Response to Ofcom further consultation on proposed charge control for wholesale standard and superfast broadband

Non-Confidential Version

Submitted to Ofcom by CityFibre Infrastructure Holdings PLC

October 2017

Contents

1 Introduction

1.1.1 CityFibre is pleased to submit its response to Ofcom's further consultation on the WLAMR charge control. CityFibre welcomes Ofcom's willingness to reassess its initial proposals in light of responses received to the March WLAMR consultation and hopes that more aspects of the charge control will be reconsidered, particularly as regards the allocation of common costs and how the network extension costs should be calculated and incorporated into the WLAMR charge control, should the Government decide to accept BT's UBC proposal.

1.1.2 In this response, we only address a small subset of those covered by the consultation. This should not be interpreted as full agreement by CityFibre to Ofcom's proposals, but is simply a consequence of having limited resources at our disposal and therefore a need to prioritise how those resources are applied.

2 CityFibre's response

Network extension costs recovery

2.1.1 Paragraphs 3.162 – 163 cover Ofcom's proposed changes to the 40/10 charge control as a consequence of implementing Ofcom's proposed method of network extension costs (NEC) recovery. The consultation document simply proposes to implement Ofcom's proposed cost recovery method for the NEC, which is understandable as the consultation was run partly concurrently with the NEC recovery consultation. CityFibre, however considers Ofcom's proposals on the NEC recovery to be unacceptable and flawed.

2.1.2 CityFibre has submitted a detailed response to Ofcom's proposals for how to recover the (NEC) resulting from BT's offer to deliver the universal broadband service of >10Mbps, known as BT's universal broadband commitment (UBC) - should the Government accept BT's offer. CityFibre has met with Ofcom to discuss its response to Ofcom's proposed NEC recovery, which has only served to strengthen CityFibre's views that Ofcom's proposals are seriously flawed.

2.1.3 In summary: 1) Ofcom confirmed that the NEC is not treated by Ofcom as a USO cost, but as a simple network extension/enhancement cost; 2) The majority of the NEC will be caused by the implementation of additional fibre in the Openreach access network, making fibre-enabled services available to customers currently only served by copper connections which cannot meet the Government's current 10Mbps minimum speed, never mind higher speeds which will without doubt be mandated in the coming years; 3) Openreach's current MPF price is calculated as a geographic average across the entire copper access network; The current GEA price is however calculated as the geographic average across a smaller footprint (the easier to reach premises), resulting in a distortion between the MPF and GEA costing bases; 4) The adjustment of the GEA price to become the geographic average across a footprint more similar to the current MPF/copper footprint would create a more comparable GEA/MPF costing and pricing relationship.

2.1.4 Based on the logic summarised above, CityFibre considers that Ofcom should have simply included the NEC into the main WLAMR charge control (CC) model, allocating copper and fibre costs into the appropriate categories. This would have resulted in MPF and GEA costs calculated on a more comparable basis. Ofcom's suggestion that doing so would cause a distortion of the actual price differential between MPF and GEA calculated in the WLAMR CC model excluding the NEC does not withstand scrutiny. Ofcom's proposal to distribute the NEC across all broadband lines does, however create a significant distortion to MPF and GEA prices, relative to the actual costs of these two products.

2.1.5 CityFibre understands that Ofcom is still considering different options of how to recover the NEC (should this become necessary), and strongly urges Ofcom to reconsider its proposed approach. Implementing Ofcom's proposal would cause a significant distortion to investment signals and cause a significant and explicit cross-subsidy from users of copper-only services to users of fibre-enabled services. CityFibre considers this approach indefensible.

2.2 Common costs recovery

2.2.1 In paragraphs 3.62 – 3.64 Ofcom refers to a number of costing approaches, including the LRIC to FAC ratios and the recovery of common costs. Footnotes 63, 64, and 65 specifically refer to comments received by stakeholders Sky, TalkTalk, and CityFibre respectively, and Ofcom simply states that it is still considering those responses and will not comment on them in that consultation. Whilst it is reassuring that the stakeholder comments are being considered, CityFibre is questioning the use of consulting on the range of other proposed changes to the WLAMR charge control (CC) model, given that the changes that could be caused by a change to the chosen approach to common costs could be of a magnitude larger than that those covered in the consultation document.

2.2.2 CityFibre submitted in its response to the March WLAMR consultation that Ofcom had erred in choosing the EPMU common cost distribution methodology between the MPF and GEA services[1] as this allocates the majority of common costs to the MPF service, simply because copper is a more expensive material than fibre. CityFibre argued that the most appropriate common cost distribution would be to allocate all common costs to the GEA service, and that if Ofcom did not consider this appropriate it should, as a minimum, allocate common costs in accordance with speeds that can be delivered by the two services/technologies. CityFibre strongly urges Ofcom to change its common costs apportionment approach to one which reflects a forward-looking approach as well as the value offered by each service, rather than a historical technology cost relationship.

2.2.3 Footnotes 63 and 64 refer to responses to the March WLAMR consultation by Sky and TalkTalk respectively. CityFibre notes that in their responses, Sky[2] and TalkTalk[3] argue that Ofcom has incorrectly allocated service-specific costs across all services. Whilst, Sky and TalkTalk focus on a small number of specific examples on which CityFibre does not comment, we believe that Ofcom's approach to the definition and identification of common costs is not sufficiently clear and transparent to demonstrate that all service-specific costs have been identified and attributed to the correct services. In the context of LRIC modelling, the definition of common costs presupposes a definition of the increment(s) being measured, yet this is not articulated in the models or consultation documents.

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[1] See CityFibre's response to the March WLAMR consultation paragraphs 6.6.22 to 8.6.66.

[2] Paragraph 72 in https://www.ofcom.org.uk/__data/assets/pdf_file/0013/105025/Sky.pdf.

[3] Paragraphs 7.13 – 7.17 in https://www.ofcom.org.uk/__data/assets/pdf_file/0014/105026/TalkTalk.pdf.

2.2.4 Additionally, Sky states that Ofcom's assumption of an asset life of 7.1 years for the DSLAM component in the bottom up modelling is too low, and that at least 12 years would be appropriate. CityFibre strongly disagrees and believe that a life of 5-7 years is realistic for this type of asset and that this range is in line with practice seen internationally. CityFibre notes that DSLAM asset lives have tended to reduce in recent years, and that this trend is set to continue as new technologies offer higher speeds and increased range over the copper network. Such trends should be accounted for in a forward-looking approach, and an asset life of 12 years or more would be completely inappropriate.

2.3 PIA rental revenues

2.3.1 CityFibre notes that Ofcom has reduced its assumption of PIA revenues for the charge control period (paragraph 3.123). However, CityFibre remains concerned that Ofcom overestimates the PIA revenues that will be generated during the relevant period. Given the current state of the PIA product and given the time it is likely to take to implement changes to make the PIA product suitable for scale usage, CityFibre encourages Ofcom to consider whether the current assumption of £3m PIA revenues is in fact appropriate.