Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR charge controls

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Non-Confidential Version

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1. Introduction and summary

EE Limited ("EE") welcomes this further consultation in relation to Ofcom's fixed access market review proposals regarding the regulation of Openreach's quality of service and the approach to setting WLR and LLU charge controls ("the 19 December 2013 Consultation").

EE's response to the 19 December Consultation is set out in detail in response to Ofcom's consultation questions. In summary:

- **Charge control design**:
  - EE is strongly supportive of Ofcom's proposals in relation to the regulation of simultaneously provided WLR and SMPF connection services, for the reasons set out in our response to Ofcom's original July 2013 consultation on its proposed WLR and LLU Charge Controls ("the July 2013 Consultation"). However we remain of the view that the relevant adjustments should be made up-front at the beginning of the new charge control. We also urge Ofcom to scrutinize carefully Openreach's claims that the costs of other services need to be increased in order to avoid it under-recovering its costs under the new regulatory approach. Prima facie, the claimed cost increases seem high relative to historic Openreach efficiency savings; and
  - EE warmly welcomes Ofcom's proposals to regulate Caller Display charges to their LRIC based costs immediately from the beginning of the new charge control, which EE firmly believes will promote the best interests of UK consumers. EE's only request would be to again ask Ofcom to carefully scrutinize BT's claims in relation to the consequential FAC costs of this service that will need to be recovered from other services – which seem to be on the high side.
- **Proposed Charge Controls**:
  - The strongest objection that EE has to Ofcom's proposals in the December 2013 Consultation is the new "Option 1" proposal to change from removing the differential between the charges for and the LRIC of providing MPF vs WLR+SMPF services by the end of 2016/17 as per the July 2013 Consultation to retaining the level of this distortion at £10. For the reasons set out in detail in response to Question 8.1 below, EE believes that the adoption of this Option would involve a grave error on Ofcom's part, in violation of Ofcom's statutory duties and the recommendations contained in the European Commission final Recommendation on Consistent Non-Discrimination Obligations and Costing Methodologies to Promote Competition and Enhance the Broadband Investment Environment ("the Costing Recommendation"). EE accordingly urges Ofcom to avert the harm to technology neutral competition, efficient investment and consumer interests that would thereby be caused by instead adopting a modified

    version of Option 2, involving the same elimination of the MPF vs WLR+SMPF price vs. LRIC distortion level by the end of 2016/17 as proposed, but with a stronger up-front reduction in the level of this distortion, in order to counteract the inadvertent distortionary impact of the current 2012 charge control.

  - For the reasons set out in EE's responses to the July 2013 Consultation and as further elaborated in EE's response to Question 8.2 below, EE continues to urge Ofcom to remove directories costs from the WLR cost stack with immediate effect.

- **Charge Control Cost Allocations and Modelling**:
  - EE fully supports Ofcom's proposals to remove the costs of evoTAMs and SFI related DSLAM capital maintenance costs from the regulated cost stacks with immediate effect, for the reasons set out by Ofcom in the December 2013 Consultation. However, EE does not agree with Ofcom's proposed allocations of the remaining DSLAM capital maintenance costs, as the proposed allocations do not match the logic claimed to be driving this approach;
  - EE is in broad agreement with Ofcom's approach for estimating the WLR/WLR+SMPF minus MPF differentials. This is subject to EE's reservations in relation to fault equalisation between WLR and MPF and the level of Caller Display common costs necessary to be reallocated to WLR services. In addition, EE strongly objects to the arbitrary and theoretically inconsistent manual adjustments to certain of the LRIC to FAC ratios that Ofcom has proposed – which EE considers should be rejected outright. Lastly, EE notes that Ofcom's £0-4 range for the MPF vs WLR+SMPF LRIC differential range involves a rounding error in favour of MPF based providers. It would be preferable in this regard to stick to a range using the actual values found by Ofcom – being £0.24-£3.31;
  - EE supports Ofcom's approach to the use of BT's RFS base year information and allocation methodologies, for the reasons set out in the December 2013 Consultation; and
  - EE considers that both BT's provisions for deafness claims and its CTC costs should be excluded from the regulated cost stacks.

- **Quality of Service:** EE is broadly supportive of Ofcom's proposals on quality of service, which EE feels have struck largely the right balance between seeking to improve Openreach's performance levels and managing costs to communications providers ("CPs"). EE 's main remaining concerns are that:
  - some of the modelling assumptions adopted by Ofcom (e.g. the "Maximum Day" resource allocation method) are likely to result in inefficient behaviour by Openreach, and should be adjusted to avoid this outcome;

    - EE would be very concerned if use was made of the 2012/13 resource deltas, as EE feels this would reward BT for inefficient resource management. This applies even in the event of future adverse weather conditions;
    - EE considers that tighter minimum standard ranges can and should be set for appointment availability; and
    - EE considers that the KPIs need to be set on the basis of GM areas, rather than nationally. EE also shares Ofcom's concerns that the proposed KPIs will not prevent gaming by Openreach, and EE urges Ofcom to take an active monitoring and enforcement role here.
- **Repair Costs:** EE supports Ofcom's proposals to allocate a higher proportion of repair costs to MPF and WLR Premium than to WLR Basic. However EE considers that the percentage allocation should potentially be higher than that proposed by Ofcom (20% rather than 14.1%).
- **Fault Rates**: EE does not agree that fault rates should be equalised between WLR and MPF. EE considers that ongoing churn levels will mean that MPF services are likely to experience higher levels of early life faults than WLR services on an ongoing basis. EE also considers that stronger incentives should be given to Openreach to improve its fault rates across all services going forwards.

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2. Response to consultation questions

2.1. Quality of service review

Question 3.1: Do you agree that it is appropriate to use the existing SLAs as the basic standard around which to set the new minimum standards? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

Yes, for the reasons set out by Ofcom at §§3.12 to 3.19 of the 19 December 2013 Consultation. As Ofcom observes, any adjustment to the current SLAs would need to involve a careful consideration of the cost implications of so doing. For the purposes of the present market review period, EE considers that Ofcom's proposals strike the correct balance between the interests of different industry stakeholders in this regard.

Question 3.2: Do you agree that it is appropriate to use General Manager areas rather than forecasting regions in the minimum standards and the KPIs? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

EE agrees with this revised proposal. EE considers that this is likely to be the best way at the moment to balance the objective of ensuring that some areas do not consistently experience poor service quality with the need to manage complexity and cost.

Question 3.3: Do you agree that it is appropriate to apply the same minimum standards to all regions? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

EE agrees that the same minimum standards should apply to all regions. EE considers that this is a key way in which Openreach will be incentivised to deliver improved service quality as compared with the current situation. EE does not consider that any regional variations are necessary to ensure that the current SLAs are achievable by Openreach in each relevant region. The move to larger regions (10 from 27) as well as the decision not to impose any tighter SLAs than those currently in place already go towards meeting any concerns that Openreach may have had in this regard.

