

Openreach response to questions relating to Ofcom's consultation document

*“Excess Construction Charges for Openreach Ethernet
Access Direct. Proposed Directions in relation to the
Leased Lines Charge Control.”*

12 March 2014

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Comments on this response should be sent to:
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1 Summary

1. This approach to levelling a flat rate ECC charge on all orders compensated by an exemption threshold was originally suggested by communications providers (CPs) and the Office of the Telecommunications Adjudicator (OTA).
2. Openreach considers that the ECC charge should be treated as an ECC price rather than a AISBO connection charge, as it is purely related to the recovery of ECC charges and how they are billed to CPs. While we believe such an approach should have been accommodated by the legal instrument, we nevertheless support Ofcom's dis-application proposal as it provides Openreach with the certainty it requires to proceed with this proposal.
3. Ofcom has performed good quality analysis to show that if there is a risk to any party in these proposals it is most likely to be Openreach i.e. overall CPs will likely win. Any small adverse impacts to a minority of CPs are mitigated by the proposed Openreach connection price reductions and are ultimately far outweighed by the benefits to CPs and end users in terms of shorter lead times, overall lower costs and greater price certainty.
4. For these reasons, Openreach supports Ofcom's proposals.

2 Answers to the Ofcom question

5. This section provides Openreach's responses to the question raised in the Ofcom consultation.

Consultation Question: Do you agree with the assessment of Openreach's proposal set out in this document, and do you agree with the Directions we propose to issue as set out in Annex 4?

Summary

6. Openreach agrees with Ofcom's assessment of our proposal and strongly supports the dis-application of the first £548 of connection charges from EAD connection charges (where an ECC exemption of at least £2,800 is made) in both WECLA and the rest of the UK (excluding Hull).
7. This approach was originally suggested by communications providers (CPs) and the Office of the Telecommunications Adjudicator (OTA). The benefits to CPs and end users are clear in terms of shorter mean time to provide, operational efficiency and greater price certainty. Moreover, the calculation of the balancing charge at £548 and the ECC exemption at £2,800 are fair, in that the proposed charge and exemption threshold was estimated by Ofcom so as to recover the same revenue as current ECC charges based on real historic data.
8. Openreach agrees that the Directions will correctly dis-apply the charges appropriately from the Leased Lines Charge Control so that the correct revenues are recognised for charge control purposes.

Benefits of Openreach's Proposal

9. We agree with Ofcom's analysis of the benefits of our proposal, and in particular:
 - We anticipate that 22% of relevant EAD orders will no longer be subject to delays awaiting approval of ECCs;
 - Openreach and CPs will save in terms of time, resource and money from not administering these ECC approvals; and
 - With greater price certainty, fewer orders will be submitted for budgetary quotes. This will result in fewer submitted orders, saving planning time and reducing cancellation rates.

Calculation of the balancing charge

10. Ofcom's approach is to estimate, assuming an ECC exemption of £2,800, the flat rate charge that would cover the cost of excess construction work. Openreach is seeking to remain revenue neutral from the change in ECC pricing structure and therefore we support this approach.
11. Ofcom has independently calculated this balancing charge as £548 and we are happy with the methodology that Ofcom used to arrive at this figure.
12. Openreach notes that a balancing charge of £548 over the last two years¹ would have resulted in a neutral revenue impact. We take comfort from this and assess there is a low risk to either us or other parties ultimately over or under recovering ECC costs based on the proposal. If there is a risk, as noted by Ofcom, it is more likely to be borne by Openreach, as the price change is more likely to lead to a higher average ECC cost per order over time (as ECCs become more affordable and less of a barrier to sale).²

¹ Ofcom consultation document Table 2

² Ofcom consultation document para 4.17

Distributional impacts

13. Ofcom assesses that, although averaging of ECCs is likely to have a slight adverse financial impact on some CPs, this impact is modest.³ We strongly agree with this assessment. In the main, CPs who purchase a range of products nationally are likely to experience the benefits outlined above without any financial downside.
14. In mitigation for CPs who could be adversely impacted, there is an off-setting connections price reduction being made by Openreach from 1 April 2014 for EAD100 and EAD1000 services.⁴ Basically, for CPs that might have had low ECC charges previously, the total initial costs of connection for EAD 100 and EAD1000 will be unchanged from before the implementation of this proposal.

Reason for Ofcom's Proposals

15. Openreach considers that the ECC charge should be treated as an ECC price rather than a AISBO connection charge, as it is purely related to the recovery of ECC charges and how they are billed to CPs. While we believe such an approach should have been accommodated by the legal instrument, we nevertheless support Ofcom's dis-application proposal as it provides Openreach with the certainty it requires to proceed with this proposal.
16. Openreach agrees it is necessary to dis-apply the first £548 of the connection fee, on relevant EAD services where the first £2,800 of ECCs has been exempted:
 - so that the reductions to the connection price of AISBO services count towards charge control compliance. Otherwise the £548 ECC flat rate charge would be treated as a connection price increase, for charge control compliance purposes, and thereby netted off against any other price reductions Openreach makes, meaning Openreach would have to make further price reductions to meet its obligations. It would be unfair if this were the case as the £548 charge is clearly a structural change to ECC charges rather than an increase in AISBO connection charges; and
 - so that the balancing charge is not treated as a connection price increase and therefore viewed as non-complaint with the RPI-RPI sub cap on all AISBO services.

³ Ofcom consultation document para 4.25

⁴ ACCN OR372