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Dear Gideon

Re: Excess Construction Charges for Openreach Ethernet Access Direct

MBNL welcomes the opportunity to respond to Ofcom's consultation entitled Excess Construction Charges for Openreach Ethernet Access Direct, published on 14 February 2014. MBNL is a joint venture between EE Limited (EE) and Hutchison 3G UK Ltd (Three). MBNL operates a shared radio access network (RAN) for its shareholders and is a significant purchaser of mobile backhaul services from BT Wholesale.

Openreach proposes to exempt the first £2,800 of Excess Construction Charges (ECCs) in order to reduce delays in the provision of Ethernet Access Direct (EAD) services. To offset the loss of ECC income on EAD services, Openreach proposes to add £548 to the connection charge payable in respect of all orders for the same EAD services, including those not subject to an ECC.

MBNL supports Openreach's aim of reducing delays caused by the ECC approval process. However, in our view Ofcom may not have sufficiently considered the effect of the proposal on the provision of mobile backhaul. In addition, the proposal is not sufficiently clear for MBNL to assess its impact or provide a considered view in relation to:

- which specific EAD services would be affected; and
- the impact of the proposal on the transparency of ECCs.

We address these issues in turn.

Impact of Openreach's proposal on mobile backhaul


MBNL purchases a Managed Ethernet Access Service (MEAS) from BT Wholesale (BTW). MEAS provides transmission capacity from thousands of radio sites to the respective core networks of Three and EE [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mobile Broadband Network Limited



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In order to provide MBNL with an end to end MEAS product, BTW purchases individual EAD circuits from BT Openreach. BTW also incurs ECCs whenever new duct and fibre build work is required, to cover activities like site survey, installation of new duct, new blown fibre and drilling through walls. ECCs will typically cover Openreach's costs plus a mark-up.

[REDACTED]

[REDACTED]

[REDACTED]

Currently, Openreach's EAD connection, rental and ECC charges are regulated and subject to charge controls. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MBNL is also concerned that there may be a negative knock-on effect on BTW's competitors such as Virgin Media, who would also be subject to the increased EAD connection charge. The costs of certain BT specific causes of ECC's will become embedded in the overall EAD charge (through the new connection charge supplement), making it impossible for communications providers (CPs) to know whether these costs could have been avoided if the CP had ordered the link from one of BT's competitors.

We therefore invite Ofcom to ensure that the benefits of Openreach's proposals flow through to the provision of mobile backhaul and thus to mobile consumers, and that no unintended anti-competitive effects are caused.

Relevant EAD services affected by Openreach's proposal


It is also unclear from the legal instruments included in Ofcom's consultation document which specific EAD services will be affected by Openreach's proposal and, in particular, whether the proposal:

- i) affects new EAD orders *and upgrades*, or only new EAD orders; and
- ii) affects all EAD orders except Resilient Option 1 orders, or *also excludes Resilience Option 2 orders*.

In relation to the former, MBNL [REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

As regards which resilience options are affected, Openreach's proposal apparently includes all EAD services except Resilient Option 1. The rationale for excluding Resilient Option 1 services is that they require construction of separate connection to the end users' premises at significant cost. MBNL anticipates that a large proportion of its future demand for new circuits will include Resilience Option 2, [REDACTED]. Resilience Option 2 provides two service boxes, each with a single diversely routed path from different building entry points. MBNL would welcome clarification as to whether these EAD services would be affected by Openreach's proposal.


Concerns about the transparency of ECCs

Currently, when Openreach considers that it will need to levy ECCs in relation to an EAD circuit, the CP ordering the circuit receives visibility of the proposed charges and, if the CP orders a free-of-charge desktop survey from BT, a fairly reliable indication of the causes for the ECCs (which the CP can then further verify by ordering a chargeable field survey). The current level of transparency regarding the ECCs proposed to be levied by BT is very important to CPs such as MBNL, and its shareholders as it enables them to understand and evaluate:

- the proposed cost implications of the particular EAD circuit ordered, which enables the CP to fully weigh up the costs and benefits;
- whether or not the ECC costs are caused by issues specific to the BT network (e.g. the need for ducting, capacity or card upgrades to support the EAD), in which case the CP may be able to avoid these costs by ordering the EAD from a wholesale competitor to BT such as Virgin; and
- whether or not the ECC costs are caused by "build" issues such as the need to dig ducts to support the EAD, in which case the CP is likely only to be able to avoid these costs if the site is suitable for the installation of a microwave link and/or by considering alternative locations for the EAD link.

Under Ofcom's proposals, it seems that CPs will lose all visibility of whether or not the circuits they have ordered would have incurred up to £2,800 of ECCs or not – and will only be informed if the ECCs are in excess of this level. MBNL is quite concerned that this loss of transparency may create scope for Openreach to charge excessive prices – by claiming that it needs to recover through the new "balancing" EAD connection charge supplement excessive ECC charges that may have been avoided if CPs were given the option to have the EAD circuit provided in a different fashion and/or which may have been otherwise reduced through the process of CP scrutiny of the same. Ultimately, MBNL is concerned that this may result in inefficiently high BT pricing, which will flow through to unnecessarily high costs to consumers.

MBNL is also concerned that there may be a negative knock-on effect on BT's wholesale competitors such as Virgin, because the costs of certain BT specific causes of ECC's will become embedded in the overall EAD charge (though the new connection charge



supplement), making it impossible for CPs to know whether these costs could have been avoided if the CP had ordered the link from one of BT's competitors.

At a minimum, MBNL therefore proposes that Ofcom requires Openreach to give CPs visibility of any ECCs of less than £2800 that would have applied to an ordered EAD were it not for this new charging arrangement. The relevant information should state the level of the ECC that would otherwise have been incurred, and ideally also summary reasons of the causes for these, similar to those normally included in a BT desktop survey.

Yours sincerely



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