Question 3.4: We have set out the details of our analysis in Annex 5. In light of this analysis, do you agree that the 2011/12 resource deltas from the Resource Simulation Model provide a reasonable basis to assess the resource and associated cost increments associated with minimum standards? Please provide reasoning for your answer.

Broadly, yes. EE has not scrutinized in detail all of the reports on the modelling underpinning Ofcom's analysis in Annex 5 and is obviously also hindered in its assessment by only having access to the non-confidential version of Ofcom's analysis. However, EE is inclined to agree with Ofcom that, to the extent that the 2012/2013 estimates appear to have been unduly influenced by sustained backlogs (in turn influenced by Openreach resourcing decisions) and have also been subject to manual adjustments by Openreach liable to distort the results, whereas the 2011/12 resource deltas are not subject to the same concerns (§A5.75), the 2011/12 resource deltas are to be strongly preferred as the more reliable data source. In principle, EE also does not believe that it will set the correct performance improvement incentives for Openreach to set resource deltas so as to allow Openreach to recover the large resource costs associated with clearing backlogs that have been allowed to build up over a prolonged period (as appears to have occurred in 2012/13), when much smaller increases would have been required to prevent such backlogs occurring in the first place (§A5.56). This gives another reason to prefer the 2011/12 resource deltas as the basis for Ofcom's resource and cost assessments – even in the event that it transpires that the serious adverse weather conditions experienced in 2012/13 are repeated in future years.

Nevertheless, EE remains concerned by Ofcom's conclusions in relation to the modelling used for 2011/12 (as well as for 2012/13), in so far as it suggests that the "Maximum Day" method of calculating resource redistribution used in the model assumes that a significant proportion of Openreach resources will be idle on most days of the year, and takes no account of the potential for these idle resources to be usefully deployed and to improve performance on off-peak days (§A5.59). EE considers this assumption to be highly commercially unrealistic and inconsistent with Ofcom's objective of incentivising Ofcom to engage in *efficient* resourcing behaviour in the best interests of consumers and competition. To the extent that this is liable to cause the model to place too much emphasis on uplifting resources on days of peak demand rather than on performance improvement on off-peak days, EE considers that Ofcom should make an appropriate adjustment to counteract this effect, rather than simply ignoring it (cf §A5.63).

We also consider it important that the 2011/2012 deltas are adjusted as per Ofcom's proposal not to take into account BT's unjustifiable proposed uplifts for performance above 80%, for the reasons given in the 19 December 2013 Consultation (§§A5.66-A5.70).

Question 3.5: Do you consider whether it is appropriate to take account of the difference in the resource levels between 2011/12 and 2012/13 in setting the final resource multiple to account for the more challenging conditions in 2012/13? Please provide reasoning for your answer.

EE does not consider that this is appropriate, for the reasons set out above in response to question 3.4. This view is confirmed by Ofcom's conclusions at §A5.82 that Openreach would have been able to meet the demands of the more challenging environmental conditions seen in 2012/13 without the use of a substantially greater resource base than in 2011/12, if Openreach's behaviour had been more efficient – e.g. in seeking to recruit additional resources more expeditiously. EE considers that the new quality of service regime Ofcom is introducing should be designed to stimulate such efficient behaviour, rather than rewarding or encouraging laggardness.

Question 3.6: Do you agree that the existing MBORC statistics form a reasonable basis for inclusion in the minimum standards? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

Yes, as they seem to be the most reliable form of data available to Ofcom for this purpose.

Question 3.7: Do you agree that it is appropriate to base the repair MBORC allowance on the statistics for 2012/13? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

Yes, this seems to be a reasonable and fair approach.

Question 3.8: Do you agree that it is appropriate to use 3% as the faults MBORC allowance and 1% as the provisioning MBORC allowance? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

On the evidence presented in the 19 December 2013 Consultation, these appear to be reasonable proposed allowances. Given the long 12 working day SLA for provisioning, EE agrees that Openreach should have greater scope than in the case of repairs (where there are much shorter SLA timeframes) to still meet the SLA even in cases of adverse external events such as bad weather (§3.103) – hence a lower MBORC allowance than for repairs would seem to set the appropriate incentives.

Question 3.9: Do you agree with the minimum standards we have proposed for the third year? Please provide reasoning for your answer.

These proposals seem to be a reasonable place to start, for the reasons set out in the 19 December 2013 Consultation. In time obviously refinements can be made where necessary to ensure that the regime is achieving the intended objectives.

Question 3.10: Do you agree with the range we have identified for the minimum standard in the first year and our proposed recommendation within that range? Please provide reasoning for your answer.

EE agrees with Ofcom's proposed range and recommendation within that range in respect of the minimum standard for repair completion and provision appointment completion. However, EE is concerned that both the proposed range and the recommendation within that range for appointment availability have been set materially too low. It is critical to the competitive effectiveness of operators using the Openreach copper network to supply services to be able to connect new customers within reasonable timeframes. 12 working days is already a significant period of time to ask a customer to wait before they can receive service. Considering the best interests of UK consumers and effective, technology neutral competition, EE considers it entirely unacceptable that historically Openreach has only been able to meet this generous target between 41-64% of the time. EE believes that setting the targets for years 1 and 2 based on these sub-standard performance levels will inappropriately reward BT for its historic inefficiencies / potentially deliberate behaviour to slow the growth of its competitors, to the clear detriment of UK consumers and healthy competition. As with the proposed provision appointment completion minimum standards, EE therefore believes that the minimum standards for years 1 and 2 should be set at the level proposed for year 3.

Question 3.11: Do you agree with the proposed glide path? Please provide reasoning for your answer

See EE's comments in response to questions 3.9 and 3.10 above.

Question 3.12: Do you agree with our analysis of the risks of unintended consequences in the setting of the minimum standards and our proposed approach to addressing the risk, including the use of new KPIs? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

EE agrees that the risk identified by Ofcom at §3.120 of the 19 December 2013 Consultation is both a genuine risk and one of concern to operators who rely on Openreach input products, such as EE. SLGs do not provide a sufficient incentive to comply with SLAs as it is likely to be cheaper for Openreach to pay SLGs than to incur the additional labour costs required to meet repair SLAs in all cases. Against this backdrop, EE is not convinced that the KPIs proposed by Ofcom will be effective in controlling this risk. We therefore encourage Ofcom to indeed actively monitor this risk and to take the enforcement actions referred to at §3.125 in the event that it materialises.

Question 3.13: Do you agree with the set of KPIs proposed? Is it sufficient that they are national rather than regional? Do you agree they should be publically available? Please provide reasoning for your answer. If you do not agree, please also give your proposed alternative.

