



Quality of Service for WLR and MPF

Directions and Consents relating to the minimum
standards and KPIs imposed in the 2014 Fixed Access
Market Reviews

Non-confidential version

Statement and further consultation

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About this document

In the 2014 Fixed Access Market Reviews (FAMR), in order to address concerns of a continued decline in Openreach's performance in provisioning and repairs, we imposed mandatory minimum quality of service (QoS) obligations on BT. In particular, we applied minimum standards to the provisioning and repair of some of the wholesale products that communications providers (CPs) purchase from Openreach to offer broadband and telephony products to consumers and small businesses.

Since the imposition of these minimum standards, there has been a change in the mix of wholesale services purchased from Openreach, which would have reduced the effectiveness of the existing minimum standards. Accordingly, we are now using our direction making powers to apply minimum standards (at the existing levels) relating to the repair of Openreach's main consumer supporting wholesale broadband and telephony services. We are also using our direction making powers to extend the minimum standards for provisioning and repair beyond March 2017, when they would otherwise expire.

The changes we are making are intended to ensure that the current arrangements continue to address the same competition concerns identified in the FAMR. We are separately, as part of our next Wholesale Local Access (WLA) market review, considering options for encouraging further improvements to BT's service quality.

We are also seeking the views of stakeholders on the detailed drafting of a draft direction in relation to QoS for WLR by 5pm on 18 November 2016 and plan to issue a statement shortly thereafter.

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Section 1

Summary

- 1.1 We concluded our most recent reviews of the fixed access markets¹ in June 2014 (referred to as the Fixed Access Market Reviews or FAMR).² We determined, among other things, that there had been a gradual decline since 2009 in Openreach's performance in the provision and repair of copper lines supporting voice and broadband services offered to consumers and small businesses and that this was a consequence of BT's significant market power (SMP) in the relevant wholesale markets. Consequently, we imposed new SMP conditions on BT requiring it to meet defined minimum quality of service (QoS) standards for the provisioning and repair of the wholesale line rental (WLR) and metallic path facility (MPF) products.³
- 1.2 Communications Providers (CPs) offering retail telephony and broadband services can purchase WLR and MPF services from Openreach with different associated service maintenance levels (known as SMLs or care levels). These SMLs reflect the speed with which Openreach commits to repair faults in its contractual arrangements with wholesale customers.
- 1.3 The SMP conditions imposed by Ofcom for repair minimum standards currently apply to the SMLs which, as at publication of the 2014 FAMR statement, accounted for the majority of overall volumes for MPF and WLR, respectively:
 - In the case of MPF, the minimum standard for 2016/17 requires Openreach to repair 77% of lines on time based on SML2 (i.e. a 'one-day' fix); and
 - In the case of WLR, the minimum standard for 2016/17 requires Openreach to repair 77% of lines on time based on SML1 (i.e. a 'two-day' fix).
- 1.4 During 2016 some CPs decided to change the SMLs associated with the WLR or MPF services they purchase from Openreach. In practical terms, this has resulted in the majority of MPF lines moving from SML2 to SML1 and the majority of WLR lines moving from SML1 to SML2. The effect of these changes is that a large proportion of total WLR and MPF lines purchased by CPs now fall outside of the on-time repair minimum standards, thereby reducing the effectiveness of our current regulation.
- 1.5 On 5 August 2016 we published a consultation in which we proposed to use our direction making powers under the relevant FAMR SMP conditions to change the scope of the current repair minimum standards so that they cover WLR lines

¹ The supply of copper loop-based, cable-based, and fibre-based wholesale local access at a fixed location; wholesale fixed analogue exchange line services; wholesale ISDN30 exchange line services; wholesale ISDN2 exchange line services; and retail ISDN2 exchange line services.

² Ofcom, FAMR: Volume 1: Statement on the markets, market power determinations and remedies, 26 June 2014: <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/statement-june-2014/volume1.pdf>

³ The on-time repair minimum standards currently only apply to WLR at SML1 (fault clear by 23.59 day after next, Monday to Friday, excluding public and bank holidays) and to MPF at SL2 (fault clear by 23.59 next day, Monday to Saturday, excluding public and bank holidays): https://www.openreach.co.uk/orpg/home/products/serviceproducts/serviceharmonisation/serviceharmonisation/downloads/SML_fact_sheet_web_vers_phme_61163_2011_09.pdf

provided at SML2 and MPF lines at SML1.⁴ We proposed a 12-month compliance year commencing in October 2016 for the new standards.

- 1.6 In addition, we proposed to update BT's reporting requirements for key performance indicators (KPIs), to extend the deadline for the reporting of two KPIs by one month, and, in order to avoid duplication of regulation, we also proposed to grant BT a consent under FAMR conditions 12.1A and 12.1B to dis-apply the current repair minimum standards for WLR SML1 and MPF SML2.
- 1.7 Further, due to the expiry of the standards on 31 March 2017 and the risk of a delay in our finalisation of the Narrowband and Wholesale Local Access (WLA) market reviews, we proposed to use our direction making power under FAMR condition 12.4 to extend all of the minimum standards such that they continue to apply at the same level until replaced or removed by Ofcom.
- 1.8 The legal instrument proposing the direction for this extension was included in our Consultation for the minimum standards applying to MPF services, but this did not capture the extension of the minimum standards for the WLR provisions. In order to implement our policy as intended we have included a further notification proposing the necessary direction for WLR. We welcome any stakeholder comments on this draft Direction which is published at Annex 4. The closing date for responses is 18 November 2016.
- 1.9 Our consultation closed on 9 September and we received responses from Openreach, TalkTalk, Vodafone, and Verastar Ltd. We have carefully considered stakeholder responses, and have set out our considerations in this Statement. We have decided to implement the proposals on which we consulted with one substantive change in light of comments from stakeholders. We consulted on a 12-month compliance period for on time fault repair starting with the publication of this statement. In light of stakeholder feedback, we have decided to increase the compliance period for the next period of the repair standards to 17 months to ensure that all minimum standards compliance measures conclude at the end of BT's financial year.
- 1.10 The Directions and Consents giving effect to our decisions are published at Annexes 1 to 3.

⁴ Ofcom, Quality of Service for WLR and MPF: Proposed Directions and Consents relating to the minimum standards and KPIs imposed in the 2014 Fixed Access Market Reviews, 5 August 2016: <http://stakeholders.ofcom.org.uk/binaries/consultations/wlr-mpf-quality/summary/quality-of-service-wlr-mpf.pdf>

Section 2

Background

- 2.1 In the 2014 FAMR, Ofcom undertook a review of matters relating to QoS delivered by BT (through Openreach) in the supply of regulated wholesale fixed access services. We determined that over many years (from 2009) there had been a gradual decline in Openreach's performance, in particular related to fault repairs and provisions for the core WLR and MPF services. We also concluded that the prevailing regulatory and contractual framework had not been sufficient to prevent material detriment to downstream competition in the fixed access markets arising out of BT's SMP.
- 2.2 As a result, we took a number of steps to incentivise better quality outcomes. In particular, we imposed a number of new SMP obligations on BT, including minimum service standards covering provisioning and repair for the main copper-based access services, specifically for WLR and MPF. These were (and remain) the highest volume services and, therefore, have the greatest impact on competition and on the engineering resource levels maintained by Openreach.
- 2.3 The provision and repair minimum standards imposed applied an increasing 'glide path' to the minimum standards over the three-year, forward-look period of the 2014 FAMR as illustrated in Table 1.

