

**Virgin Media's response to Ofcom's Consultation on the Fixed Access Market Review : Openreach Quality of Service and approach to setting LLU and WLR Charge Controls.**

**13th February 2014**

**Non - Confidential Version**

## Introduction

Virgin Media fully agrees with Ofcom's underlying proposition that the provision of network access on fair and reasonable terms is critical to addressing BT's SMP, and the quality of network access services should be sufficient to ensure that the remedy is effective, with below standard provision potentially adversely affecting competition in access markets<sup>1</sup>.

This review is limited in its focus to copper access products, given the markets under review. It is important to understand the effect that any additional compliance obligations in these markets may have on Openreach's performance in other markets. It is vital that in achieving enhanced and mandated standards of performance in one area, Openreach do not "rob Peter to pay Paul", and de-prioritise service in other (regulated) areas<sup>2</sup>. It is of note that there is significant industry concern over service provision of business connectivity services (for example, the use of Cablelink). A further deterioration of performance in these markets due to reallocation of resources to copper markets would be detrimental to competition, and the overall result of the current Fixed Access proposals could be net negative for consumers. In addition, there is the potential for interaction between such markets. An example of this is where the provision of LLU backhaul is via regulated products supplied, at least in part by Openreach, even if this is limited to a Cablelink connection between a rack and the network of a backhaul provider, such as Virgin Media.

Virgin Media fully understands that the forthcoming Business Connectivity Review will look into the provision of services within those markets, and it is not directly within the remit of the Fixed Access Market review to conduct a detailed assessment of the effect on competition there. Nevertheless, it remains an important concern for Ofcom to address in the wider context, that Openreach, in being held to new regulatory copper access standards, do not have an incentive to reduce service in other areas, both in the context of setting appropriate regulation here, and in an ongoing monitoring role to understand the effect of that new regulation.

---

<sup>1</sup> Paragraph 3.3 Consultation

<sup>2</sup> It is of note that at paragraph 3.102, Ofcom note that prior to the introduction of an SLA Openreach could divert resource from provisioning to fault repair without incurring an SLG payment.

## Quality of service review : Responses to Questions

**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.*

Virgin Media understand that a substantial reduction from existing SLAs would drive additional costs; however, the minimum level of service set under access regulation must be at an acceptable level that enables competition within the market. That some CPs may seek something for nothing, is an untenable position, and the evidence supplied in response to the July consultation indicated that the length of provisioning times was a genuine concern.

**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.*

Virgin Media has no comment on this question

**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.*

Virgin Media has no comment on this question

**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.*

**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.*

Virgin Media notes that Ofcom has taken account of comments made in relation to the relative competitive balance as between copper based CPs and Virgin Media<sup>3</sup>. Virgin Media would comment that it is not appropriate to compare a minimum regulatory standard for service performance wholesale copper access products and service offered to Virgin Media's retail customers. There are a number of reasons for this apart from the wholesale / retail distinction. Virgin Media do not consider that a direct comparison between our HFC network and the DSL technology offered by Openreach would be meaningful given the differences that exist (and the inherent better

---

<sup>3</sup> See paragraph 3.39

reliability of HFC). Additionally, any CP will choose to differentiate its offer to its own retail customer base in a number of different ways; for example Sky relies, in part, on its content rights to supplement copper access services in order to create a distinct bundled retail offering to its customers. Virgin Media owns its own access network, and it is therefore a key point of differentiation in the competitive retail environment for broadband and telephony services. [CONFIDENTIAL] We note that this has been discussed in the context of an upper bound, but we still consider that Virgin Media service levels are not a relevant factor either in this context or going forward.

This is also relevant to consideration of consultation responses that suggested that Openreach performance created negative effects on customer perception that would have switching consequences<sup>4</sup>. Again, whilst it is entirely correct that Openreach should offer a level of service that does not undermine the effectiveness of SMP access conditions, it should not be required to base its performance on the level of service independently offered by Virgin Media, as a network owing CP, which could itself distort competition and pricing within the market.

Ofcom state<sup>5</sup> an explicit concern that there is a potential risk of copper based CPs being at a permanent disadvantage to Virgin Media due to the [poor] reputation of copper services. Virgin Media consider that this comparison is not the one to make, rather in seeking to emulate a competitive environment by addressing BT's SMP in these markets, Ofcom must ensure that there is competitive neutrality in relation to the purchase of copper access products; it would be inappropriate to benchmark a standard against a non-SMP CP.

