



Charge control for LLU and WLR services

Adoption of revised SMP Services Conditions further
to paragraph 3 of the Competition Appeal Tribunal's
Directions of
29 April 2013

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Section 1

Executive Summary

- 1.1 In this document Ofcom has adopted revised charge controls for Local Loop Unbundling and Wholesale Line Rental Services following Sky and TalkTalk's appeal of the charge control set in March 2012.
- 1.2 This revision is made pursuant to paragraph 3 of the directions dated 29 April 2013 from the Competition Appeal Tribunal in Case 1192/3/3/12 *British Sky Broadcasting Limited and TalkTalk Telecom Group PLC v. Ofcom*. The Competition Commission determined that Ofcom erred by not taking into account the effect of young lines of MPF fault rates. Pursuant to the Tribunal's directions, Ofcom was required to correct the error identified by the Competition Commission taking into account the guidance in the determination by amending SMP Conditions FAA4(A) and AAAA(WLR).
- 1.3 We explain in the remainder of this document:
- 1.3.1 the background to the appeal and the fault rates issue identified by the Competition Commission;
 - 1.3.2 the steps we have taken to investigate the fault rates issue further on remittal;
 - 1.3.3 the evidence obtained from BT for these purposes;
 - 1.3.4 the analysis undertaken by CSMG on our behalf of the BT data; and
 - 1.3.5 our analysis and conclusions in relation to making a correction.
- 1.4 For the reasons set out in this document we are revising the charge controls for MPF rental, SMPF rental and Analogue Core WLR rental in order to give effect to the Tribunal's direction. Table 1.1 below sets out the revised charge controls:

Table 1.1

Service	Charge Control for 2013/14	Change from existing charges
MPF rental	£83.92	- 34 pence
SMPF rental	£9.89	+ 14 pence
WLR rental	£93.32	+ 5 pence

- 1.5 These revisions, which are set out in full in Section 4, take effect as of today's date.

Section 2

Background

Introduction

- 2.1 On 7 March 2012, Ofcom published the statement *Charge control review for LLU and WLR services* ("the 2012 Statement").¹ In the 2012 Statement Ofcom imposed charge controls on the supply by British Telecommunications ("BT") of certain Local Loop Unbundling ("LLU") and Wholesale Line Rental ("WLR") services for two years ending on 31 March 2014 pursuant to sections 45, 87 and 88 of the Communications Act 2003 ("the 2003 Act"). These charge controls were imposed as a consequence of Ofcom's 2010 reviews of the Wholesale Local Access and Wholesale Fixed Analogue Exchange Line markets, which identified BT (Openreach) as having significant market power in those markets and determined that charge controls were necessary as a remedy to address Openreach's ability to fix or maintain prices at an excessively high level for LLU and WLR services.²
- 2.2 The SMP services conditions imposing the charge controls are contained in Schedule 1 to Part I (LLU) and Schedule 1 to Part IV (WLR) of Annex 12 of the 2012 Statement.

Price control appeals

- 2.3 The 2012 Statement was subject to two separate appeals to the Competition Appeal Tribunal ("the Tribunal") brought by (i) BT and (ii) British Sky Broadcasting Limited ("Sky") and TalkTalk Telecom Group PLC ("TalkTalk") (acting as co-appellants).
- 2.4 As the appeals related to price control matters, the matters were subject to determination by the Competition Commission ("CC") pursuant to section 193 of the 2003 Act. On 24 July 2012 the Tribunal referred to the CC a number of questions addressing the specified price control matters arising in BT's appeal. On 28 September 2012 the Tribunal referred to the CC a number of questions addressing the specified price control matters arising in Sky and TalkTalk's appeal.
- 2.5 On 27 March 2013, the CC notified the Tribunal of its determination of the price control matters referred to it.
- 2.6 By a ruling of 29 April 2013, the Tribunal decided pursuant to sections 193(6) and 195(2) of the 2003 Act that those grounds of appeal encapsulated in:
- 2.6.1 Reference Questions 1(i) and (ii) of Sky and TalkTalk's appeal; and
- 2.6.2 Reference Questions 1(ii), (iv), (vi) and (vii) of the BT appeal,
- are upheld to the extent found in the CC's determination.
- 2.7 The Tribunal dismissed the other grounds of appeal.