EE agrees that for maximum effectiveness the KPIs should be publicly available. Ofcom has not explained in the 19 December 2013 Consultation why it considers it unnecessary for these KPIs to be provided for each GM area. EE is concerned that if BT does engage in the feared gaming behaviour, then this is liable to take place with a focus on particular regions in which BT has allowed standards to slip, and that only tracking national averages is likely to hinder effective detection and sanctioning of such behaviour. Without regional tracking of KPIs, it would be possible for BT to meet a national SLA, whilst consistently providing poor service in hard-to-serve regions. Further, EE recommends that the SLAs address ‘repeat faults’ i.e. the recurrence of faults. Without this safeguard, EE is concerned that BT could close a fault as resolved, if it falls out of SLA, and then open a new one if the CP complains. EE does not otherwise have any comments on the sets of KPIs proposed at the present point in time.

2.2. Service Level cost differentials

Question 4.1: Do you agree with our proposal on how conceptually to estimate the cost differential? Please provide reasoning for your answer.

Question 4.2: Do you agree that the Resource Simulation Model appropriately adjusted for estimating the cost differential is an improvement on the way we previously used to set this differential? Please provide reasoning for your answer.

Question 4.3: Do you agree that we have undertaken the correct and appropriate adjustments to the Resource Simulation Model to better reflect reality? Please provide reasoning for your answer.

Question 4.4: Do you consider that there may be ways in which the Resource Simulation Model could be changed to make it more reflective of the reality – e.g. Gamma distribution assumptions and exclusion of Saturday working for Service Level 2? Please provide reasoning for your answer.

EE agrees that it is appropriate for Ofcom to allocate a higher proportion of repair costs to MPF and WLR premium than to WLR basic on the basis that MPF and WLR premium services have higher repair service levels (offered with Service Level 2, requiring next working day repair) than WLR basic (offered with Service Level 1, requiring repair only within two working days) (§4.3). Clearly, it violates Ofcom’s objectives of promoting technology neutrality and fair completion to require WLR basic based operators to fund the superior service levels enjoyed by their MPF and WLR premium based rivals.

In view of the non-confidential information set out in Section 4 of the 19 December 2013 Consultation, EE considers that Ofcom’s proposed allocation of 14.1% more costs to Service Level 2 services than to Service Level 1 services (§4.2) seems to be a not entirely unreasonable approach. However, there would seem to be considerations suggesting that using Openreach’s higher estimate that Service Level 2 services use approximately 20% more costs than Service Level 1 services (§4.29) would also be reasonable, and potentially more appropriate than some of the hypothetical assumptions used by Ofcom to derive its 14.1% figure (see, e.g. the comments by Openreach at §4.35.1 and §4.35.2). For example, it is likely that MPF faults are likely to require more engineering time to diagnose and resolve. This is because MPF (j) uses both the Openreach and the CP’s network and (ii) combines narrowband and broadband services. As a result, fault diagnosis and resolution is likely to require interaction with the CP's own engineers, thereby increasing repair time. By contrast, WLR basic and premium faults can be entirely resolved by Openreach, and are limited to narrowband services. EE would therefore expect a shorter repair time for the diagnosis and resolution of WLR faults.

2.3. Fault rates

Question 5.1: Do you agree with our approach to establishing base year costs? Please provide reasoning for your answer.

Not entirely.

EE considers that Sky's submissions referred to at §5.91 of the 19 December 2013 Consultation that an efficient operator should be able to achieve reasonable year on year reductions in annual fault volumes to be credible and to carry some weight. EE is concerned that Ofcom's proposal not to make any adjustment in this respect because Ofcom is uncertain by exactly how much to adjust the figures (§5.92) risks harming the best interests of UK consumers and competition in the supply of fixed telecommunications broadband and voice services. EE believes that the better approach would be for Ofcom to build in reasonable expected fault reduction improvements over the course of the charge control period, so as to ensure that the performance incentives given to Openreach further the best interests of consumers and competition.

In relation to the impact of roll-out and take-up of NGA however, EE considers that Ofcom's approach of not making any adjustment appears to be reasonable based on the CSMG factual findings in this regard (see §5.94).

Question 5.2: Do you agree that fault rates should remain constant throughout the Charge Control period based on our analysis above? Please provide reasoning for your answer.

EE considers that setting a charge control based on constant assumed fault rates, is the minimum intervention necessary, in order to incentivise Openreach to repair and upgrade its network as appropriate to meet changing demand. To the extent that fault rates are on the rise as claimed by Openreach (§5.137), then setting the charge control based on constant assumed fault rates should give Openreach the appropriate incentives to adapt its operations to *meet* such challenges. However, this approach will not address the concern raised above in response to question 5.1 that Ofcom needs to ensure that Openreach is being given appropriate incentives to continually *improve* its performance levels. Ideally, Ofcom should go beyond applying a constant assumed fault rate, and apply a reasonable downward adjustment to fault rates, in order to continue to provide adequate performance incentives to Openreach.

Question 5.3: Do you agree with our proposed approach to equalising relative fault rates, with MPF = 1, WLR+SMPF = 1, WLR only = 0.87 and SMPF = 0.13? Please provide reasoning for your answer.

EE is concerned that Ofcom's approach as described at §§5.138-5.156 is lacking a clear factual justification. In reality, MPF relative fault rates are always likely to be higher than WLR/WLR+SMPF fault rates. In early life, MPF faults are significantly higher than those from WLR/WLR+SMPF. Ofcom's analysis in §5.148 in relation to constant market shares resulting in reducing early life fault ("ELF") rates ignores the impact of churn in the market. In practice, whilst overall market shares may remain relatively constant, customers will continue to leave and join MPF networks, therefore the number of young lines will not decrease and ELF will continue to push up the relative fault rate of MPF.

2.4. Charge Control Design

Question 6.1: Do you agree with our revised proposals for baskets and SMPF New Provides? Please provide reasoning for your answer.

For the reasons set out in EE's response to Ofcom's July 2013 consultation, EE is strongly supportive of Ofcom's revised proposals to control the additional WLR connection service of WLR Start of Stopped MPF Line within a WLR Connections basket also including the WLR Standard Connection service (§6.70). EE agrees that it will be important to ensure fair, technology neutral and vigorous competition going forwards as the number of MPF lines in the UK grows for the WLR Start of Stopped MPF Line product to be charge controlled (§6.71).

EE is otherwise in broad agreement with Ofcom's revised proposals, for the reasons set out in the 19 December 2013 Consultation, subject to the comment that EE is concerned that removing Expedite connection services from the ancillary baskets and not imposing any safeguard cap creates a risk that Openreach will seek to use its SMP position to extract supra-normal profits from the supply of these services, resulting in competitive and consumer harm. EE considers that it would better further Ofcom's statutory objectives if these services were to be basket charge controlled.

Question 6.2: Do you agree that we should control (i) WLR Standard Connection when simultaneously provided with SMPF New Provide and (ii) WLR Start of Stopped MPF Line and its simultaneous provision with SMPF New Provide? Please provide reasoning for your answer.