Table 1: Openreach minimum service quality standards for WLR and MPF products⁵

Minimum standard	First Year (2014/15)	Second Year (2015/16)	Final Year (2016/17)
12-day provision appointment availability	54%	67%	79%
Provision completion by contracted date	89%	89%	89%
Repair completion within SLA timescales	67%	72%	77%

Source: Ofcom

- 2.4 Openreach must achieve these annual standards in each of its 10 geographic regions.⁶ Two of those regions may make use of what are referred to as 'High Level MBORC' declarations within the performance calculations.⁷ A failure to

⁵ Exclusive of any fixed allowances for "MBORC", or "Matters Beyond Our (Openreach's) Reasonable Control". MBORC means a force majeure event under the relevant Access Agreement, the occurrence of which releases Openreach from the liability to make any payment under the corresponding service level guarantee (SLG).

⁶ These 10 regions include Openreach's nine General Manager (GM) areas plus Northern Ireland.

⁷ High Level MBORCs are typically force majeure events of significant magnitude for which no preparation by Openreach would be sufficient. For example, instances where over 2,000 lines or end-users are affected, incidents which are/are likely to become the subject of regional or national media interest, and anything likely to have a significant impact on the BT and/or Openreach brand.

comply with the standards would represent a breach of the SMP conditions and may result in sanctions being imposed on BT, including fines.

- 2.5 Our monitoring of Openreach's performance shows that it has met the three minimum standards for the first two years of the review period. In particular, the percentages of WLR and MPF repairs completed within service level agreement (SLA) timescales⁸ have improved compared to the low levels identified during the FAMR.

Subsequent changes in care levels for WLR and MPF

- 2.6 At the time of the 2014 FAMR, the majority of WLR lines provided by Openreach were associated with an SML1 SLA (a 'two-day' repair), while the majority of MPF lines were provided at SML2 (a 'one-day' repair). We determined that these were the product/care level combinations about which there were particular QoS concerns and, consequently, applied the repair minimum standards to them.
- 2.7 However, certain retail CPs have recently made decisions to change the SML associated with their rental of WLR and MPF services from Openreach. [redacted] decided to change the SML associated with a significant proportion of their MPF services moving from SML2 to SML1.⁹ [redacted] decided to change the SML for its consumer WLR services from SML1 to SML2.¹⁰
- 2.8 These decisions mean that a large number of UK consumers have had their services migrated automatically to either a higher or a lower SML. [redacted] WLR lines have moved to a higher care level, while [redacted] MPF lines have moved down a care level. The changes are set out in the tables below.

Table 2: WLR and MPF lines by care level (pre CP migration, correct as of 26 February 2016)¹¹

	SML1	SML2
WLR	[redacted]	[redacted]
MPF	[redacted]	[redacted]

Source: Openreach

⁸ I.e. repairs completed 'on time'.

⁹ At the time of the last FAMR, MPF at SML1 was not available from Openreach. [redacted]. MPF at SML1 is provided at a standard rental charge of £85.29 per annum (excluding VAT) – i.e. a discount of £2.36 per line, per annum compared to MPF SML2. See Local Loop Unbundling Pricing: <https://www.openreach.co.uk/orpg/home/products/pricing/loadPricingNotifications.do>

¹⁰ There was also no indication at that the time of the FAMR that [redacted] was likely to change its demand for service of WLR.

¹¹ [redacted]

Table 3: WLR and MPF lines by care level (post CP migration, correct as of 30 September 2016)

	SML1	SML2
WLR	[X]	[X]
MPF	[X]	[X]

Source: Openreach

- 2.9 These movements mean that the 2014 FAMR minimum standards for fault repair no longer apply to the bulk of the WLR and MPF lines. Further, the much lower volumes of lines which would remain subject to a minimum repair standard will make it more difficult for Ofcom to assess whether success or failure against the minimum standards is an accurate reflection of Openreach's overall performance. Absent active steps now to plug the resulting gap in our SMP regulation, we consider that there is a material risk of a negative effect on service quality provided by Openreach, on the degree of competition between CPs, and on the consumer experience as a whole.

Our proposals and consultation

- 2.10 Consequently, on 5 August 2016 we consulted on using our direction making powers in order to ensure that these appropriately targeted remedies will continue to be effective. Our proposals were to replace the previous focus on 'on time repair' of WLR to SML1 and MPF to SML2 with a set of minimum standards applying to all lines (WLR and/or MPF) at a given care level. Our objectives were to address the changes observed in the wholesale products purchased by CPs and to 'future-proof' our QoS regulation in the event of future shifts between care levels.
- 2.11 In addition, we proposed to use our regulatory powers to issue directions and consents under the SMP Conditions to:
- Update the KPI reporting requirements to require BT to report additional data for MPF lines at SML1;
 - Extend the deadline for the reporting of KPIs relating to the volumes of installations and repairs impacted by MBORCs by one month;
 - Consent to the dis-application of the existing final year minimum standards for WLR and MPF repairs, on the basis that these will no longer be necessary; and
 - Extend the provision and repair minimum standards to ensure that they remain in force until the next Narrowband and Wholesale Local Access (WLA) market reviews are completed.
- 2.12 We asked stakeholders whether they agreed with our proposals for the minimum standards and KPIs, and with our proposed directions and consents. The key points raised, and our considerations of them, are set out in the following section.

Impact assessment

- 2.13 The analysis presented in our consultation constitutes an impact assessment, as defined in section 7 of the Act. In this statement we take into account relevant responses and set out our conclusions on the impact of the changes. Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which sets out that we have to carry out impact assessments where the remedies we impose would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy, Ofcom is committed to carrying out impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, please see our guidelines.¹²

Equality impact assessment

- 2.14 Ofcom is required by statute to assess the potential impact of all our functions, policies, projects, and practices on race, disability, and gender equality. Equality impact assessments (EIAs) also assist us in making sure that we are meeting our principle duty of furthering the interests of citizens and consumers regardless of their background or identity. An EIA has already been undertaken in relation to our QoS regulation. This can be found at Annex 2 of the 2014 FAMR Statement.¹³
- 2.15 In summary, it is not apparent to us that the outcome of this document is likely to have any particular impact on race, disability, and gender equality. Specifically, we do not envisage the impact of any outcome to be to the detriment of any group of society. Nor do we consider it necessary to carry out separate EIAs in relation to race or gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes.

¹² Ofcom, Better policy making: Ofcom's approach to impact assessment, 21 July 2005: http://stakeholders.ofcom.org.uk/binaries/consultations/ia_guidelines/summary/condoc.pdf

¹³ <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/statement-june-2014/annexes.pdf>

Section 3

Responses to the consultation and our decisions

- 3.1 We received responses to our Consultation from Openreach, Vodafone, Verastar Ltd, and TalkTalk. In this section we set out a summary of those responses, our consideration of them, and our decisions.

Changes to the repair minimum standards

Stakeholders' views

- 3.2 All respondents supported our proposed use of direction making powers under the relevant FAMR SMP conditions to change the scope of the current repair minimum standards to cover WLR at SML2 and MPF at SML1.
- 3.3 With respect to the levels of the new repair standards, Openreach considered that our consultation should be limited to the issues that have arisen directly from CPs' movements between care levels. It therefore agreed with our proposals to retain the current standard of 77% of repairs completed within the SLA timescale and to consider potential future changes to the minimum standards in the context of the forthcoming WLA market review consultation.
- 3.4 In contrast, TalkTalk considered that keeping the standards at their current levels would be inappropriate for two reasons. Firstly, our decision not to propose to increase the minimum standards in this consultation is inconsistent with the Digital Communication Review's¹⁴ aim of driving a "step change in quality of service".¹⁵ Secondly, Openreach will increase profits as a result of the shifts between care levels and will therefore have the ability to raise its performance from April 2017 while still recovering costs.
- 3.5 Further, TalkTalk disagreed with our proposal to apply the same level of standard to repairs delivered at both care levels and considers that the standard for SML1 should be higher given the "additional 24 hours" that the SLA allows BT to resolve faults. It also stated that we have not justified why the standard should be the same for SMLs 1 and 2, and should further explain our reasoning and/or evidence.