¹ Available at: <http://stakeholders.ofcom.org.uk/consultations/wlr-cc-2011/statement-march2012/>

² Available at: <http://stakeholders.ofcom.org.uk/consultations/wla/statement> and <http://stakeholders.ofcom.org.uk/consultations/review-wholesale-fixed-exchange/statement>

Directions from the Competition Appeal Tribunal to Ofcom

2.8 Pursuant to section 195(4) of the 2003 Act, the Tribunal remitted the decision under appeal to Ofcom with the following directions:

“(…)

2. *In order to correct the errors identified in Reference Questions 1(ii), (iv), (vi) and (vii) in BT's Appeal and Reference Question 1(i) in Sky and TalkTalk's appeal, OFCOM shall:*

- (a) *amend Condition AAAA4(WLR) in Part IV, Schedule 1, to Annex 12 of the Statement, so that the charge ceiling for Analogue Core WLR Rental in the unelapsed period of the Second Relevant Year is £93.27;*
- (b) *amend Condition FAA4(A) in Part I, Schedule 1, to Annex 12 of the Statement, so that the charge ceiling for MPF Rental in the unelapsed period of the Second Relevant Year is £84.26;*
- (c) *amend Condition FAA4(A) in Part I, Schedule 1, to Annex 12 of the Statement, so that the charge ceiling for SMPF Rental in the unelapsed period of the Second Relevant Year is £9.75; and*
- (d) *amend Condition FAA4(A) in Part I, Schedule 1, to Annex 12 of the Statement, so that the charge ceiling for each of MPF Transfer and SMPF Connection in the unelapsed period of the Second Relevant Year is £30.65.*

3. *In relation to the error identified in Reference Question 1(ii) of Sky and TalkTalk's Appeal, OFCOM shall correct the error in accordance with the Determinations, taking account of the guidance set out in paragraph 14.186 of the Determinations, and amend Conditions FAA4(A) in Part I, Schedule 1, to Annex 12 of the Statement and AAAA4(WLR) in Part IV, Schedule 1, to Annex 12 of the Statement accordingly as soon as reasonably practicable.”*

2.9 On 30 April 2013 Ofcom published the document *Charge Control for LLU and WLR services – Adoption of revised SMP Conditions following the Competition Appeal Tribunal's Directions of 29 April 2013*. By this document Ofcom gave effect to paragraph 2 of the Tribunal's directions.

Section 3

Paragraph 3 of the Tribunal's directions - correcting the "fault rates" error

Sky and TalkTalk's appeal and the Competition Commission's determination of the 'fault rates' ground of appeal

- 3.1 Reference Question 1(ii) of Sky and TalkTalk's Appeal required the CC to determine whether price controls set in the 2012 Statement had been set at a level which was inappropriate because Ofcom erred in its assessment of fault repair costs for the reasons set out in the Notice of Appeal. In summary, Sky and TalkTalk's appeal was that the fault rate on MPF lines would fall significantly over the charge control period due to the falling proportion of 'young lines' in the total MPF customer base and that this should have been built into Ofcom's modelling of the charge controls.³ The premise of this argument was that young lines had a materially greater propensity to fault (also referred to in the appeal as early life failures ("ELF"⁴)) than older lines (referred to in the appeal as in life failures ("ILF"⁵)).
- 3.2 The CC concluded that, on balance, the data presented by Sky and TalkTalk in the appeal was strongly suggestive of a causal relationship between young lines and fault rates (i.e. that young lines cause elevated fault rates). The CC concluded that the evidence base showed that the MPF price control had been set at an inappropriate level because it did not take into account the effect of a change in the proportion of young lines on average MPF fault rates.⁶
- 3.3 Given the relatively short time remaining on the appealed charge control, the CC considered that it would be preferable to correct this error without further delay, provided that they could be confident that such a correction was appropriate, effective and practicable. Therefore, the CC sought to establish whether a correction could be made without remittal.⁷
- 3.4 In carrying out this assessment, the CC had before it the following data:
- 3.4.1 BT data on fault rates split by exchange, access and dropwire/NTE for young lines and in-life lines from October 2009 to April 2012 inclusive;
 - 3.4.2 Sky data split by exchange and access for young lines and in-life lines for March 2012; and
 - 3.4.3 TalkTalk data split by exchange and access for young lines and in-life lines for November 2011 to April 2012 inclusive (and summary data for October 2009 to January 2011 inclusive).⁸