EE is strongly supportive of both of these proposals, for the reasons set out in our response to Ofcom's July 2013 Consultation. EE agrees that a charge control is the most appropriate remedy, for the reasons set out in §6.116 of the 19 December Consultation.

However, for the reasons set out in EE's response to the July 2013 Consultation, EE remains of the view that these charges should be brought in line with their FAC costs immediately by way of an up-front adjustment rather than only by the end of the charge control period (§6.117). EE considers that Ofcom's glide-path approach will result in unnecessary consumer welfare loss and competitive distortion by allowing Openreach to recover unduly high profits for the supply of these services for an unnecessarily extended period, whereas EE considers that there are no such detrimental impacts likely to flow if Ofcom makes the relevant adjustments immediately.

Question 6.3: Do you agree with our proposal not to set charge controls that require Openreach to provide a discount when WLR Transfer and SMPF Single Migration; WLR Start of Stopped WLR Line and SMPF New Provide; and WLR Working Line Take Over and SMPF New Provide are provided simultaneously? Please provide reasoning for your answer.

EE agrees with this proposal, for the reasons set out in §6.123 of the 19 December 2013 Consultation.

Question 6.4: Do you agree that we should re-allocate costs between the services that have been attributed the cost savings associated with the WLR+SMPF simultaneous connections and migrations services so that all services involving jumpering at the exchange more accurately reflect their underlying costs? Please provide reasoning for your answer.

EE agrees with this proposal, In order to promote fair, technology neutral competition and efficient investment signals, EE is strongly supportive of the principle that prices should reflect as closely as possible the underlying resource costs (§6.127). We also accept that principle that Openreach should not be required to under-recover its costs (§6.126). We would nevertheless urge Ofcom to scrutinize carefully claimed cost savings allocations from simultaneous provision to other services, in order to ensure that Openreach is also not permitted to over-recover its costs. For example, we note that the proposed 15% increase in costs in step 1 as compared with Ofcom's July 2013 Consultation proposals (§A11.33) is three times higher than the 5% (gross) efficiency target set by Ofcom for Openreach under the last WLR and LLU charge control and much higher than any of the numbers put forward by Openreach to Ofcom in its consultation responses in relation to its ability to make efficiency savings for the purposes of that charge control review – suggesting that the 15% figure may be too generous to Openreach.

Question 6.5: Do you agree that we should now charge control the Caller Display service? Please provide reasoning for your answer.

For all of the reasons set out in EE's response to Ofcom's July 2013 Consultation as well as Ofcom's previous consultations and calls for inputs on this issue, EE warmly welcomes this proposed charge control as an extremely important step in promoting the best interests of UK consumers and fair competition in the supply of voice services in the UK.

For the same reasons, EE further agrees that the charge control should be set to allow Openreach to recover no more than the LRIC of the service, as from the beginning of the new charge control (§6.131; §§6.167-6.170). EE fully supports Ofcom's assessment that such a one-off adjustment is appropriate and consistent with Ofcom's regulatory principles given that these charges were not previously subject to a charge control and are high relative costs assessed on both a LRIC and FAC basis (footnote 315).

Based on the evidence set out in the 19 December Consultation, EE also agrees with Ofcom's conclusion that the potential degradation in quality of service for supply of the Caller Display service which might result from significantly higher take-up is unlikely to be a major concern (§6.159), and thus that any expenditure by Openreach to increase its current capacity is likely to be unnecessary and inefficient – such that communications providers should not be obliged to contribute to any such costs (§§6.160-6.162).

The only thing that concerns EE is Ofcom's new proposal that it will need to make consequential allocations of quite substantial additional common costs to the charge controlled WLR and MPF rentals (§6.131). EE finds these proposals surprising, given Ofcom's earlier conclusions based on previous mandatory information request responses submitted by BT that the cost of providing Caller

Display was likely to be close to zero (§6.141). At §6.173, Ofcom suggests that the proposed adjustments reflect the difference between the FAC of Caller Display and the "direct" costs of supplying this service (assumed to represent the LRIC). EE confesses that it is surprised that these common cost allocations are estimated at as high as between £2-£3 per line installed with Caller ID (§6.141). Whilst EE supports the methodology proposed by Ofcom for allocating these FAC at §§6.173-6.174, EE would urge Ofcom to further scrutinize these alleged costs to ensure that Openreach is not being allowed to over-recover its common costs – which would obviously be detrimental to the best interests of UK consumers.

Question 6.6: Do you agree that we should impose a one-off reduction in the Caller Display charge to LRIC (in 2014/15), with common costs reallocated across WLR and MPF as appropriate? Please provide reasoning for your answer.

Yes, see our response to question 6.5 above.

2.5. Charge control cost allocations and modelling

Question 7.1: Do you agree with our proposal to change the approach to the recovery of evoTAMs costs so as to exclude evoTAMs costs from the SMPF line rental? Do you agree with our revised assessment of TAMs costs? Please provide reasoning for your answer.

EE agrees with Ofcom's views that recovering evoTAMs costs from all SMPF lines would not reflect the principle of cost causation (as only SMPF lines that use evoTAMs cause these costs) nor the principle of distribution of benefits (as only SMPF lines connected to the evoTAMs benefit from their enhanced testing functionality) (§7.29). For these reasons, EE supports Ofcom's proposal to exclude evoTAMs costs from the SMPF cost stack entirely.

For the same reasons, EE fully supports Ofcom's proposals to remove evoTAMs costs from the SMPF cost stack immediately by way of a one-off adjustment (§7.33).

EE notes that Ofcom's "high case" scenario assumes a contrary position, whereby evoTAMs costs are spread across all SMPF lines (§7.22). In addition to being inappropriate in principle, EE notes that Ofcom's high case here also appears to incorporate a calculation error. Specifically, in this case the amount to be recovered would need to be much closer to the 2011/12 RFS allocation of £1.70 per SMPF line (§7.22) than the £6.75 per SMPF line which seems to have been wrongly used in Ofcom's high scenario (§7.32) – given that the £6.75 estimate is what would be the relevant cost if evoTAMs were *only* recovered from the WBC lines that directly use them (§7.23.2) and thus would clearly lead to Openreach over-recovering its costs if this cost was attributed to all SMPF lines.

EE can understand the logic behind Ofcom's proposals to use a 7 year rather than 5 year asset life for TAMs, consistent with that used for evoTAMs. Without access to the confidential BT costing information upon which Ofcom's new cost estimate is based, it is not otherwise possible for EE to verify the reasonableness or otherwise of Ofcom's proposed new MPF cost estimate of £5.50 per TAM in 2016/17.

Question 7.2: Do you agree with our proposal to immediately remove 'DSLAM capital/maintenance' costs associated with SFI faults from the Cost Model? Please provide reasoning for your answer.

EE fully agrees with this proposal. It is clearly inappropriate for BT to be able to double recover these costs both from its separately charged for SFI services as well as from core rental services (§7.39) and the interests of consumers and competitors in limiting BT to efficient cost recovery require that this anomaly is corrected as soon as possible.