Ofcom's considerations

- 3.6 We welcome support from stakeholders on our proposals for the minimum standards and maintain that these protective measures are necessary to ensure that our QoS remedies remain relevant (by applying to the majority of copper access lines) and become more future-proofed in the light of the changes in service level mix that has occurred.

¹⁴ Also known as the Digital Communications Review or DCR.

¹⁵ Ofcom, Making communications work for everyone: Initial conclusions from the Strategic Review of Digital Communications, 25 August 2016:

<http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/digital-comms-review/DCR-statement.pdf>

- 3.7 While we note TalkTalk's position that it would be desirable to see an increase in the service standards delivered by Openreach, as we identified in the DCR,¹⁶ it would not be appropriate to use these Directions as a vehicle for delivering any increase. We have not, for the purposes of this statement, undertaken a consideration of the operational and resource implications of changes to the level of QoS standards, and the implications for other aspects of service delivery. This is the focus of the analysis that we are currently undertaking in support of the upcoming WLA market review. The measures we are implementing at this time have been designed to ensure that the decision to protect quality through minimum standards made in 2014 continues to be effective notwithstanding the change in service mix and delay in the next reviews.
- 3.8 Further, it is not clear to us why TalkTalk has questioned the appropriateness of having the same minimum standards (as expressed in terms of delivery to the contract SLA) for SML1 and SML2. The existing minimum standards (for WLR and MPF) were developed on this basis and our analysis in the 2014 FAMR in terms of the capacity of Openreach to deliver the minimum standards and the resources required was all based on this assumption. The difference in MPF charges between SML2 and SML1 is similarly based on the difference in SML resource levels linked to these standards. While it may be appropriate in the future to have different standards for different SMLs, as discussed above with respect to the absolute level of the standards, it would not be appropriate to establish such a difference in this review.
- 3.9 Therefore, having considered stakeholder responses, we remain of the view that it is appropriate to hold the new repair standards at the same level as the existing 2016/17 minimum standards for WLR SML1 and MPF SML2 (i.e. 77%).

Structure of the minimum standards and non-discrimination

Stakeholders' views

- 3.10 TalkTalk set out its view that our proposed structure for the standards allows for the possibility of discrimination by enabling Openreach to trade-off a higher performance for WLR against a lower performance for MPF. TalkTalk suggested that this could be prevented by imposing individual standards on each of WLR SML1, MPF SML1, WLR SML2, and MPF SML2, rather than have a single standard for all products at a given SML as we had proposed. TalkTalk considered it essential that we are more explicit on how we will prevent discrimination going forward, should we not impose individual standards as they suggested.
- 3.11 Openreach, in contrast, considered that the risks of discrimination between the two products are adequately mitigated by the existing service monitoring programme that is in place. In fact, according to Openreach, WLR and MPF at SMLs 1 and 2, respectively, are "served from the same operational books" and are "treated the same". Openreach added that it does not, and will not, discriminate between WLR and MPF in terms of service outcomes, and will consistently aim to exceed the minimum standards for both products.

¹⁶ Ofcom, Making communications work for everyone: Initial conclusions from the Strategic Review of Digital Communications, 25 August 2016:
<http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/digital-comms-review/DCR-statement.pdf>

Ofcom's considerations

- 3.12 As noted in the consultation, we are aware that imposing a standard on repairs on all WLR and MPF lines at a given SML does not guarantee that the repairs to a given product meet the standard and that there would be some scope for discrimination by Openreach between the products. However, we consider that there are three main reasons why the risk of discrimination to any anti-competitive end is low and that we would be able to step in rapidly should such conduct be observed:
- Adequate non-discrimination measures are in place to address any systematic discrimination:
 - BT is subject to an Equivalence of Inputs (EOI) remedy, which we consider is the most effective form of non-discrimination. Under EOI, Openreach's systems ensure that service resources are not allocated by reference to the purchaser of the product; and
 - The no undue-discrimination remedy imposed in the 2014 FAMR, whilst being more general than the EOI obligation, is designed as a complementary remedy to the requirement for network access, principally to ensure that BT, as a vertically integrated SMP operator, cannot unfairly favour to a material extent its own downstream business so as to place one or more third parties at a competitive disadvantage.
 - The structure of Openreach's service delivery does not readily lend itself to such discrimination. We do not consider it probable under the form of direction that we have proposed, that BT could organise its operations in such a way as to increase the level of service for WLR to such an extent that it could materially disadvantage MPF operators.
 - We have an active QoS monitoring programme (which includes monthly service KPIs for each product variant) which would quickly identify such discrimination if it arose and we would take further action as necessary.
- 3.13 We would note that these non-discrimination measures pre-date our minimum standards and our experience, having reviewed extensive amounts of evidence for the purpose of the 2014 FAMR and since, suggests that they have ensured that BT has not sought to engineer any systematic favouring of products that are used in greater proportions by BT's downstream businesses relative to third party CPs. We note that performance at the UK level against each of the three minimum standards in 2015/16 was in fact higher for MPF than it was for WLR.
- 3.14 We have considered TalkTalk's proposal for individual minimum standards for each product at SML1 and SML2, but we consider that given the risk of material changes in the volumes of services provided at a given SML, Openreach would be exposed to a material risk of failure against these standards as a result of exogenous changes in demand. That is, Openreach could find that the yearly weighted average performance was materially distorted by movement between SMLs. While such a risk is not completely eliminated by the combined standards, the probability of a sufficient movement, which would give rise to a risk of failure, is reduced significantly.

- 3.15 We therefore retain confidence in our proposed approach for calculating compliance with the cross-care level standards and have decided to proceed on this basis.

The compliance period for the minimum standards

Stakeholders' views

- 3.16 Openreach disagreed with our proposed change to the compliance cycle of the repair minimum standards from a financial year basis (April to March) to October to September. It outlined a number of concerns, including the fact that repair standards would be out of line with the provisioning standards, Openreach's planning cycle, and "other highly connected regulatory remedies", such as the charge controls.
- 3.17 Openreach has suggested that a more appropriate approach for the repair standards would be for Ofcom to set an 18-month compliance period running from 1 October 2016 to 31 March 2018. It considered that this would "not dilute existing remedies in any way" and would have the additional benefit of offering certainty to stakeholders.
- 3.18 TalkTalk stated that it understands the logic for an October to September cycle but that this results in a misalignment in compliance periods for provision and repair. It suggests compliance years which would cover October 2016-September 2017, April 2017-March 2018, April 2018-March 2019, and so on. This would result in a six-month overlap; which TalkTalk considers would not be unreasonable.

Ofcom's considerations

- 3.19 In the August consultation, our proposed approach for measuring compliance with the modified repair standards was to commence a new compliance period running from October 2016 to September 2017 to coincide with the publication of our decision on the directions. We noted Openreach's concerns about the impact of having some minimum standards operating on different timeframes from others¹⁷ and set out its proposal for an October 2016 to March 2017 minimum standard (either at the national or regional level) which is derived for 2016/17 by taking into account performance in the first part of this financial year.
- 3.20 We were concerned about the robustness of the derivation of the sub-year target and ultimately did not consider that we could support such an approach. We stated that compliance with the existing standards is based on a 12-month average in order to factor in the potential for seasonal challenges to Openreach's operational activities and proposed that the compliance period for the new, cross-SML standards remains at 12 months and that it begins in October 2016.
- 3.21 However, having reviewed Openreach's latest proposal, we consider that setting an initial compliance period that is longer than 12 months and covers two autumn/winter periods (the more challenging seasons for service delivery) allows us to set a minimum standard that addresses all the stakeholder concerns, while avoiding the dilution risk on the standard of a shorter period.