³ CC Determination §10.2

⁴ An ELF is a fault occurring on a line within 28 and 30 days respectively of a WLR or MPF line having been subjected to an engineering intervention leading to a change in ownership of that line.

⁵ An ILF is a fault occurring on a line more than 28 and 30 days respectively of a WLR or MPF line having been subjected to an engineering intervention leading to a change in ownership of that line.

⁶ CC Determination §10.96

⁷ CC Determination §14.167

⁸ CC Determination §14.174

- 3.5 In examining these data, the CC observed that the BT and the Sky/TalkTalk data respectively provided strikingly different estimates as to the appropriate adjustment to the fault rate usage factor to be applied in the model to correct the error.⁹
- 3.6 The CC stated that BT's data from February 2011 onwards showed a significantly higher fault rate for young lines, which was consistent with Sky and TalkTalk's data, but that BT's data from October 2009 to January 2011 showed a fault rate for young lines and in-life lines that was significantly lower than that for February 2011 onwards.¹⁰ BT told the CC that in January 2011 there had been a significant change to the way in which new MPF lines were provided. Whilst the CC said that it had significant doubts as to the validity of the earlier pre-January 2011 ELF BT data, it also noted the possibility that the ELF fault rate may have been raised permanently by the change in industry practice that BT explained had taken place. The CC stated that this might suggest that the ELF rate applied in any correction should be higher for 2013/14 than the base year. The implication would be that – if the BT data were a true reflection of the MPF ELF rate over time and the WLR ELF rate was unchanged – that correction of the error might lead to an increase in the relative MPF/WLR fault rate.¹¹ In the light of these data the CC said that:

"14.184 We considered that these issues did not lead us to doubt our original conclusions as to the existence of an error: the additional BT data for the period from January 2011 onwards reinforced the original Sky/TalkTalk data. However, the significant difference between the pre- and post-January 2011 data introduced significant uncertainty as to what the appropriate size (or direction) of the correction should be. Most significantly, on the basis of the evidence before us and in the time available, we could not fully understand the dramatic increase in the ELF rate indicated by BT's data from January 2011 onwards. In order to make a correction, we would need to be clear about whether this change was caused by simply a change in the way faults were classified, a change in the physical process of transfer to MPF, or both, or some other additional factor."¹² (emphasis added).

- 3.7 On that basis the CC considered that the only practicable option was for the matter to be remitted to Ofcom for further investigation as the data it had received raised a number of further questions and therefore there were a range of possible final outcomes that could be reached.¹³
- 3.8 The CC provided the following guidance for Ofcom in relation to how the error should be corrected:
- 3.8.1 An adjustment to the Cost Allocation Model for relative fault rates, using gross rather than net additions and the method outlined in the 1st witness statement of Martin Duckworth, an expert witness for Sky and TalkTalk, is recommended.
- 3.8.2 In the process of its investigation it may be that Ofcom is able to obtain appropriate disaggregated data that would also allow it to consider dropwire/NTE faults.