Question 7.3: Do you agree with our proposal by 2016/17 to allocate the remaining 'DSLAM capital/maintenance costs on a consistent basis with our treatment of other fault-related costs, by means of a glide path? Please provide reasoning for your answer.

No. Ofcom states in the 19 December 2013 Consultation that these costs relate to "broadband only faults" (§7.40). On this basis, Ofcom does not consider it appropriate to allocate these costs between SMPF and MPF, "*because the MPF rental fault rate includes faults affecting both voice and broadband*" (§7.40). Yet the result of Ofcom's preferred alternative approach will be to allocate £0.15 of these costs to each WLR line – many of which are clearly only used <u>purely to provide voice services</u> (unlike MPF lines which are virtually never used exclusively to provide voice services due to the cost inefficiencies of so doing). This proposed £0.15 allocation to WLR lines represents a materially higher cost allocation than the £0.12 proposed to be allocated to each MPF line and the mere £0.02 to be allocated to each SMPF line. EE finds these cost allocation proposals to be fundamentally inconsistent with the logic driving them – to ensure that these costs are not inappropriately recovered from lines used to provide voice rather than broadband services.

Question 7.4: Do you agree with our approach and estimates of the likely ranges for the WLR/WLR+SMPF minus MPF differentials? Please provide reasoning for your answer.

Broadly yes, subject to the following provisos:

- EE does not agree that fault rates should be equalised between WLR and MPF, for the reasons set out above in our response to question 5.3 (cf §7.57). For the same reason, EE does NOT consider that it would be appropriate for Ofcom to make any additional manual adjustments to the current estimates of service centre assurance costs – which adjustments EE considers would be liable to distort efficient investment signals (cf §7.61; §7.73.2).
- For the reasons set out in response to question 6.5 above, EE urges Ofcom to carefully scrutinize the appropriateness of any additional common costs proposed to be allocated from Caller ID to line cards (§7.59).
- We share Ofcom's reservations expressed in footnote 342 regarding the theoretically inconsistent and relatively arbitrary proposed adjustment to the LRIC to FAC ratio for line cards from 70% to 92% in order simply to make it match the LRIC to FAC ratio for TAMs. Based

on the information presently presented in the 19 December 2013 Consultation, EE does NOT consider it is appropriate for Ofcom to make this manual adjustment (cf Table 7.4 and §7.73.1).

- Even were it to be accepted that the adjustments set out in Table 7.4 are correct, whilst we appreciate that whole numbers are simple to deal with, we consider that Ofcom's rounding simplifications proposed in §7.65 introduce a rounding error to the detriment of WLR+SMPF based providers. Specifically, EE is concerned that Ofcom's proposed low estimate of the LRIC differential of £0 rounds down the figure in Table 7.3 by £0.24, whereas Ofcom's proposed high estimate of £4 rounds up the figure in Table 7.4 by a significantly greater amount of £0.69. This distorts the mid-point, which Ofcom has assumed at £2, whereas this should in fact be around £1.75 (£1.78 precisely). Given the importance of this figure to Ofcom's subsequent charge control proposals[1], EE urges Ofcom to review it with care so as not to inadvertently imbed any inappropriately inefficient and distortive investment signals into the charge controls.
- As per the reservations expressed by Ofcom in footnote 342, we do not believe that Ofcom should make the proposed theoretically inconsistent adjustment for the frames capital LRIC to FAC ratio from 80% in Table 7.6 to 10% as per §7.76 and Table 7.7. We are therefore not convinced that less weight should be placed on the lower end of Ofcom's LRIC differential range estimate for MPF and WLR of -£3 as per §7.81. Nevertheless, given the uncertainties involved in estimating this differential, EE supports Ofcom's proposal of an assumed £0 differential for the purposes of the current charge control period (§7.81)

Question 7.5: Do you agree with our proposal to update the cost model base year information for the most recent 2013 RFS cost information (adjusted as proposed in this Consultation) while retaining the 2012 RFS allocation methodologies (as adjusted as set out in the July 2013 Consultation and this Consultation)? Please provide reasoning for your answer.

Yes. EE agrees with the use of the 2013 RFS cost information provided that Ofcom does indeed appropriately scrutinize and adjust it where necessary to ensure that the resulting charge controls fulfil Ofcom's statutory objectives (§§7.8687). For all of the reasons set out in the 19 December 2013 Consultation, EE also agrees that Ofcom should retain the 2012 RFS allocation methodologies. In particular, EE considers it highly inappropriate that BT should be allowed to significantly over-recover its costs (§7.92) and also agrees that timely implementation of the new charge controls is critical to stimulating efficient, sustainable and technology neutral competition and maximising consumer welfare (§§7.94-7.96). In the event that Ofcom's proposed approach proves not feasible for any reason, EE supports Ofcom's proposed fall-back option of reverting to the 2012 RFS as the base year data for the charge controls (§7.98).

[1] I.e. for deriving the assumed LRIC of SMPF of £2 as per footnote 354.

Question 7.6: Do you agree that BT's provision for claims for deafness arising from the use of copper line testing equipment used in the past by engineers should be excluded from the cost base of the Charge Controls? Please provide reasoning for your answer.

EE fully agrees with this proposal, on the basis that the charge controls should only allow BT to recover efficiently incurred forward looking costs – which such costs clearly are not. .

Question 7.7: Do you consider that BT's CTC costs should be included in the cost base of the Charge Controls? Please provide reasoning for your answer.

On the basis of the information set out in the 19 December 2013 Consultation, no. Looking at the matter from the principle of cost causation, it is very difficult to see why CPs should be obliged to pay any costs towards BT employees who are in effect sitting around and doing nothing to contribute towards the provision of the telecommunications services consumed by those CPs, before then either being made redundant or moving on to an entirely different line of business. Furthermore, we consider that BT is likely to be best incentivised to minimise these costs to efficient levels if it is required to absorb them, rather than to simply pass them on to CPs.

Question 7.8: Are you aware of any other specific BT RFS cost items which merit further investigation by Ofcom to establish whether they properly constitute efficiently incurred forward looking costs?

Not at this stage. EE has previously mentioned to Ofcom the very large drop in directories costs that took place between the BT RFS used to set the 2012 WLR charge controls and the very next published RFS – strongly suggesting that not all of the originally allocated costs were efficiently incurred. However this should no longer be a concern, given Ofcom's proposals to remove these costs entirely from the WLR cost stack with immediate effect in the new charge controls.

2.6. Proposed Charge Controls

Question 8.1: Do you agree with our proposal to set the main rental charges such that the differential in charges between WLR+SMPF and MPF is equal to £10 by 2016/17, rather than moving more rapidly to reflect our now lower estimate of the LRIC differential of £0 to £4? Please provide reasoning and information to support your response to this question.

