state aid receipts.

Question 4.2: Do you agree with our proposed approach to forecasting service volumes? Please provide reasons and evidence to support your answer.

Yes

Question 4.3: Do you agree with our proposed top-down cost modelling for MPF services? Please provide reasons and evidence to support your answer

Yes.

Question 4.4: Do you agree with our proposed bottom-up cost modelling for GEA services? Please provide reasons and evidence to support your answer.

Yes but; the Cartesian Model is a good basis for a full analysis of all investment, public and private and should be extended to include all subsidies, given much of the BDUK data is already available in Cartesians worksheets but is not used by Ofcom in its workings.

Question 4.5: Do you agree with our proposed approach to calibrating the bottom-up model? Please provide reasons and evidence to support your answer.

Yes, but it must include an assessment of all investment public and private. The work could also include early findings on the more than 200,000 FTTP connections paid by the public purse.

Question 4.6: Do you agree with our proposed approach to estimating input price inflation? If not, what alternatives would you propose and why? Please provide reasons and evidence to support your answer.

No comment.

Question 4.7: Do you agree with our proposed approach to estimating AVEs and CVEs? If not, what alternatives would you propose and why? Please provide reasons and evidence to support your answer.

No comment.

Question 4.8: Do you agree with our proposed approach to setting efficiency target? If not, what alternatives would you propose and why? Please provide reasons and evidence to support your answer.

No comment.

Question 4.9: Do you agree with our proposed approach to forecasting and attributing BT's cumulative costs? Please provide reasons and evidence to support your answer.

No comment.

Question 4.10: Do you agree with our proposed approach to the treatment of future profit and losses from the sales of copper? Please provide reasons and evidence to support your answer.

In the context of a 'full fibre' or 'more fibre' objective I am inclined to suggest BT should be allowed to keep whatever it makes from copper removal. Copper removal creates more space in ducts and thus the real value might be in the improved the probability of PIA working as a policy. Copper removal is resource intensive, so has a high opportunity cost. The copper removal activity should be aligned with the ambition for 'more fibre'.

Incentives on cost removal and disposal could be used creatively to accelerate investment by BT.

Question 4.11: Do you agree with our proposed approach to the treatment of future profit and losses from the sales of property? Please provide reasons and evidence to support your answer.

No comment.

Question 5.1: Do you agree with each of our proposals in relation to the implementation of charge controls for BT's LLU and GEA services? Please provide reasons and evidence in support of your views.

Yes.

Final Comments

The lack of regulatory and legal context for FTTP is peculiar. There ought to some statements of direction, for example;

FTTP provision including (VULA) can replace MPF where the customer or customers order it. The use of 'metal' path arises from the definition work at the time. Regulations need to be updated to reflect that 'fibre' or 'glass' can used as a medium to carry signals in the same way 'metal' is used and deployed. There must be some requirement that the cheapest LRIC option is expected to be used. Installing 14 subsidised powered cabinets, e.g. Cambridge Science Park does not appear well served where duct is available to allow premises to be connected using direct fibre connections. The latter only occurred because BT has discretion to withhold a direct fibre service and not offer the most efficient solution.

Voice over FTTP has equivalence to meeting the Telephony USO.

BT is free to remove copper where 100% of customers can order an equivalent service based on Fibre, subject to the appropriate customer and industry consultations.

While BT has pricing freedoms for FTTP, the underlying costs for new FTTP services is modelled as the similar to a copper access network. It is likely to have a lower LRIC because it has fewer active components.

Ofcom are minded to the support notion of reasonable demand for a direct fibre connections, particularly those served by network elements funded by public subsidy. Ofcom note the commitments to the supply FTTP on demand as standard in 2014 and restated by BT to the Welsh Government in 2016. This aspect of BDUK's work needs to be nurtured, and developed not ignored.

The challenge for Ofcom and indeed BT is that having relied upon copper gain technology, BT still needs to invest in all fibre networks if it is not to exclude substantial numbers of customers from a future proofed data transport network. The relationship between the legacy network and overlay copper gain technology and the new all fibre network should be discussed in this review. They are not separate. Optimising investment in rural areas demands that customer migrations from one infrastructure to another is discussed and accommodated. This is lacking in the consultation so far.

The Ofcom WLA consultation should note the growing capital deferral owed by BT (£446m- April 2017) and the still substantial public funds available to industry to further improve rural networks, some £500m from the total of £1.7bn and the proposed DCMS full fibre monies (£200m) in the 2016 budget point to the need for a direct fibre product to be available on the basis of reasonable demand. These are very significant sums of money and ought to be the referenced in the context of forcing a change in thinking where an over reliance on the replacements costs of an efficient copper access network does not reflect the current activity on the ground. Works in rural areas paid for with public funding is forcing the deployment of direct fibre connections to the point where the concepts and limitations of 'metal path' and the replacements cost of a copper network, have only a limited utility for what is now needed. BDUK supported activity in rural Wales, Northern Ireland and in many parts of England, means more than 200,000 premises in the most difficult to serve areas have fibre to the premises and this is better that that available to homes and businesses in Greater London. This remarkable achievement should not be ignored but recorded celebrated and acted upon so more can be done with the funds available. The latter has arisen from the scrutiny from various national audit functions and BDUK, much more can be achieved if Ofcom can play its part in verifying BT's required capital contribution.

Thanks for the opportunity to respond.

End.

Mike Kiely

Founder,

The Bit Commons

May 2017