⁹ CC Determination §14.175

¹⁰ CC Determination §§14.181-14.182

¹¹ CC Determination §14.183

¹² CC Determination §14.184

¹³ CC Determination §14.185

3.8.3 Ofcom should focus on the causes of the significant differences in the ELF rate in the BT data for the period pre- and post-January 2011 and the discrepancy between BT's data and TalkTalk's data in the period prior to January 2011. In particular, Ofcom should consider whether the increase post-January 2011 has underlying causes or simply represents a change in fault classification.¹⁴

3.9 The CC noted that

"14.187 (...) Ofcom may find that once these data discrepancies have been resolved, the correction required could be an increase, decrease or no change in the relative MPF/WLR fault rates".¹⁵

Investigation undertaken by Ofcom on remittal

3.10 Ofcom has undertaken a significant amount of further analysis and assessment in order to determine how to correct the 'fault rates' error identified by the CC. In accordance with paragraph 3 of the Directions, in doing so Ofcom has taken into account the guidance provided by the CC in its determination. In particular, given the discrepancies in the data before the CC Ofcom has investigated further:

- 3.10.1 the fault rates for MPF, WLR and SMPF services between April 2009 and the present, including both the ILF and ELF rates;
- 3.10.2 the location in the Openreach network of those failures – i.e. the exchange, access network or dropwire/NTE;
- 3.10.3 whether the elevated MPF ELF rate is likely to be enduring, at least until the end of the current charge control period (31 March 2014);
- 3.10.4 what this data would mean in terms of a correction to the charge controls.

3.11 In order to investigate these issues, on 13 May 2013 Ofcom requested further information from BT using our statutory information gathering powers under section 135 of the 2003 Act. Specifically, Ofcom requested from BT:

- monthly data on all faults on the Openreach network reported by communications providers (including other parts of the BT group) in the period 1 April 2008 to 1 February 2013 relating to WLR, SMPF and MPF services, broken down by reference to a number of factors (including whether the fault is classified as ELF or ILF);¹⁶
- monthly provisioning data for WLR, SMPF and MPF over the same period;
- monthly data on the quantity of each Fault Clear Code assigned by Openreach on the completion of network repairs;

¹⁴ CC Determination §14.186

¹⁵ CC Determination §14.187

¹⁶ Ofcom requested this information split by reference to the following characteristics: (i) the relevant service (MPF, WLR, SMPF), (ii) reporting communications provider, (iii) fault report classification, (iv) main fault location, (v) geographic location, (vi) whether the fault was an ELF or ILF, and (vii) whether the fault was subject to a 'Matters Beyond our Reasonable Control' designation at the time it was reported.

- details of any data retention policies that limit the information provided in response to Ofcom's requests.
- 3.12 Ofcom also relied on information provided by BT under its SMP conditions regarding the volumes of installed and working WLR and LLU services.
- 3.13 This information was required to undertake an analysis of the matters highlighted by the CC in its determination and, in particular, to interrogate the apparent difference in the ELF rate for MPF lines in the pre- and post-January 2011 data before the CC.
- 3.14 In its response to this statutory information request, BT informed Ofcom that as a result of its data retention policy it had not retained data required to investigate the discrepancy identified by the CC. BT informed Ofcom that it operates a group-wide data retention policy, which means that data is kept no longer than is necessary and no longer than a recommended period of two years unless there are specific reasons to retain the information for a longer period (e.g. in relation to tax matters). BT explained that the application of this policy meant that BT held a full set of the requested data for only 22 months' of the relevant period.
- 3.15 On the basis of this information, Ofcom reached the view that it was unable to obtain any further data from BT on fault rates, including ELF rates for MPF, prior to March 2011 (other than the information provided by BT, Sky and TalkTalk to the CC in the appeal). Consequently, Ofcom considered that it was not possible to carry out the analysis of fault rates required to resolve the issue identified by the CC and, therefore, to correct the error as required by the Tribunal's directions.
- 3.16 On 9 September 2013 Ofcom wrote to Sky, TalkTalk and BT, as the parties to this aspect of the appeal, providing a reasoned note of its investigation and assessment. Ofcom explained that in the absence of historical data on fault rates, it could not determine the questions left unresolved from the CC's determination. Ofcom invited comments from those parties on the position set out in that note. In response:
- 3.16.1 Sky and TalkTalk submitted that Ofcom could and should make a correction to the charge control consistent with the CC's determination using the information available.
- 3.16.2 BT submitted that Ofcom had discharged the requirements of paragraph 3 of the Tribunal's directions and did not have any substantive comments on the position set out by Ofcom.
- 3.17 On 25 October 2013 Ofcom made an application to the Tribunal to vary the terms of the Tribunal's directions on the basis that on the information available it was not possible to make a correction to the charge controls for the fault rates error.
- 3.18 In the course of subsequent correspondence with the parties on Ofcom's application it became apparent that BT may have held data on fault rates that had not been provided to Ofcom, notwithstanding Ofcom's statutory information request of 13 May 2013. Ofcom wrote to BT on 14 November 2013 requesting urgent clarification of the position and the provision of relevant fault rate data to the extent that it had not previously been provided by BT.
- 3.19 On 15 November 2013 BT provided to Ofcom three further archive datasets containing information on fault rates covering the historic period for which Ofcom did not have data. The three datasets contained the following:

- 3.19.1 Archive 1 contained an Access database of faults for MPF and WLR/SMPF reported during the period April 2008 to January 2011, including ELF designations for some of these faults. An additional dataset (in Excel files) in this archive contained ELFs primarily from February 2011 to March 2011, with limited data in January and April 2011, though the ELFs for these datasets only included MPF and WLR3 faults (i.e. WLR Classic and SMPF were excluded).
- 3.19.2 Archive 2 contained MPF and WLR/ SMPF faults between October 2009 and September 2011, along with the dates when these faults were received and clear codes detailing how the fault was resolved.
- 3.19.3 Archive 3 contained MPF and WLR/SMPF faults between April 2008 and March 2011, the clear codes for these faults, and the location of the fault (e.g., network segment).

CSMG analysis of the fault rates data

- 3.20 Ofcom engaged Cambridge Strategic Management Group ("CSMG") to analyse and process the three new archive datasets provided by BT and to provide a report for Ofcom. Ofcom had previously instructed CSMG to undertake a detailed analysis of the evidence on fault rates (including ELF rates) for the purposes of Ofcom's Fixed Access Market Reviews. CSMG was able to compare its analysis of the three new archive datasets (for which CSMG was able to calculate ILF and ELF rates for MPF and WLR+SMPF for the period October 2009 to January 2011) with its analysis of more recently obtained evidence in the Fixed Access Market Reviews (which covers the period April 2011 to August 2013).
- 3.21 A copy of CSMG's report reviewing the newly provided remittal data is attached at Annex 1 (the "CSMG Remittal Report"). A copy of CSMG's report on fault rates for the Fixed Access Market Reviews (the "CSMG FAMR Report") has been published as Annex 10 to a further consultation entitled: *Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls* (published 19 December 2013).
- 3.22 Reference should be made to the CSMG report at Annex 1 for a full description of the methodology adopted and CSMG's analysis, which is not repeated here. By way of summary:
 - 3.22.1 Using the three new archive datasets provided by BT, CSMG was able to calculate the volume of ELFs and ILFs for MPF and WLR+SMPF between the period October 2009 and January 2011. CSMG has compared this analysis with that undertaken on the data in the CSMG FAMR Report. See CSMG Remittal Report paragraphs 2.1 – 2.16 and Figure 1.
 - 3.22.2 ELF volumes are several times higher in the later period than in the period October 2009 to January 2011. On average they are 10 times higher for MPF and 3 times higher for WLR+SMPF. See CSMG Remittal Report paragraphs 2.17 - 2.19 and Figure 2.
 - 3.22.3 The increase in provisioning activity for MPF lines over the period in question is insufficient to fully explain the increase in fault volumes. See CSMG Remittal Report paragraph 2.21 and Figure 3.