EE objects to this proposal in the strongest terms. For all of the reasons set out in EE's response to the July 2013 Consultation and in EE's preceding responses to Ofcom's Call for Inputs on this charge control and Ofcom's consultations on the 2012 WLR and LLU charge controls as well as in EE's intervention in support of BT's appeal to the Competition Commission ("CC") of the 2012 charge controls in this respect, EE considers that Ofcom should exercise its discretion so as to ensure that the charges for MPF and WLR+SMPF rentals match the LRIC differential in the supply of these services at the earliest opportunity (in the present circumstances this means **immediately at the beginning of the new charge control**). EE's views in this regard have remained consistent over time and we do not therefore repeat them here[2].

For the purposes of the present consultation, what we consider it important for Ofcom to focus on is what has *relevantly recently changed*, in particular since the CC's decision on 27 March 2013 upholding the exercise of Ofcom's discretion not to alter WLR+SMPF and MPF charges to match the LRIC differential by the end of the current charge control period on 31 March 2014 ("the CC Decision"). In this regard, we consider that there are two main relevant factors that have changed:

1. Ofcom's new and more robust estimate of the LRIC differential, which shows it to be significantly lower and thus the divergence from the current FAC charges to be much larger than previously thought (£0-£4, compared to the current FAC differential of £19) (§8.3); and
2. The publication of the European Commission final Recommendation on Consistent Non-Discrimination Obligations and Costing Methodologies to Promote Competition and Enhance the Broadband Investment Environment ("the Costing Recommendation") on 11 September 2013, which places strong emphasis on the importance of minimizing any fluctuations in copper based wholesale broadband pricing as soon as possible, and in any event by no later than 31 December 2016.

For the reasons set out below, EE considers that both of these new factors materially strengthen the case for Ofcom to adjust the WLR+SMPF and MPF charges so as to match the newly estimated LRIC differential as soon as possible and in any event by no later than 31 March 2017 as per Ofcom's proposed "Option 2" and greatly heighten the risk that Ofcom will fall into reviewable legal error if it fails to do so.

The impact of a (further) reduced estimate of the LRIC differential

Since 2009, Ofcom's investigations into the LRIC differential between the costs of supplying MPF as compared with the costs of supplying WLR+SMPF ("the LRIC differential") have produced steadily reducing estimates of this cost differential. Specifically, in May 2009 Ofcom estimated the LRIC differential at £20-25 and then in October 2009 Ofcom revised this estimate downwards to £15-20[3]; in 2012[4] Ofcom estimated it to be £10-14 and now, in the 19 December 2013 Consultation, Ofcom estimates it to be £0-4 (Table 8.1).

Ofcom's reduced estimate of the magnitude of the LRIC differential as between its last WLR and LLU Charge Control Statement in March 2012 and the current 19 December 2013 Consultation does not therefore, in and of itself, represent a material change in circumstances since the CC Decision (cf §8.63.1 of the

[2] Nor do we respond to the points made in response to the July 2013 Consultation by Sky and TalkTalk and Frontier Economics on their behalf, which essentially simply repeat arguments already robustly rejected by Ofcom during the course of the 2012 WLR and LLU charge control review and further responded to in EE's intervention in the BT appeal to the CC on this point.

[3] See Ofcom, Charge Controls for Wholesale Line Rental and Related Services Statement and Consultation dated 26 October 2009 ("the 2009 Statement"), Figure 5.1 and §5.85.

[4] See Ofcom, Charge Control Review for LLU and WLR Services Statement dated 7 March 2012 ("the 2012 Statement"), Figure 7.3.

December 2013 Consultation). Indeed, the £10 reduction in Ofcom's current estimate of the LRIC differential range is in fact slightly lower than the £10-11 reduction in Ofcom's estimate of this range between its May 2009 LLU Pricing Framework Statement and its March 2012 WLR and LLU Charge Control Statement.

What the new and more accurate 19 December 2013 LRIC differential range estimate has relevantly revealed is that, when Ofcom set the regulated WLR and LLU prices in 2012, whereas Ofcom intended and believed that this pricing would **reduce** the delta between this pricing and the LRIC differential ("the price vs. LRIC distortion level") (from £5-10 in 2012/13 to £4.14 to £8.14 in 2013/14),[5] in fact the pricing set by Ofcom in 2012 has (contrary to Ofcom's stated intentions and MPF and WLR+SMPF related investment expectations) **increased** the price vs. LRIC distortion level (from £5-10 in 2012/13 to £14.14 to £18.14 in 2013/14).

Had the CC been aware of this new factual evidence at the time, EE believes that this would have resulted in a materially different view having been reached in the CC Decision as to the appropriateness of Ofcom's 2012 WLR and LLU charge controls. Specifically, EE notes that the CC Decision to uphold the exercise of Ofcom's discretion not to reduce the price vs. LRIC distortion level to a level lower than that proposed in Ofcom's 2012 Statement (as contended for by BT and EE in the appeal) was based upon the following considerations:

- Weight given by the CC to Ofcom's presumption, which the CC expected stakeholders to share, that having made a position in a previous charge control as to how Ofcom was going to treat a cost, Ofcom would continue to do so, unless there was a compelling reason why that position must be changed (§7.138);
- The fact that Ofcom's justification for setting the relevant level of the WLR and LLU pricing in the 2012 Statement was based upon Ofcom's view that it was appropriate to *reduce the price vs. LRIC distortion level* from where it had been prior to the 2012 Statement, albeit not to remove the price vs. LRIC distortion entirely (§7.139);
- Ofcom's "*view that (without fettering its discretion) it has signalled its intention to* ***continue to reduce the price differential [i.e. the price vs. LRIC distortion level] in future****, which will reduce the risk of CPs engaging in inefficient investment on the basis of the current price differential*" (§7.141, emphasis added). It is notable that the CC placed particular weight on this point in upholding the exercise of Ofcom's discretion, concluding that "*We think Ofcom is right to say that this introduces a balance between having regard to past investments and promoting efficient investment in future*" (§7.141);
- The belief by the CC (which was shared by all of the parties to the appeal at the time) that under Ofcom's proposed 2012 WLR and LLU charge controls, that the price vs. LRIC distortion "*falls by a substantial*

5 See the 2009 Statement Figure 5.1 and §5.85 and the 2012 Statement Figure 7.3

amount in 2012/13 and 2013/14, compared with the largest previous change" (§7.142);

- The fact that the above considerations supported Ofcom's view that it had correctly taken into account so far as practicable technological neutrality considerations, weighing them against its wider efficiency considerations (§7.144);
- The fact that encouraging MPF-based services was not part of Ofcom's justification for setting the relevant WLR and LLU prices (§7.145);
- The CC's conclusion that the CC's findings in the appeal of Ofcom's 2009 WLR and LLU charge controls as regards the benefits of aligning the relative charges for the two MPF and WLR+SMPF services were in line with one of the relevant considerations that Ofcom took into account in setting the 2012 charge controls, albeit that Ofcom set that consideration against other factors in reaching its decision (§7.145).