¹⁷ I.e. repair standards that fall out of alignment with the appointment availability and on-time provisioning standards.

- 3.22 The directions and consents we have decided to make will take effect on 1 November 2016 and we have decided to set an initial compliance year of 17 months beginning 1 November 2016 and ending 31 March 2018. We consider that this is an appropriate period over which to assess performance (and is not materially different from the 18-month period suggested by Openreach) and is a simple, yet effective, means of resolving the issue of misalignment with the provisioning minimum standards.
- 3.23 We do not consider that extending the compliance period will lead to a reduction in performance against the minimum standards. In fact, a 17-month compliance period which includes two autumn/winter seasons is potentially more challenging for Openreach as autumn/winter weather tends to result in a higher fault intake. Subsequent, compliance periods will then revert to 12 months.

Continuing the minimum standards for provisions and repairs beyond 2016/17

Stakeholders' views

- 3.24 The four respondents to the consultation all supported our proposals to ensure the continuation of the FAMR QoS regime, in particular the minimum standards, beyond the current end date of 31 March 2017.

Ofcom's considerations

- 3.25 We note the agreement of respondents to our consultation for this aspect of our proposals. We continue to consider that, in the interests of both competition and consumers, it remains necessary to prevent the minimum standards falling away at the end of 2016/17 for both MPF and WLR.
- 3.26 Accordingly, we will implement the direction we proposed for MPF, which will ensure that the standards remain in force at their current level for future 12-month periods (until they are revoked or superseded).
- 3.27 Our draft legal instrument did not capture this aspect of our proposals for the minimum standards relating to provisioning for WLR. Section 5 explains our proposal to set a further direction for WLR to ensure the minimum standards continue for that product also.

Other points raised

- 3.28 In their responses to our consultation, stakeholders also raised a number of additional points dealing with:
- Our proposed consent to dis-apply the existing repair standards;
 - KPI reporting requirements for MPF lines at SML1; and
 - Extending the deadline for 'MBORC KPIs'.

Our proposed consent to dis-apply the existing repair standards

Stakeholders' views

- 3.29 Openreach and Verastar commented in favour of our proposal to consent to BT not applying the existing repair minimum standards for the year 2016/17.

Openreach stated that it would be “undesirable and disproportionate” for it to be required to be compliant with two different QoS regimes in parallel.

Ofcom’s considerations

- 3.30 We consider that our proposal to dis-apply the current repair minimum standards, in light of the new cross-SML standards, remains appropriate and will avoid an unnecessary duplication of regulation. The relevant Consents are set out at Annex 3.

KPI reporting requirements for MPF lines at SML1

Stakeholders’ views

- 3.31 Both Verastar and Openreach agreed with our proposals to extend KPI reporting requirements, by Direction, to MPF lines with an associated repair commitment of SML1.
- 3.32 Openreach considered that as MPF at SML1 is now being purchased at scale and as this product variant will form part of the new repair standards it is appropriate for the KPI obligations to be extended accordingly. In addition, Openreach stated that it would welcome further discussion with Ofcom on the public KPIs in order that necessary changes to their website can be made and do not confuse users of that site.

Ofcom’s considerations

- 3.33 Following stakeholder comments, we consider that our consultation proposal relating to the submission of MPF SML1 repair KPIs remains appropriate. This data should be provided in the same format and on the same date each month as the current suite of KPIs imposed via the 2014 FAMR statement. The deadline for receipt by Ofcom of the first expanded set of KPIs will be 20 December 2016. A list of the new KPIs we expect BT to report is outlined in the Directions which can be found at Annex 2 of this document.
- 3.34 With respect to the public KPIs, we have engaged with Openreach on how these are presented in the future, signposting of changes for users of the site, and the retaining of historic quarterly data.

Extending the deadline for MBORC KPIs

Stakeholders’ views

- 3.35 Again, both Verastar and Openreach agreed with our proposals to extend the deadline for the reporting of the two MBORC KPIs¹⁸ to one month plus 14 working days of the last working day of every month. Openreach considered that our proposal was “sensible and proportionate” in the circumstances.

¹⁸ Within “Part 2: Volumes” of the FAMR Legal Instruments the relevant KPI for the volume of installations impacted by MBORC declarations is KPI(v) for WLR, MPF, VULA (FTTC and FTTP), ISDN2, and ISDN30. There is no corresponding KPI for Shared Access. The relevant KPI for the volume of repairs impacted by MBORC declarations is KPI(vi) for WLR, MPF, VULA (FTTC and FTTP), ISDN2, and ISDN30, and KPI(v) for Shared Access.

Ofcom's considerations

- 3.36 We consider that our proposal to grant BT additional time for the reporting of KPI data for the volumes of installations and repairs impacted by MBORC declarations remains appropriate. As such, and as set out in the Directions at Annex 2, the deadline for receipt by Ofcom of the relevant MBORC KPIs for October 2016 will be 20 December 2016.

Section 4

Conclusions and legal tests

- 4.1 On the basis of our assessment set out above, including analysing and addressing stakeholder comments, we have decided to issue the Directions and Consents set out in annexes 1 to 3.

Legal tests

- 4.2 For the reasons set out below, we are satisfied that the directions we are setting and the consents that we are giving meet the necessary legal tests in the Communications Act 2003 (the Act).
- 4.3 Ofcom's power to set SMP conditions in section 45 of the Act includes the power to impose a requirement on the addressee to comply with such directions as may be given by Ofcom from time to time with respect to the matters to which the conditions relates. The same provision makes it clear that SMP conditions may be framed by reference to consents given by Ofcom. Section 49(2) of the Act provides that Ofcom must not give, modify or withdraw a direction, approval or consent unless we are satisfied that to do so is: objectively justifiable, not such as to discriminate unduly, proportionate to what it is intended to achieve, and transparent, in relation to what it is intended to achieve.
- 4.4 We consider that the directions and consents are objectively justifiable in that their purpose is to ensure mandatory minimum standards in relation to key services supporting network access set in the 2014 FAMR remain effective. In advance of our next full market review of these wholesale markets, we consider that the standards set in this review remains the most appropriate means of securing the minimum QoS necessary to ensure effective network access. In addition, we maintain that extending the life of the current requirements is justified based on the need to avoid the risks caused by a large proportion of total WLR and MPF lines falling outside of minimum standards. The 2014 FAMR determined that the prevailing regulatory and contractual framework¹⁹ had been insufficient in ensuring that BT delivered an adequate level of QoS, which in turn negatively affected downstream CPs. However, our interventions in this market review have resulted in improvements in QoS which would be at risk if the standards were to lapse at the end of 2016/17.
- 4.5 We consider that the directions are not unduly discriminatory as they apply only to BT in the markets in which it has been found to have SMP, and proportionate as the minimum standards will continue to be targeted specifically at those areas for which regulation is required and go no further than is required to addressing the competition issues identified. We maintain that, without intervention, the level of QoS delivered by Openreach could decline, thereby impacting the vast majority of WLR and MPF lines in operation, and that the Consents are also important to ensure there is no unnecessary overlap in the compliance obligations.
- 4.6 We consider that the directions are transparent in that it is clear that their intention is to ensure that BT maintains a minimum level of QoS in the delivery of key wholesale inputs. This intention has not changed since the 2014 FAMR

¹⁹ I.e. the SLA/SLG regime.