- 3.22.4 The distribution of ELF's across particular network segments is roughly consistent between datasets. See CSMG Remittal Report paragraph 2.22 and Figure 4.
- 3.22.5 The data suggests that the categorisation of ELF's for both MPF and WLR+SMPF is different between the dataset covering the period October 2009 to January 2011 and the dataset covering the period April 2011 to August 2013. CSMG say that *"This suggests that the early life fault categorisation is different between the two datasets and that faults which would have been categorised as early life in the 2013 report dataset may have been categorised as in-life faults in the remittal dataset"*. See CSMG Remittal Report paragraphs 2.23 – 2.25 and Figures 5 and 6.
- 3.22.6 CSMG also observed that BT confirmed in correspondence that there was at least one known difference in ELF categorisation between the datasets for the two periods. In the three archive datasets fault reports within the ELF period that did not give rise to engineering activity were not classified as ELF. CSMG note that this supports their assessment. CSMG Remittal Report paragraph 2.25.

Ofcom's analysis of the evidence

- 3.23 Ofcom was directed by the Tribunal to correct the fault rates error identified by the Competition Commission in accordance with the determination, taking account of the guidance set out in paragraph 14.186 of the determination (which is repeated above at paragraph 2.8).¹⁷ Consistent with the Competition Commission's guidance we have therefore focussed on whether the apparent increase in ELF rates for MPF lines post-January 2011 observed in the data in the appeal has underlying causes or simply represents a change in fault classification. It was the answer to this question that the Competition Commission identified as being necessary in order for it to be in a position to make a correction.
- 3.24 We have carefully considered the available evidence and the analysis set out in the CSMG Remittal Report, Ofcom would note the following for the pre- and post-January 2011 periods:
- a) the total level of faults in the two periods is consistent (for MPF, total faults were increasing gradually and for WLR+SMPF they were roughly similar); but
 - b) there is a stark difference between the reported ELF volumes, for both MPF and WLR+SMPF, pre- and post-January 2011 presented in the CSMG Remittal Report; and
- 3.25 We consider that this evidence and analysis suggests that the categorisation of ELF is different between the two datasets. Moreover, this is consistent with Ofcom's expectations as a matter of engineering: in a network as large as the Openreach network (with around 25 million active copper lines and over 5,500 local exchanges we consider it to be highly unlikely that a single (or even multiple) engineering or procedural change could have such a dramatic and pervasive effect on ELF rates in such a short period of time. Finally, also, it is clear that Openreach has identified at least one change in categorisation of ELF between the two datasets.

¹⁷ Separately, Ofcom is considering fault rates on the Openreach access network for the purposes of the Fixed Access Market Reviews. That review covers the forward looking period to 2016/17.

- 3.26 Before the Competition Commission, BT suggested that the increase in ELF rates apparent in its data was attributable to a change in the way that MPF lines were provided. BT said:

"...in January 2011 a significant change took place within industry regarding the way in which new MPF lines were provided. Prior to that date, MPF providers wanting to order a new line in practice largely relied upon a variant of WLR known as 'WLR2' and then migrated to MPF. In January 2011, WLR2 was progressively withdrawn to be replaced by a new variant (known as 'WLR3') for new orders. From that date, instead of ordering a WLR line and subsequently migrating to MPF, MPF providers largely order MPF lines directly."¹⁸

- 3.27 However, the evidence now available to Ofcom (which was not available to the Competition Commission) indicates that there was an apparent increase in ELF rates for both MPF and WLR+SMPF in January 2011 (see Figures 2, 5 and 6 of the CSMG Remittal Report) albeit the increase for MPF was greater. The explanation presented by BT in the appeal for the apparent rise in MPF ELF rates does not explain the apparent rise in WLR+SMPF rates also shown in the data.
- 3.28 In light of the available evidence Ofcom considers that the dramatic increase in the MPF ELF rate from January 2011 onwards observed by the Competition Commission in BT data presented in the appeal is likely to be attributable to a change in the classification of faults rather than to another underlying cause or causes.
- 3.29 On that basis, as directed by the Tribunal, we are making a correction to the charge controls to account for the effect of MPF young lines and MPF ELF rates using the available evidence.