In summary, the CC Decision was based upon a view that Ofcom had had due regard to the importance of technology neutral regulation of MPF and WLR+SMPF based voice and broadband services and the importance for efficient investment, fair competition and consumer welfare of aligning the charges for MPF and WLR+SMPF based services with their costs; had consistently signalled to MPF and WLR+SMPF based investors (and Openreach) that it would progressively reduce the price vs. LRIC distortion level to zero in view of these considerations and that Ofcom had in fact reduced the price vs. LRIC distortion level in setting the 2012 WLR and LLU prices, albeit not to zero.

In contrast, what the pricing set by Ofcom under the 2012 WLR and LLU charge controls has in fact done is **increase** the assumed level of the price vs. LRIC distortion level in March 2012 by over £10, from £4.14-£8.14 to £15-19[6].

In EE's view, all of the above considerations mean that Ofcom will have acted in a manner which is unjustifiably contrary to all of Ofcom's previous policy statements and in violation of a large number of Ofcom's statutory duties and objectives and hence have committed a serious legally reviewable error if Ofcom fails to:

- set WLR and LLU pricing **as from the beginning of the 2014 charge control** so that the price vs. LRIC distortion level is no higher than **£4.14-£8.14** (in order to correct the error created under the current charge control which is presently distorting investment signals and competition in a manner which is markedly different to that intended and stated to be the case by Ofcom in the 2012 Statement and thus relied upon by CPs in making their investment decisions); and

[6] I.e. subtracting Ofcom's December 2013 Consultation view of the LRIC differential of £0-£4 from the price differential of £19 set for 2013/14 under the 2012 charge control pricing – see 19 December 2013 Consultation §8.3. Note that, whilst for simplicity in these calculations EE has adopted Ofcom's December 2013 Consultation estimate of £0-£4 for the LRIC differential, as per EE's response to question 7.4 above, EE believes that this range should be £0.24-£3.31 and maintains that the relevant rounding error should be corrected in Ofcom's final calculations.

- **<u>reduce the price vs. LRIC distortion level to materially below £4.14-£8.14 over the course of the charge control</u>** (again in order to comply with Ofcom's publicly stated intentions in this regard in the 2012 Statement, upon which MPF and WLR+SMPF based CPs have based their investment and other commercial decisions and to achieve Ofcom's statutory objectives).

In contrast, as set out in the table and figure below, neither of the Options 1 or 2 proposed by Ofcom in the December 2013 Consultation will achieve this result. Specifically:

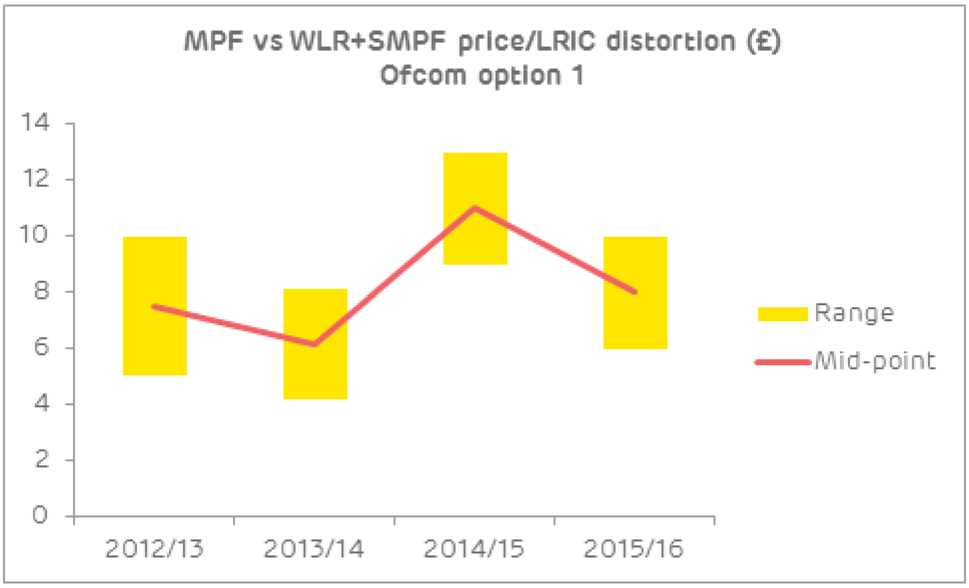
- For the first year of the 2014 charge control, Option 1 will miss this target by nearly £5 (£4.85) and Option 2 by nearly £1.50 (£1.30); and
- By the last year of the 2014 charge control (2016/17) Option 1 will still cause a price vs. LRIC distortion level that is nearly £2 higher than that intended to have been be created by 2013/14 under Ofcom's 2012 charge control, and only Option 2 will achieve a lower price vs. LRIC distortion level.

Table 1: Evolution of the LRIC and price differential

STATEMENT DATE	2009[7]	2012[8]	[2014][9]	[2014][10]
YEAR	2012/13[11]	2013/14[12]	2014/15[13]	2016/17[14]
MPF vs. WLR+SMPF PRICE DIFFERENTIAL	£25	£18.14	Option 1: £12.99 Option 2: £9.44	Option 1: £10 Option 2: £2
MPF vs. WLR+SMPF LRIC DIFFERENTIAL	£15-20	£10-14	£0-4	£0-4
MPF vs. WLR+SMPF PRICE vs. LRIC DISTORTION LEVEL	£5-10	£4.14-£8.14	Option 1: £12.99-£8.99 Option 2: £9.44-£5.44	Option 1: £6-£10 Option 2: £2-£-2

7 See the 2009 Statement, Figure 5.1 and §5.85.
8 See the 2012 Statement, Figure 7.3.
9 See 19 December 2013 Consultation, Table 8.1.
10 See 19 December 2013 Consultation, Table 8.1.
11 Forecast for final year of charge control.
12 Forecast for final year of charge control.
13 Forecast for first year of charge control.
14 Forecast for final year of charge control.

Figure 1



Given the large number of MPF lines in the UK, on EE's calculations, the total value of the distortion in favour of MPF CPs under option 1 for 2014/15 – 2016/17 will amount to a whopping £235m. It is clearly out of line with Ofcom's objectives to promote efficient investment and fair competition in the best interests of UK consumers to allow its regulations to create such a distortionary effect.

EE considers that the above analysis provides strong support for the proposition that Ofcom should reject its currently preferred Option 1 outright, and should adopt a modified version of Option 2, which reduces the price v LRIC distortion by a further £1.30 by in the first year of the charge control.

The impact of the Costing Recommendation

[✂][CONFIDENTIAL [✂]

In light of the above, EE is firmly of the view that Ofcom's proposed Option 1 violates the principles set out in the Costing Recommendation, whereas those in Option 2 much more closely comply.