Statement. We also consider that our determination of the appropriate compliance period has sufficiently well explained to provide clarity around our policy-making process.

- 4.7 Further, we consider that in giving these directions we are acting in accordance with the relevant duties set out in sections 3 and 4 of the Act. We consider that our Directions for the minimum standards will further the interests of citizens in relation to communications matters and of consumers in relevant markets by promoting competition, and will promote competition in relation to the provision of electronic communications networks.
- 4.8 Finally, we consider that the KPI directions fulfil our general duties under section 3 the Act, meet the Community requirements set out in section 4, and also meet the requirements in section 49 in that they are:
- objectively justifiable, in that we consider it necessary for BT to report specific additional KPIs to ensure that we can monitor compliance with the repair minimum standards;
 - not unduly discriminatory, in that they only apply to BT and it is only BT that is subject to the SMP transparency condition;
 - proportionate, in that BT is only required to publish specific KPI data related to key business processes and, as BT is already supplying similar data, already has systems and procedures in place; and
 - transparent, in that it is clear from the Directions as to what information would be required to be published and supplied by BT.

Notification to the Secretary of State and European Commission

- 4.9 In accordance with section 49C(1) of the Act a copy of the notifications proposing the directions and consents was sent to the Secretary of State. The Secretary of State did not notify Ofcom of any international obligations of the UK related to our proposals.
- 4.10 Section 49B of the Act, relating to notifying the European Commission, BEREC and other Member State national regulatory authorities, did not apply in this case because our proposals were not of EU significance, as defined under section 150A(2) of the Act. In particular, because in our view given their nature and consequently their limited impact, the proposals would not affect trade between Member States.²⁰ Rather, they continue to ensure the effectiveness of existing regulatory remedies already imposed in the 2014 FAMR.
- 4.11 In accordance with section 49C of the Act, copies of the directions and consents given will be sent to the Secretary of State and the European Commission.

²⁰ The cumulative criteria that must be satisfied in order for a proposal to be of EU significance include the criterion that the proposal would, in Ofcom's opinion, affect trade between Member States (see section 150A(2)(d)).

Section 5

Proposed WLR Direction

- 5.1 Since the August consultation we have observed that our proposal to ensure that the WLR provision minimum standards continue to operate beyond March 2017 has not been accurately reflected in the proposed Directions (MPF provisioning and repair were captured, as was WLR repair).
- 5.2 We note that respondents to our consultation have already supported our intention to use our direction making power to extend the duration of the minimum standards; however, in order to comply with procedural requirements in the Act, Annex 4 contains a further Notice proposing a direction to capture the continuation of the WLR provision standards.
- 5.3 We welcome stakeholder responses to this draft Direction, which can be found at Annex 4. The deadline for comments is 5pm on 18 November 2016.
- 5.4 We consider that setting this proposed direction will fulfil our general duties under section 3 the Act, meet the Community requirements set out in section 4, and also meet the requirements in section 49 in that it is:
- objectively justifiable, in that extending the life of the current requirements is necessary to ensure that important regulatory protections remain in place in advance of the forthcoming market reviews;
 - not unduly discriminatory, in that they only apply to BT in a market for which it has been designated as having SMP;
 - proportionate, as the minimum standards will continue to be targeted specifically at those areas for which regulation is required and go no further than is required to addressing the competition issues identified; and
 - transparent, in that it is clear that our intention is to ensure that BT maintains a minimum level of QoS in the delivery of key wholesale inputs.

Consultation question 1: Do you agree with the Direction Ofcom proposes to issue set out in Annex 4? If not, please set out your reasons.

Annex 1

Direction

DIRECTION UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003 AND CONDITION 12.4 RELATING TO REQUIREMENTS CONCERNING MINIMUM STANDARDS OF QUALITY OF SERVICE IMPOSED ON BT IN RESPECT OF THE PROVISION OF NETWORK ACCESS TO METALIC PATH FACILITIES

Background

1. On 26 June 2014 OFCOM published the “Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 Statement on the markets, market power determinations and remedies” (the “FAMR Statement”).
2. Under SMP services condition 12 of the Legal Instrument at annex 29 to the FAMR statement (the “Legal Instrument”), BT must comply with minimum standards in relation to the provision of network access for Metallic Path Facilities (“MPF”) and Wholesale Analogue Line Rental (“WLR”).
3. Paragraph 12.4 of condition 12 requires BT to comply with any such further minimum standards as OFCOM may direct from time to time.
4. On 5 August 2016 Ofcom published a consultation document entitled “*Quality of Service for WLR and MPF: Proposed Directions and Consents relating to the minimum standards and KPIs imposed in the 2014 Fixed Access Market Reviews*” (“the Consultation”). OFCOM consulted on proposals pursuant to SMP services condition 12.4 to specify further minimum standards in relation to the provision of network access for MPF including a proposed direction. OFCOM invited responses to the Consultation by 9 September 2016. A copy of the proposed direction was sent to the Secretary of State in accordance with sections 49C(1)(a) of the Act.
5. OFCOM received several responses to the proposals set out in the Consultation and it considered every such representation. The Secretary of State did not notify Ofcom of any international obligation on the United Kingdom for the purposes of section 49A(6)(b) of the Act.

Decision

6. OFCOM has decided to give the direction set out in the Schedule with effect from 1 November 2016.
7. The effects of, and the reasons for the decision to give the direction are set out in the accompanying statement.

OFCOM’s duties and legal tests

8. OFCOM considers that the direction set out in the Schedule complies with the requirements of section 49(2) of the Communications Act 2003 (“Act”).
9. In giving the direction OFCOM has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act.
10. A copy of the direction set out in the Schedule has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.

Interpretation

11. For the purposes of interpreting the Schedule the following definitions shall apply:

“Access Agreement” means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access in accordance with Condition 1 and, in relevant cases, Condition 2;

“Committed Date” means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;

“BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;

“Dominant Provider” means BT;

“Equivalence Management Platform” means the Dominant Provider’s operation support system designed to handle the majority of transactions for equivalence of inputs and network access;

“Exchange Line” means apparatus comprised in the Dominant Provider’s electronic communications network and installed for the purpose of connecting a telephone exchange run by the Dominant Provider to a Network Termination Point comprised in Network Termination and Testing Apparatus installed by the Dominant Provider for the purpose of providing electronic communications services at the premises at which the Network Termination and Testing Apparatus is located;

“Faults Compliance Period” means the period beginning on 1 November 2016 and ending on 31 March 2018, and following 31 March 2018, every 12-month period beginning on 1 April and ending on 31 March.

“Further MPF Minimum Standards” has the meaning given to it in paragraph 1 of the Schedule.

“High Level MBORC Declaration” means any declaration by the Dominant Provider in respect of a Relevant Region (or a part thereof) that an MBORC has occurred in relation to network access to Metallic Path Facilities but only in respect of ‘major’ MBORC declarations;

“Level 2 Working Day” means any day other than Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);

“MBORC” (Matters Beyond Our Reasonable Control) means a force majeure event under the relevant Access Agreement, the occurrence of which releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;

“Metallic Path Facilities” means a circuit comprising a pair of twisted metal wires employing electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an electronic communications network;

“MPF Fault” means a degradation or problem with Metallic Path Facilities that is identified by the Dominant Provider or a Third Party and which is registered on the Dominant Provider’s operational support system;

“OFCOM” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11);

“Order” means a request for Metallic Path Facilities submitted to the Dominant Provider by a Third Party;

“Provisions Compliance Year” means a period of 12 months beginning on 1 April and ending on 31 March, with the first such year starting on 1 April 2017.