Correction to the LLU and WLR charge controls

- 3.30 To determine the appropriate correction, we need to:
1. determine the rates of MPF ELF and MPF ILF that were implicit in the original charge control allocations for fault rates;
 2. use this to determine the proportion of network and exchange faults attributable to MPF ELF in that determination;
 3. adjust this for the change in relative volumes of MPF new installations and total MPF lines over the period of the model while also allowing for any change in the MPF ELF and MPF ILF rates over the period and then re-determine the allocation rates.
- 3.31 It is not possible, for the reasons set out above, to directly derive the MPF ELF and MPF ILF rates for the period upon which the original charge control fault allocation was based. Accordingly, we consider that the most appropriate proxy for this fault rate is to use the earliest MPF ELF and MPF ILF rates for which we have reliable data.
- 3.32 We have calculated the average yearly MPF ELF and MPF ILF rates by network segment for 2011/12 and 2013/14 (based on six months of data). These are set out

¹⁸ See paragraph 14.157 of the CC Determination.

in Table 3.1 below. The data is based on the analysis CSMG undertook for the CSMG FAMR Report.¹⁹

Table 3.1 Average Yearly MPF ELF and ILF rates by network segment

	Start Point	End Point
Date	2011/12	2013/14
Network ELF rate	2.10%	3.41%
Network ILF rate	4.92%	5.62%
Exchange ELF rate	1.20%	0.69%
Exchange ILF rate	1.41%	1.02%

- 3.33 Consistent with the CC's guidance at paragraph 14.186(a) of the Determination, we have applied these rates using gross rather than net additions on the basis of the methodology set out in Martin Duckworth's 1st Witness Statement (the "Duckworth method"). This allows us to calculate the change in the overall propensity for MPF faults. This is set out in Table 3.2 below.

¹⁹ Our calculation of the 2012/13 and 2013/14 ILF and ELF rates using the most recent data available is consistent with the approach taken by the CC in relation to correcting the volumes error where the CC used up-to-date actual volume data; see paragraphs 14.95 to 14.100 of the CC Determination.

Table 3.2 Application of the Duckworth method - revised estimate of the change in overall MPF propensity to fault²⁰

	10/11	13/14
MPF Installations (M)	1,911	1,740
Total MPF volumes (M)	3,776	7,043
Network MPF ELF rate	2.10%	3.41%
Network MPF ILF rate	4.92%	5.62%
ELF (M)	40	59
ILF (M)	186	396
Total network faults	226	455
Overall MPF network fault rate per line	6.0%	6.5%
Change from 10/11 to 13/14	108%	
Exchange ELF rate	1.20%	0.69%
Exchange ILF rate	1.41%	1.02%
ELF (M)	23	12
ILF (M)	53	72
Total exchange faults	76	84
Overall MPF exchange fault rate per line	2.0%	1.2%
Change from 10/11 to 13/14	59%	

3.34 Based on the above calculation, we then modified the fault allocation in the Cost Allocation ("CA") model as follows:

- for Network faults – the 1.08 increase in faults per the Duckworth method is applied against the existing usage factor for MPF in the CA model²¹ to increase the usage factor from 1.10 to 1.19; and
- for Exchange faults – the 0.59 decrease in faults per the Duckworth method is applied against the existing usage factor for MPF in the CA model²² to decrease the usage factor from 2.25 to 1.33.

3.35 The combined effect of these changes is for the:

²⁰ In this calculation total MPF volumes include MPF installations, which means that the derived total network faults rate are not a simple weighted average of the ELF and ILF rates but include in the weighting the fact that installations in a given year are included in the calculation of ELF fault numbers and ILF fault numbers.