In responding to this issue most stakeholders, as customers of Openreach, appear to suggest, as set out in paragraph 3.64, that an increase in level of service should not be accompanied by a corresponding increase in costs. Virgin Media do not seek to comment in detail on Ofcom's proposed treatment of the Resource Simulation Model, but it is incumbent upon Ofcom to treat the comments of stakeholders in an appropriate light given obvious self interest as potentially directly benefit customers.

**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.*

**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.*

**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.*

---

<sup>4</sup> See paragraph 3.55 and EE's comment reference at FN52

<sup>5</sup> See paragraph 3.79

Virgin Media consider that incorporating MBORC into regulated standards is essential to ensure that those standards are applied consistently, and can act as a clear benchmark to industry. Ofcom's proposals are designed to achieve this, and whilst Virgin Media does not seek to offer any detailed comment on the specific proposal levels used for MBORC allowances, we broadly agree with the approach taken.

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

**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.*

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

Virgin Media does not seek to make detailed comment on the specific ranges adopted, but it does appear that in adopting an approach that, in essence, allows a glide up to minimum standards from the universally acknowledged unacceptable service levels of 2012/13, Ofcom are allowing Openreach to perform at a level that may undermine the effectiveness of the access condition for the first and second years. Ofcom have already noted that Openreach has had time to take mitigating action since 2012/13, and in baking in an MBORC allowance, has factored in the type of weather extremes that Openreach cite (at least in part) for the minimum level of performance set for year three. Additionally, given the balance of ensuring a minimum level of performance without creating disproportionate cost liabilities for Openreach (as discussed at paragraph 3.84), there appears very little additional resource for Openreach to establish to achieve the required levels of service. Ofcom should review whether it is necessary for Openreach to be given the opportunity to glide to the Year 3 standards, or whether it would be reasonable, and in light of the need to ensure the effectiveness of the access conditions, appropriate for the standards to be imposed immediately.

**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.*

**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.*

Virgin Media agrees that there is a legitimate risk of Openreach de-prioritising "failed" repairs / provisions, and this is a matter that Ofcom needs to address to ensure that the access condition is not undermined. Ofcom have proposed to allow Openreach to set its own targets for the delivery of the tail, along with KPIs to track the "tail". Virgin Media do consider that this may not be sufficient to prevent a two tier service being born, with successful service being provided within standard, and unsuccessful service lagging far behind

due to the deprioritisation effect. Whether Openreach's future proposal will address this is entirely uncertain until it is seen, and it may be appropriate to allow comment on any such proposals made by Openreach, given that these will effectively set the level of regulation, albeit through self-regulation, in this regard.

## **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.*

Virgin Media agrees with Ofcom's view that although a WLR CP has the choice to purchase Service Level 2 (and therefore offer a comparable service level to that of an Unbundled CP purchasing MPF), the cost of repairs should be reflected in the respective wholesale charges to ensure competitive neutrality as between WLR CPs and Unbundled CPs.

Virgin Media does not seek to comment on the specific proposals to estimate the cost differential, but supports the commissioning of consultants to review the Openreach Resource Simulation Model, although we note that the instruction was based on Ofcom scenarios, so it is not an independent review of Openreach's modelling.

## **Fault rates**

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

**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.*

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

Virgin Media does not have any comments in relation to the proposed approach to Fault Rates



## 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.

**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.

**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.

**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 jumping at the exchange more accurately reflect their underlying costs? Please provide reasoning for your answer.

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

**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.

Virgin Media does not have any comments in relation to this section of the consultation.

## 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.

Virgin Media does not have any additional comments to make above the comments made in response to the July 2013 Consultation.

**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.

**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.

**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.

**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.

**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.

**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.

**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? Please provide reasoning for your answer.

Virgin Media does not have any further comments in relation to this section.

## 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.

Virgin Media agrees with Ofcom's comments at paragraph 8.47 that it is no longer appropriate to set charges to promote MPF-based competition for the reasons stated, but note that the proposal is that a reduction to the revised (lower) LRIC differential range would risk regulatory stability and predictability, which it is proposed, outweighs the benefit of moving to the differential figure within the control period.

Virgin Media recognises the need for industry to be protected from unexpected effects on pricing, and to that extent understands the proposal to retain the £10 target for the end of the control, notwithstanding its divergence from the underlying objective. Ofcom have previously considered that the argument for stability and predictability can be overcome, even when large cost changes are proposed (for example the move to LRIC termination in the wholesale fixed termination market), so the justification needs to be fully reasoned if Ofcom choose to implement their proposal.

**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.





Virgin Media does not have any further comments in relation to this section.

**Virgin Media**  
**13 February 2014**