Question 8.2: Do you agree with our proposed approach to making one-off adjustments for the removal of evoTAMs costs and DSLAM capital maintenance costs? Please provide reasoning for your answer.

EE fully supports this proposed approach, for the reasons set out in our response to the July 2013 Consultation; for the reasons given in response to the questions above on the removal of evoTAMs and DSLAM capital maintenance costs; and for those set out by Ofcom at §§8.66-8.72 of the December 2013 Consultation.

EE notes that Ofcom states it has not yet reached a final position on its approach to directory costs (although the principles supporting their immediate removal are stated to be the same as for evoTAMs and DSLAM capital maintenance costs and for the purposes of the December 2013 Consultation Ofcom is proceeding on the same basis as the July 2013 Consultation (§8.67) – i.e. on the basis that these costs should be removed immediately at the beginning of the charge control (§8.7).

In this regard, EE notes that both BT[15] and TalkTalk[16] have submitted to Ofcom in response to the July 2013 Consultation that directories costs should not be removed until the third and final year of the 2014 charge control (i.e. as from 1 April 2016).

For the reasons previously submitted to Ofcom on this issue, EE considers that there is absolutely no merit to the arguments put forward in support of these proposals for delay by BT and TalkTalk. In addition, EE sets out below its response to the particular arguments raised by BT in this regard[17].

Whilst acknowledging that General Condition 8 ("GC8") only requires a printed directory to be provided on request, whereas BT currently engages in (and thus WLR based CPs currently pay for) a "blanket Phone Book distribution policy", BT claims that a delayed change to this wasteful and costly blanket distribution policy will better avoid consumer harm than putting an immediate stop to it for the following reasons, which EE responds to in turn:

- It would **allow BT time to adjust/modify its existing long term contracts for production and distribution of the Phone Book, which are claimed to be planned "months in advance**". EE notes in response that BT has now had fair warning of Ofcom's proposals for over 8 months; that any such impact should be reduced by virtue of the fact that BT's printing cycles go by region such that many will obviously be able to be altered months in advance in any event; and that finally this is hardly an argument for giving BT a full 2 years after the commencement of the new charge control to make any such changes.
- It would **allow BT time to put alternative arrangements in place to help support CPs meet GC8** via new commercial arrangements with BT. EE finds this claim unconvincing. BT has been aware of Ofcom's proposals since July 2013 and EE (supported by several other WLR based CPs) has been requesting BT to consider commercial alternatives to the current arrangements for far longer than that. In this time, BT has failed completely to put any proactive commercial proposals on the table for CPs to consider. On 19 November 2013, BT officially verbally confirmed as part of the WLR Contract Review process that BT did not have any plans to proactively make any proposals in this regard (at least until after Ofcom's final statement was issued). To EE, BT's approach to date of simply dragging its heels on this issue provides a very strong indication that BT is unlikely to put any effort into making such offers available unless and until Ofcom gives it the commercial incentive to do so. As this will only happen at the point immediately prior to removal of directories costs from the WLR cost stack, EE considers that the principle of cost minimisation should steer Ofcom towards removing the directories costs from the WLR cost stack immediately. Further weight to this view is given by the details included

15 See http://stakeholders.ofcom.org.uk/binaries/consultations/llu-wlr-cc-13/responses/BT_Group.pdf, §45.

16 See http://stakeholders.ofcom.org.uk/binaries/consultations/llu-wlr-cc-13/responses/TalkTalk_Group.pdf, §2.55

17 See the BT Group response to the July 2013 Consultation, §§509 to 517.

in BT's July 2013 Consultation as to the considerations likely to be involved if BT is to design a new commercial arrangement for providing Phone Books to CPs. Clearly, BT has already done some relatively advanced thinking on this matter – yet its failure to put any proposal along these lines to CPs over the course of the last 8+ months shows that BT needs to be provided with the commercial incentive to progress matters before any real progress in this regard will be made. What is needed is not so much "time to agree" on this matter as suggested by BT in its consultation response – but rather an incentive to be provided to BT to put an offer on the table which CPs can agree to.

- It would **allow CPs time to consider new ways in which they could comply with GC8 on their own**, which would require them to establish their own production and distribution process. EE notes that this omits entirely to consider the option that CPs already have to achieve compliance via the existing procedure for doing this under Schedule 152 of BT's Standard Interconnection Agreement ("SIA") (which EE has previously drawn to Ofcom's attention).
- If Ofcom's proposal of an immediate cease of funding from WLR went ahead, the financial consequences **might lead BT to stop blanket distribution of Phone Books and only deliver to its own retail customers**. EE notes that this claim by BT is totally inconsistent with the position run by both BT and Ofcom to date (justifying the imposition of BT's full blanket distribution directories costs solely on WLR based providers) that there would be no cost savings if BT did not in fact do a national blanket distribution and instead made distributions to WLR based CPs only. Quite simply, if it is indeed true as Ofcom has assumed to date that there is no cost saving to BT and/or actually an additional cost to BT in order to do such a limited distribution, there is no logical commercial reason why BT would in fact be likely to adopt such an approach. EE accordingly considers that this essentially empty threat by BT (together with the claimed consumer detriments that would flow from this) should be given very limited weight.
- BT suggests that other **CPs are not aware of the complexities of producing and distributing their own printed directories**. EE considers that BT's comments in this regard make the relevant processes sound far more complex and involved than they would actually need to be in reality to provide a "no-frills" printed directory on demand, to those highly limited numbers of its customers that are likely to request this. EE notes in this respect that this directory could involve very simple formatting and design, and that CPs could rely upon the database license for directory information under Schedule 11 of the SIA in relation to BT's "step 3" regarding compilation and pre-press actions. EE further notes that the production and distribution of such directories by CPs is likely in fact to involve only small scale print runs and distributions as compared with BT's current mass blanket production and distribution method (cf BT's "steps 4 and 5") and that CPs are already obliged under the GCs to manage and respond to their customers' opt-in preferences (cf BT's "steps 6 and 7").

- BT **quotes consumer research** results suggesting 51% of adults use a printed directory to help them find a local business (rising to 70% in the 65+ category). These results are quite surprising and EE wonders in this regard whether there has been some confusion by survey participants between the use of the current BT Phone Book and the use of classified printed directories – which would be the more normal printed avenue for consumers to turn to for finding local businesses.
- BT claims that **£33m of revenues** for businesses were generated via the Phone Book. EE notes that these figures pale in comparison with what WLR based CPs currently pay to have the Phone Book distributed – which are more than three times this level. Thus, from a net consumer welfare perspective, it would seem obvious that CP revenues would be better invested in other ways.
- BT claims that the **average spend** was £562 on products & services found via the Phone Book, rising to £917 for the 65+ category. Again, EE questions whether the survey respondents (in particular the older ones who may recall when e.g. the Yellow Pages was owned by BT) have confused current printed classified directories with the non-classified BT Phone Book that is in issue here.