²¹ CA model cells AJ25 (D side) and AJ27 (E side)

²² CA model cell AJ40

- MPF rental charge to decrease by 34p
- SMPF rental charge to increase by 14p
- WLR rental charge to increase by 5p

3.36 The effect on the MPF, SMPF and WLR rental charges is set out below in table 3.3.

Table 3.3 Current and revised charges

Service	Previous charge 2013/14	Revised charge
MPF rental	£84.26	£83.92
SMPF rental	£9.75	£9.89
WLR rental	£93.27	£93.32

Section 4

The revised SMP services conditions

4.1 Under section 195(6) of the 2003 Act, Ofcom has a duty to comply with the Tribunal's directions. In accordance with the Tribunal's directions, Ofcom is amending the charge controls with effect from 19 December 2013 such that the Dominant Provider shall not charge more than the following for the remainder of the charge control period (the period 19 December 2013 to 31 March 2014):

4.1.1 for MPF Rental the amount of £83.92

4.1.2 for SMPF Rental the amount of £9.89

4.1.3 for Analogue Core WLR Rental, the amount of £93.32

LLU services: revisions to SMP services condition FAA4(A)

4.2 Ofcom now adopts the following revision to SMP Condition FAA4(A).2 (as amended by Ofcom on 30 April 2013), to take effect from 19 December 2013.

Condition FAA4(A) – Charge control

FAA4(A).2 The Dominant Provider shall not charge more than:

- (a) for MPF Rental, the amount of £87.41 in the First Relevant Year, the amount of £85.04 for the period beginning 1 April 2013 and ending on 30 April 2013, ~~and~~ the amount of £84.26 for the period beginning on 1 May 2013 and ending on 19 December 2013 and the amount of £83.92 the remainder of the Second Relevant Year;
- (b) for SMPF Rental, the amount of £11.92 in the First Relevant Year the amount of £10.40 for the period beginning 1 April 2013 and ending on 30 April 2013, ~~and~~ the amount of £9.75 the period beginning on 1 May 2013 and ending on 19 December 2013 and the amount of £9.89 for the remainder of the Second Relevant Year;
- (c) for MPF Transfer, the amount of £33.54 in the First Relevant Year the amount of £30.82 for the period beginning 1 April 2013 and ending on 30 April 2013 and the amount of £30.65 for the remainder of the Second Relevant Year;
- (d) for MPF New Provide, the amount of £51.16 in the First Relevant Year;
- (e) for SMPF Connection, the amount of £33.54 in the First Relevant Year the amount of £30.82 for the period beginning 1 April 2013 and ending on 30 April 2013 and the amount of £30.65 for the remainder of the Second Relevant Year;
- (f) for MPF Cease, the amount of £0.00 in each of the First Relevant Year and the Second Relevant Year;

- (g) for SMPF Cease, the amount of £0.00 in each of the First Relevant Year and the Second Relevant Year;
- (h) for MPF Singleton Jumper Removal, the amount of £25.81 in the First Relevant Year;
- (i) for SMPF Singleton Jumper Removal, the amount of £28.15 in the First Relevant Year
- (j) for MPF Bulk Jumper Removal, the amount of £19.63 in the First Relevant Year; and
- (k) for SMPF Bulk Jumper Removal, the amount of £22.99 in the First Relevant Year.

WLR services: revisions to SMP services condition AAAA4(WLR)

- 4.3 Ofcom now adopts the following revision to SMP Condition AAAA4(WLR).2 (as amended by Ofcom on 30 April 2013), to take effect from 19 December 2013.

Condition AAAA4(WLR) - Charge control

AAAA4(WLR).2 The Dominant Provider shall not charge more than:

- (a) for Analogue Core WLR rental, the amount of £98.81 in the First Relevant Year, the amount of £94.75 for the period beginning 1 April 2013 and ending on 30 April 2013, ~~and~~ the amount of £93.27 the period beginning on 1 May 2013 and ending on 19 December 2013 and the amount of £93.32 for the remainder of the Second Relevant Year;
- (b) for WLR Transfer, the amount of £3.29 in the First Relevant Year;
- (c) for WLR New Connection, the amount of £50.44 in the First Relevant Year.

Annex 1: CSMG Remittal Report

Please see

http://stakeholders.ofcom.org.uk/binaries/consultations/wlr-cc-2011/charge-control-december2013/Ofcom_Remittal_Data_Review.pdf