“Relevant Region” means the ten geographic areas specified Schedule 3 to Part 1 of the FAMR Legal Instrument or such other regions as Ofcom may direct from time to time; and

“Service Level Commitment” means the quality standards that the Dominant Provider must meet when performing its obligations;

“Service Level Guarantee” means a commitment specifying the amount payable by the Dominant Provider to a Third Party for a failure to adhere to a Service Level Commitment;

“Service Maintenance Level 1” means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of the relevant wholesale service to Third Parties;

“Service Maintenance Level 2” means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of the relevant wholesale service to Third Parties;

“Third Party” means a person providing a public electronic communications network or a person providing a public electronic communications service;

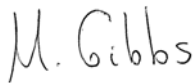
“Wholesale Analogue Line Rental” means an electronic communications service provided by the Dominant Provider to a Third Party for the use and Ordinary Maintenance of an analogue Exchange Line;

“Wholesale Line Rental” means Wholesale Analogue Line Rental provided to Third Parties’ end users;

“Working Day” means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

12. For the purposes of interpreting this direction and Schedule, except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Legal Instrument and otherwise any word or expression shall have the same meaning as it has in the Act.

Signed



Marina Gibbs

Competition Policy Director, OFCOM

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

19 October 2016

Schedule

Direction under section 49 of the Communications Act 2003 and Condition 12.4 requiring BT to comply with minimum standards in relation to the provision of network access to Metallic Path Facilities.

1. In relation to the provision of network access to Metallic Path Facilities under conditions 1 and 2 of the Legal Instrument, the following shall be Further MPF Minimum Standards:

Provisions

That the Dominant Provider in each Provisions Compliance Year —

- a) offer an appointment where required for that provision that is within 12 Working Days of the corresponding Order being placed on the Equivalence Management Platform by a Third Party in at least 79% of such instances;
- b) complete that provision on the Committed Date in at least 89% of such instances;

Repairs

That the Dominant Provider in each Faults Compliance Period —

- c) complete the repair of MPF Faults that are subject to Service Maintenance Level 1 by the end of the second Working Day after such Faults have been placed on the Equivalence Management Platform such that the following formula is satisfied:
 - i. The percentage of repairs completed by the end of the second Working Day after such Faults have been placed on the Equivalence Management Platform for MPF lines at Service Maintenance Level 1 and WLR lines at Service Maintenance Level 1 is greater than or equal to 77%.
 - d) complete the repair of MPF Faults that are subject to Service Maintenance Level 2 by the end of the next Level 2 Working Day after such Faults have been placed on the Equivalence Management Platform such that the following formula is satisfied:
 - i. The percentage of repairs completed by the end of the next Level 2 Working Day after such Faults have been placed on the Equivalence Management Platform for MPF lines at Service Maintenance Level 2 and WLR lines at Service Maintenance Level 2 is greater than or equal to 77%.
2. In each Provisions Compliance Year and Faults Compliance Period:

- a) in eight of the ten Relevant Regions the Dominant Provider must comply with each of the applicable Further MPF Minimum Standards; and
 - b) in the remaining two Relevant Regions the Dominant Provider must comply with each of the applicable Further MPF Minimum Standards except that in calculating the number of instances in which the Dominant Provider did not meet the relevant obligations instances of failure occurring within an area that was subject to a High Level MBORC Declaration within eight weeks of the Dominant Provider making that High Level MBORC Declaration and the Fault or Order (as applicable) shall be excluded.
3. The Dominant Provider must record, maintain and supply to OFCOM in writing, no later than three months after the end of each Provisions Compliance Year and Faults Compliance Period the data necessary for OFCOM to monitor compliance by the Dominant Provider with the requirements set out in this direction.

Annex 2

Modifications to KPIs Directions

MODIFICATION OF DIRECTIONS SET UNDER SECTIONS 49 OF THE COMMUNICATIONS ACT 2003 AND CONDITION 11 OF 26 JUNE 2014 REQUIRING THE PUBLICATION OF KPIs BY BT FOR SPECIFIED VIRTUAL UNBUNDLED LOCAL ACCESS, METALIC PATH FACILITIES, SHARED ACCESS SERVICES, WHOLESALE LINE RENTAL SERVICES, ISDN2 EXCHANGE LINES SERVICES, AND ISDN30 EXCHANGE LINES SERVICES

Background

1. On 26 June 2014 OFCOM published the “Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 Statement on the markets, market power determinations and remedies” (the “FAMR Statement”).
2. Under SMP services condition 11 of the Legal Instrument at annex 29 to the FAMR statement (the “Legal Instrument”), BT must publish all such information as to the quality of service in relation to network access provided by it pursuant to conditions 1 and 2 (as applicable) in such manner and form, and including such content, as OFCOM may from time to time direct.
3. On 26 of July 2014 OFCOM issued a series of directions titled:
 - (i) “Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Virtual Unbundled Local Access, Metallic Path Facilities and Shared Access services”;
 - (ii) “Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Wholesale Line Rental Services”;
 - (iii) “Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN2 Exchange Line Services”;
 - (iv) “Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN30 Exchange Line Services”,setting requirements in relation to the publication by BT of certain Key Performance Indicators (“KPIs”) (together “the 26 July 2014 Directions”).
4. On 5 August 2016 Ofcom published a consultation document entitled “*Quality of Service for WLR and MPF: Proposed Directions and Consents relating to the minimum standards and KPIs imposed in the 2014 Fixed Access Market Reviews*” (“the Consultation”). OFCOM consulted on proposals pursuant to SMP services condition 11 to modify the 26 July 2014 Directions. OFCOM invited responses to the Consultation by 9 September 2016. A copy of the proposed

direction was sent to the Secretary of State in accordance with sections 49C(1)(a) of the Act.

5. OFCOM received several responses to the proposals set out in the Consultation and it considered every such representation. The Secretary of State did not notify Ofcom of any international obligation on the United Kingdom for the purposes of section 49A(6)(b) of the Act.

Modification of the 26 July 2014 Directions

6. OFCOM has decided to modify the 26 July Directions as set out in Schedules 1 to 4.
7. The effect of, and the reasons for, the proposed modifications to the 26 July 2014 Directions are set out in the accompanying statement.

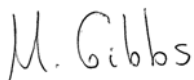
OFCOM's duties and legal tests

8. OFCOM considers that the modifications to the 26 July 2014 Directions complies with the requirements of section 49(2) of the Communications Act 2003 ("Act").
9. In modifying the 26 July 2014 Directions OFCOM has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act.
10. A copy of the modifications to 26 July 2014 Directions as set out in Schedules 1 to 4, have been sent to the Secretary of State in accordance with section 49C(1)(c) of the Act, and the European Commission in accordance with section 49C(2)(b) of the Act.

Interpretation

11. For the purposes of interpreting the Schedules, except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Legal Instrument and 26 July 2014 Directions and otherwise any word or expression shall have the same meaning as it has in the Act.

Signed



Marina Gibbs

Competition Policy Director, OFCOM

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

19 October 2016

SCHEDULE 1 – Wholesale Local Access

Modification of the Direction of 26 July 2014 made under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Virtual Unbundled Local Access, Metallic Path Facilities and Shared Access services.

