



# BT's response to Ofcom's consultation document

*"Business Connectivity Market Review*

*Very low bandwidth leased lines"*

22 July 2015

**NON-CONFIDENTIAL VERSION**

Comments on this response should be sent to:

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## Section 1 – Executive summary

1. We agree with Ofcom’s proposal that with effect from 1 April 2016 all current regulations relating to our retail provision of Very Low Bandwidth (VLB) TI leased lines should be removed.
2. This is a welcome proposal and one which we have argued for previously on various grounds including the fact that the retail market concerned was removed from the EC’s Relevant Markets Recommendation in 2007.
3. Ofcom’s application of the EC’s three criteria test to determine whether this market is suitable for *ex ante* regulation is correct and we agree with Ofcom’s proposed conclusion [5.20] that the test is no longer satisfied and therefore the retail VLB TI market is no longer susceptible to *ex ante* regulation.
4. Our retail VLB TI services are legacy services whose volumes are in steep decline [Figure 3.1] and for which a wide range of modern alternatives are available including broadband services, superfast broadband services and Ethernet services delivered over copper (EFM) or optical fibre [3.2].
5. Accordingly we have previously announced our intention to withdraw all remaining currently available retail VLB TI services from new supply effective 1st September 2016.<sup>1</sup>
6. We have also previously announced that all remaining retail VLB TI services will be fully withdrawn from service effective 31 March 2020.<sup>2</sup>
7. Our experiences with customers for our retail VLB TI services demonstrate that migration to alternative services is fully viable and likely to increase in pace over the next three years as we approach the announced withdrawal date.
8. It is clear from the Consultation that Ofcom’s principal interest relates to users of our retail VLB TI services for the purposes of supporting essential public services - known as critical national infrastructure (CNI) operators.
9. We recognise this interest and have engaged with CNI operators over a number of years in order to communicate and raise awareness of our plans for the retail VLB TI services concerned. We will continue with this engagement.
10. The benefit of our engagement with CNI operators is recognised in the Consultation [3.4] where Ofcom confirm that awareness of the withdrawal of our retail VLB TI services is good among CNI operators.

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<sup>1</sup> <http://www.bt.com/pricing/notifs/01-08-2014/index.htm>

<sup>2</sup> BT, *BT’s TDM services – product roadmap update (Mar 2015)*, 26 March 2015, [http://www.globalservices.bt.com/static/assets/pdf/campaign/tdm\\_services/TDM\\_Roadmap\\_Mar\\_2015\\_Iss6.pdf](http://www.globalservices.bt.com/static/assets/pdf/campaign/tdm_services/TDM_Roadmap_Mar_2015_Iss6.pdf)

11. Ofcom provide informative commentary in Section 3 of the Consultation regarding the types of alternative service that CNI operators are moving to including the use of own fibre network, ADSL broadband, wireless and microwave technologies.
12. Ofcom also confirm in Section 3 of the Consultation that a number of CNI operators have well developed migration plans with timescales to achieve migration in advance of the withdrawal of our retail VLB TI services.
13. Ofcom's commentary bears out our own experiences and belief that a number of wholly viable alternatives exist to our retail VLB TI services and that there is no technological barrier to migration.
14. We welcome the fact that Ofcom have embarked on a programme of engagement [4.3] to mitigate any residual risk to CNI operators posed by the withdrawal of our retail VLB TI services. Ofcom's engagement is scheduled to continue until at least March 2016.
15. We agree with Ofcom's statement in the Consultation [5.14] that the importance of CNI uses is not by itself an indicator that retail regulation is justified. This depends instead on the outcome of the application of the EC's three criteria test.
16. We agree with Ofcom's proposed conclusion [5.20] that the EC's three criteria test is no longer satisfied and therefore the retail VLB TI market is no longer susceptible to ex ante regulation.

## Section 2 – Responses to Ofcom’s Consultation questions

**Question 3.1: Do you know of other CNI operators that will be affected by the withdrawal of VLB services that we have not considered above? If so, please provide details of these CNI operators, and, if possible, please outline their awareness and preparedness for the withdrawal.**

We would include the Ministry of Defence in addition to those CNI operators identified in Section 3 of the Consultation. We note however that Ofcom have written to the Ministry of Defence [4.15] as part of its risk mitigation plan described in Section 4 of the Consultation.

**Question 3.2: Are there any other developments since the last BCMR or prospective developments that may be relevant to our review of this market? Please identify specific developments, explaining why they may be relevant.**

Since the last BCMR we have, as noted in the Consultation, published dates for the cessation of new supply and full withdrawal of all our remaining retail VLB TI services. With regard to full withdrawal we have extended the previous planned withdrawal date from 2018 to 2020.

Whilst this extension allows existing users some more time to complete migration plans the position with the network transmission platform which supports our retail VLB TI services is much as it was before i.e. it continues to age and will become increasingly challenging to support.

We hope and expect that our continued engagement with our customers and industry associations, together with our recent announcements on the future of our retail VLB TI services, will serve to remind and inform remaining users clearly and unambiguously that the lifetime of the services is limited.

Given this we reasonably expect the pace of migration to alternative services to increase over the market review period. Such migration is in the interests of users given the limited remaining life span of our retail VLB TI services.

**Question 4.1: Are there industry associations among the CNI community that you consider we need to contact to increase awareness of the withdrawal of these services?**

We are aware of the Rail Industry Association in addition to those industry associations identified in Section 4 of the Consultation.

**Question 4.2: Do you know of any other category of CNI operator that will be affected by the withdrawal, but that would not become aware of it through our programme of engagement? If so, please provide details of the category of CNI operator and your view on how best to raise awareness with them.**

We are not aware of any other category of CNI operators other than those identified in the Consultation.

**Question 5.1: Do you agree with our conclusion that the VLB TI retail market no longer satisfies the EC's three criteria test? If not, please explain your view.**

Yes. We agree with Ofcom's conclusion that the VLB TI retail market no longer satisfies the EC's three criteria test.

We consider that Ofcom's discussion [5.18 & 5.19 in particular] supports the conclusion [5.20] that the VLB TI retail market no longer satisfies the EC's three criteria test. As a result Ofcom consider it appropriate to rely on *ex post* competition law rather than imposing *ex ante* regulation.

The effect of this finding [5.21] if confirmed following the consultation process would be:

- i) that Ofcom will not conduct a formal market definition and SMP assessment for this market; and
- ii) that Ofcom will withdraw the existing SMP regulation imposed under BCMR 2013 from April 2016 at the conclusion of this market review.

We fully support and agree with this analysis and outcome.

**Question 6.1: Do you know of any CNI operators that rely on retail VLB leased lines provided by KCOM? If so, please provide information about the CNI operator and contact information.**

We do not have detailed information but believe that the following CNI operators may be served by KCOM: 