

## **Additional comments:**

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

[X] welcomes Ofcom's project to discover the range of different public service and CNI (critical national infrastructure) operators that currently use communication links that fall into the VLB market. However, we note that within the discussion on the energy sector, there is no mention of gas network operators. [XCONFIDENTIALX].

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

No comment

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

No comment

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

No comment

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

No. [X] does not support Ofcom's provisional finding that the EC's 'three criteria test' is no longer satisfied for the VLB TI market.

In paragraphs 5.15 to 5.18, Ofcom argues that the three criteria test is no longer met because the previously identified market failures are no longer present. On other aspects of the test, such as the presence of high and non-transitory barriers to entry, Ofcom is satisfied that these still apply. The market failures previously identified for the last review include that BT might engage in discriminatory practices or withdraw services without sufficient notice and that BT might charge excessive prices given users' inability to migrate quickly to alternative services.

In [X]'s view, the market failures mentioned above are still valid. Just because migrations are now planned, it is not the case that service withdrawals, poor maintenance and/or excessive pricing by BT could not occur, especially as the confirmed timeframes for some

migrations are beyond the end of the current BCMR period and well into the next e.g. the electricity DNOs are noted in paragraph 3.6 as working to a migration completion date of 31 March 2018. Furthermore, since Ofcom has identified a range of other public service users of VLB communication links, it is not clear that all affected organisations in these sectors will have had time to plan, fund and carry out the necessary migration exercises by the end of March 2016, when the current BCMR period comes to an end.

After preserving regulation on BT to continue provision of VLB retail lines on reasonable terms over at least the last two BCMR periods since April 2009, it seems premature for Ofcom to look to remove all regulatory oversight of VLB provision for the period April 2016 to March 2019, when it is aware that at least some migrations of CNI type users will not be complete by the start of that period. While volumes of VLB use may have declined, there are still an appreciable number of such communications links in use today. As noted in paragraph 1.1, "businesses and public sector organisations still use VLB leased lines to support a range of applications, including essential public services". As such, even a handful of lines awaiting migration but disrupted by poor performance and/or withdrawal of supply after April 2016 could have a severe impact on certain citizens of the UK. Competition law, acting retrospectively, would not be an appropriate remedy upon which to rely in order to avoid these potential adverse consequences of the market power still held by BT in this market until all lines supporting essential public services have been migrated out of it.

Against this background, we would argue that Ofcom should consider that the 'EC three criteria test' is met and that BT continues to have significant market power (SMP) in this declining market. The regulatory remedies that remain appropriate, in our view, are:

- An obligation to continue to supply and support existing VLB circuits until end March 2019 (to allow for over-runs on existing migration plans) under the existing terms and conditions;
- A requirement for no undue discrimination between users;
- An obligation to publish prices and terms and conditions for existing circuits; and
- A safeguard price cap - while we agree that some price increases reflecting the reduction in size of the customer base would be reasonable, we do not believe that increases should be at BT's sole discretion.

We recognise and welcome Ofcom's programme of engagement to ensure that the CNI operators using VLBs become aware of the need to migrate to other types of communications link. However, as discussed above, it seems likely to us that a significant proportion of the required migrations will not have been completed by the end of March 2016. This situation is best served by a continuation of some form of regulatory oversight by Ofcom in the 2016-2019 BCMR period, in our view, to ensure that BT does not act unreasonably in using its continuing SMP in this market. The commitments from BT that Ofcom refer to in the consultation are also welcome but do not provide the same safety net to underpin BT's continuing performance for its customers in the VLB market as continuing regulatory oversight with the ability for Ofcom to step in if issues occur. Our understanding is that Ofcom would have no ability to address such issues if it withdraws existing regulation on the VLB market without making a finding on BT's SMP and, for example, BT then adversely amended its voluntary commitments between now and 2020.

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

No comment