In accordance with section 49 of the Act, OFCOM hereby modifies the Direction of 26 July 2014 under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Virtual Unbundled Local Access, Metallic Path Facilities and Shared Access services as follows:

1. In paragraph 16 after “within 14 Working Days of the last Working Day of every month in respect of the previous month” insert “, with the exception of KPIs (v) and (vi) in Annex A, Part 2 and Annex B, Part 2 and KPI (v) in Annex C, Part 2 which must be provided within 14 Working Days of the last Working Day of every month in respect of the month preceding the previous month.”
2. After paragraph 20(gg) the following is inserted:
“hh1. “**Service Maintenance Level 1**” means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of the Relevant Wholesale Service to Third Parties;”
3. In Annex B, Part 1: Indicators
 - a) Paragraph 6 is replaced with:

“The Dominant Provider must publish information derived from the information required in KPIs (iii), (vi) to (viii), (x)(a) to (b), (xA) and (xi) on a publicly accessible website, which for the avoidance of doubt should not require password access.”
 - b) **KPI(x) - Average time to restore service** is replaced with:
“**KPI(x) - Average time to restore service**
the average time (in working hours) during the relevant month for the Dominant Provider to achieve Restored Service after a Fault has been registered in relation to each of:
(a) Service Maintenance Level 1

(b) Service Maintenance Level 2; and

(c) Service Maintenance Level 3;”
 - c) After **KPI(x) - Average time to restore service** the following is inserted:

“**KPI(xA) – Percentage of faults restored on time for services subject to Service Maintenance Level 1**

for services subject to Service Maintenance Level 1, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 1;”
4. In Annex B, Part 2: Volumes

- a) **KPI(iv) – Volume of completed faults** is replaced with:
“**KPI(iv) - Volume of completed faults**
the number of Faults where the Dominant Provider subsequently achieves Restored Service during the relevant month in relation to each of:
- (a) Service Maintenance Level 1;
 - (b) Service Maintenance Level 2; and
 - (c) Service Maintenance Level 3;”
- b) **KPI(vi) – Volume of repairs impacted by MBORC declarations** is replaced with:
“**KPI(vi) – Volume of repairs impacted by MBORC declarations**
the total number of Faults during the relevant month that were not completed within either Service Maintenance Level 1, Service Maintenance Level 2 or Service Maintenance Level 3 contracted repair times (as applicable) that were subject to an MBORC Declaration by the Dominant Provider.”

5. In Annex B, Part 3: Late fault repair and provisions

- a) **KPI(i) – Timing of fault repairs** is replaced with:
“**KPI(i) – Timing of fault repairs**
the average daily number of Faults in the relevant month for which the Dominant Provider has not provided a Restored Service when the Relevant Commitment has been passed by:
- (a) for services subject to Service Maintenance Level 1:
 - (i) 1 calendar day or more;
 - (ii) 5 calendar days or more;
 - (iii) 11 calendar days or more;
 - (iv) 31 calendar days or more.
 - (b) for services subject to Service Maintenance Level 2:
 - (i) 1 calendar day or more;
 - (ii) 5 calendar days or more;
 - (iii) 11 calendar days or more;
 - (iv) 31 calendar days or more.

“**Relevant Commitment**” means –

- (a) for services subject to Service Maintenance Level 1, the requirement for the Dominant Provider to complete repairs of Faults by the end of the second Working Day; and

- (b) for services subject to Service Maintenance Level 2, the requirement for the Dominant Provider to complete repairs of Faults by the end of the next Level 2 Working Day after such Faults have been placed on the Equivalence Management Platform, where “**Level 2 Working Day**” means any day other than Sundays, public holidays or bank holidays in England and Wales, Scotland and Northern Ireland (as applicable).”

SCHEDULE 2 – Wholesale Line Rental Services

Modification of the Direction of 26 July 2014 made under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Wholesale Line Rental Services.

In accordance with section 49 of the Act, OFCOM hereby modifies the Direction of 26 July 2014 under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Wholesale Line Rental Services as follows:

1. In paragraph 16 replace after “within 14 Working Days of the last Working Day of every month in respect of the previous month” insert “, with the exception of KPIs (v) and (vi) in Annex A, Part 2, which must be provided within 14 Working Days of the last Working Day of every month in respect of the month preceding the previous month.”

SCHEDULE 3 – ISDN2 Exchange Line Services

Modification of the Direction of 26 July 2014 made under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN2 Exchange Line Services.

In accordance with section 49 of the Act, OFCOM hereby modifies the Direction of 26 July 2014 under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN2 Exchange Line Services as follows:

1. In paragraph 15 after “within 14 Working Days of the last Working Day of every month in respect of the previous month” insert “, with the exception of KPI (v) and (vi) in Part 2 of Annex A which must be provided within 14 Working Days of the last Working Day of every month in respect of the month preceding the previous month.”

SCHEDULE 4 – ISDN30 Exchange Line Services

Modification of the Direction of 26 July 2014 made under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN30 Exchange Line Services.

In accordance with section 49 of the Act, OFCOM hereby modifies the Direction of 26 July 2014 under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified ISDN30 Exchange Line Services as follows:

1. In paragraph 15 after “within 14 Working Days of the last Working Day of every month in respect of the previous month” insert “with the exception of KPIs (v) and (vi) in Annex A, Part 2, which must be provided within 14 Working Days of the last Working Day of every month in respect of the month preceding the previous month.”

Annex 3

Consents

CONSENTS UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003 AND CONDITIONS 12.1A AND 12.2B RELATING TO REQUIREMENTS CONCERNING MINIMUM STANDARDS OF QUALITY OF SERVICE IMPOSED ON BT IN RESPECT OF THE PROVISION OF NETWORK ACCESS TO METALIC PATH FACILITIES AND WHOLESALE ANALOGUE LINE RENTAL

Background

1. On 26 June 2014 OFCOM published the “Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 Statement on the markets, market power determinations and remedies” (the “FAMR Statement”).
2. Under SMP services condition 12 of the Legal Instrument at annex 29 to the FAMR statement (the “Legal Instrument”), BT must comply with minimum standards in relation to the provision of network access for Metallic Path Facilities (“MPF”) and Wholesale Analogue Line Rental (“WLR”).
3. On 5 August 2016 Ofcom published a consultation document entitled “*Quality of Service for WLR and MPF: Proposed Directions and Consents relating to the minimum standards and KPIs imposed in the 2014 Fixed Access Market Reviews*” (“the Consultation”). OFCOM consulted on proposals pursuant to SMP services condition 12.4 to specify further minimum standards in relation to the provision of network access and as a consequence to consent to certain existing MPF and WLR minimum standards ceasing to apply. OFCOM invited responses to the Consultation by 9 September 2016. A copy of the proposed directions and consents were sent to the Secretary of State in accordance with sections 49C(1)(a) of the Act.
4. OFCOM received several responses to the proposals set out in the Consultation and it considered every such representation. The Secretary of State did not notify Ofcom of any international obligation on the United Kingdom for the purposes of section 49A(6)(b) of the Act.
5. As more fully described in the accompanying statement document published on today’s date, OFCOM has given a direction pursuant to paragraphs 12.4 of Condition 12 requiring BT to comply with new minimum standards relating to the repair of Faults for certain MPF services and is proposing a further direction in relation to WLR services.

Decision to consent to minimum standards for quality of service ceasing to apply

6. Following the direction described in paragraph 5, OFCOM has decided to give consent to the minimum standards for Faults in SMP conditions 12.1A(c)(iii) and 12.1B(c)(iii) ceasing to apply in accordance with Schedules 1 and 2 with effect from 1 November 2016.
7. The effects of, and the reasons for giving the consents are set out in the accompanying statement document.

OFCOM’s duties and legal tests

8. OFCOM considers that the consents comply with the requirements of section 49(2) of the Communications Act 2003 ("Act").
9. In giving the consents in Schedules 1 and 2 OFCOM has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act.
10. A copy of the consents has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.

Interpretation

11. For the purposes of interpreting Schedules 1 and 2, except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Legal Instrument and otherwise any word or expression shall have the same meaning as it has in the Act.

Signed

M. Gibbs

Competition Policy Director, OFCOM

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

19 October 2016

Schedule 1 – Wholesale Local Access

Consent under section 49 of the Communications Act 2003 and Condition 12.1A in relation to the minimum standards for quality of service in relation to the provision of network access to Metallic Path Facilities

In relation to the provision of network access to Metallic Path Facilities under conditions 1 and 2 of the Legal Instrument, the MPF Minimum Standards in condition 12.1A(c)(iii) (on time fault repair in the Third Relevant Year) shall no longer apply from 31 October 2016.

Schedule 2 – Wholesale Analogue Fixed Exchange Lines

Consent under section 49 of the Communications Act 2003 and Condition 12.1B in relation to the minimum standards for quality of service in relation to the provision of network access to Wholesale Analogue Line Rental

In relation to the provision of network access to Wholesale Analogue Line Rental under conditions 1 and 2 of the Legal Instrument the WLR Minimum Standards in condition 12.1B(c)(iii) (on time fault repair in the Third Relevant Year) shall no longer apply from 31 October 2016.

Annex 4

Notice of proposed Directions

NOTIFICATION UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003 AND CONDITION 12.4 RELATING TO REQUIREMENTS CONCERNING MINIMUM STANDARDS OF QUALITY OF SERVICE PROPOSED TO BE IMPOSED ON BT IN RESPECT OF THE PROVISION OF NETWORK ACCESS TO WHOLESALE ANALOGUE LINE RENTAL

Background

1. On 26 June 2014 OFCOM published the “Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 Statement on the markets, market power determinations and remedies” (the “FAMR Statement”).
2. Under SMP services condition 12 of the Legal Instrument at annex 29 to the FAMR statement (the “Legal Instrument”), BT must comply with minimum standards in relation to the provision of network access for Metallic Path Facilities (“MPF”) and Wholesale Analogue Line Rental (“WLR”).
3. Paragraph 12.4 of condition 12 requires BT to comply with any such further minimum standards as OFCOM may direct from time to time.
4. This Notification relates to proposals pursuant to SMP services condition 12.4 to specify further minimum standards in relation to the provision of network access for WLR.

Proposal to give directions

5. OFCOM is proposing to give the direction in the Schedule to this Notification requiring BT to comply with the minimum standards set out therein.
6. The effects of, and the reasons for proposing to give, the directions are set out in the accompanying consultation document.

OFCOM’s duties and legal tests

7. OFCOM considers that the proposed direction complies with the requirements of section 49(2) of the Communications Act 2003 (“Act”).
8. In making the proposals OFCOM has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act. OFCOM does not consider that the proposals are of EU significance.

Making representations

9. Representations may be made to OFCOM about the proposals set out in this Notification and the accompanying consultation by no later than 5pm on 18 November 2016.
10. In accordance with section 49C(1)(a) of the Act, a copy of the Notification, together with the Schedule, has been sent to the Secretary of State.

Interpretation

11. For the purposes of interpreting the Schedule the following definition shall apply:

“Access Agreement” means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access in accordance with Condition 1 and, in relevant cases, Condition 2;

“Committed Date” means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;

“BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;

“Dominant Provider” means BT;

“Equivalence Management Platform” means the Dominant Provider’s operation support system designed to handle the majority of transactions for equivalence of inputs and network access;

“Exchange Line” means apparatus comprised in the Dominant Provider’s electronic communications network and installed for the purpose of connecting a telephone exchange run by the Dominant Provider to a Network Termination Point comprised in Network Termination and Testing Apparatus installed by the Dominant Provider for the purpose of providing electronic communications services at the premises at which the Network Termination and Testing Apparatus is located;

“Further WLR Minimum Standards” has the meaning given to it in paragraph [1] of the Schedule;

“High Level MBORC Declaration” means any declaration by the Dominant Provider in respect of a Relevant Region (or a part thereof) that an MBORC has occurred in relation to network access to Wholesale Line Rental but only in respect of ‘major’ MBORC declarations;

“MBORC” (Matters Beyond Our Reasonable Control) means a force majeure event under the relevant Access Agreement, the occurrence of which releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;

“OFCOM” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11);

“Order” means a request for [network access to] Wholesale Line Rental submitted to the Dominant Provider by a Third Party;

“Ordinary Maintenance” means maintenance which is part of the service provided by the Dominant Provider in consideration of the charge for an Exchange Line and includes normal fault repair, as defined in the Dominant Provider’s standard terms and conditions;

“Network Termination Point” means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;

“Network Termination and Testing Apparatus” means an item of apparatus comprised in an electronic communications network installed in a fixed position on served premises which enables:

- i. approved apparatus to be readily connected to, and disconnected from, the network;
- ii. the conveyance of signals between such approved apparatus and the network;
- iii. the due functioning of the network to be tested, but the only other functions of which, if any, are:
 1. to supply energy between such approved apparatus and the network;
 2. to protect safety or security of the operation of the network; or
 3. to enable other operations exclusively related to the running of the network to be performed or the due functioning of any system to which the network is or is to be connected to be tested (separately or together with the network);

“Provisions Compliance Year” means a period of 12 months beginning on 1 April and ending on 31 March, with the first such year starting on 1 April 2017.

“Relevant Region” means the ten geographic areas specified Schedule 3 to Part 1 of the FAMR Legal Instrument or such other regions as Ofcom may direct from time to time; and

“Service Level Commitment” means the quality standards that the Dominant Provider must meet when performing its obligations;

“Service Level Guarantee” means a commitment specifying the amount payable by the Dominant Provider to a Third Party for a failure to adhere to a Service Level Commitment;

“Third Party” means a person providing a public electronic communications network or a person providing a public electronic communications service;

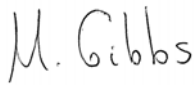
“Wholesale Analogue Line Rental” means an electronic communications service provided by the Dominant Provider to a Third Party for the use and Ordinary Maintenance of an analogue Exchange Line;

“Wholesale Line Rental” means Wholesale Analogue Line Rental provided to Third Parties’ end users;

“Working Day” means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

12. For the purposes of interpreting this Notification and the Schedule to this Notification, except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Legal Instrument and otherwise any word or expression shall have the same meaning as it has in the Act.

Signed

A handwritten signature in black ink that reads "M. Gibbs". The signature is written in a cursive, slightly slanted style.

Marina Gibbs

Competition Policy Director, OFCOM

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

19 October 2016

Schedule

[Proposed] Direction under section 49 of the Communications Act 2003 and Condition 12.4 requiring BT to comply with minimum standards in relation to the provision of network access to Wholesale Line Rental.

1. In relation to the provision of network access to Wholesale Line Rental under conditions 1 and 2 of the Legal Instrument, the following shall be Further WLR Minimum Standards:

Provisions

That the Dominant Provider in each Provisions Compliance Year —

- a) offer an appointment where required for that provision that is within 12 Working Days of the corresponding Order being placed on the Equivalence Management Platform by a Third Party in at least 79% of such instances;
 - b) complete that provision on the Committed Date in at least 89% of such instances.
2. In each Provisions Compliance Year:
 - a) in eight of the ten Relevant Regions the Dominant Provider must comply with the Further WLR Minimum Standards; and
 - b) in the remaining two Relevant Regions the Dominant Provider must comply with the Further WLR Minimum Standards except that in calculating the number of instances in which the Dominant Provider did not meet the relevant obligations instances of failure occurring within an area that was subject to a High Level MBORC Declaration within eight weeks of the Dominant Provider making that High Level MBORC Declaration and the Order shall be excluded.
 3. The Dominant Provider must record, maintain and supply to OFCOM in writing, no later than three months after the end of each Provisions Compliance Year the data necessary for OFCOM to monitor compliance by the Dominant Provider with the requirements set out in this direction.