



Requests from BT for exemption from its Undertakings under the Enterprise Act 2002 for Wavestream, Pathfinder and Redcare Fire and Security

Consultation

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Section 1

Summary

- 1.1 This consultation seeks views from interested parties on three requests from BT for exemptions from its undertakings under the Enterprise Act 2002. These relate to the following products: the Wavestream product set; the use of the Openreach backhaul product within the Pathfinder trial; and the Openreach input to the Redcare Fire and Security product.
- 1.2 On 22 September 2005 British Telecommunications plc ("BT") offered, and Ofcom accepted, a set of undertakings ("the Undertakings") pursuant to section 154 of the Enterprise Act 2002 in lieu of a reference of certain markets to the Competition Commission. At the time the Undertakings were formulated it was realised that in the interest of reaching a conclusion in a timely manner, to ensure that the benefits could be felt by consumers as quickly as possible, it would be inappropriate to define all of BT's products to which Equivalence of Inputs (EOI) should apply. In addition, the Undertakings provide that under certain circumstances BT may apply for exemptions from certain provisions.
- 1.3 In January 2006, BT provided Ofcom with a proposed list of products (which had not been specifically identified in the original Undertakings) to which EOI should apply and a number of requests for exemptions and requests for agreement from Ofcom. BT needs to seek such requests since, for instance, Openreach cannot supply certain products on a non-EOI basis unless it has the agreement of Ofcom. In June 2006, Ofcom issued a statement relating to the first batch of exemption requests¹. This included a request for exemption for the Redcare Fire and Security product. BT has now requested an updated exemption for this product.
- 1.4 In October 2006, Ofcom issued a consultation² related to thirteen outstanding requests listed in the earlier statement, and in December 2006 issued a statement agreeing to a further nine requests³. This left outstanding four requests for fibre-based products, including Wavestream. Ofcom issued a statement on 19 July 2007 in respect of three of these four, but this did not include Wavestream.
- 1.5 Wavestream has been left outstanding to allow the consideration of information gathered through the Leased Lines Market Review. Ofcom now believes this is sufficiently developed to allow it to move forward on this request.
- 1.6 On 19 July 2007, Ofcom published a consultation on further requests from BT⁴. This included a request for exemption for elements of the Pathfinder trial that BT is conducting as part of its 21CN deployment. On 3 October 2007, Ofcom published a statement which agreed to the request for an exemption for Pathfinder along with three other exemptions and one variation⁵. BT has now requested an extension to the timescale of the exemption for Pathfinder, in line with the ongoing trial.
- 1.7 Section 155 of the Enterprise Act 2002 requires that Ofcom consults where it proposes to amend the Undertakings in a material respect. However, in this

¹ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/requests/>

² <http://www.ofcom.org.uk/consult/condocs/btrequests/>

³ <http://www.ofcom.org.uk/consult/condocs/btrequests/statement/statement.pdf>

⁴ <http://www.ofcom.org.uk/consult/condocs/btrequests/part3/>

⁵ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/part4/>

instance, Ofcom does not consider that the exemptions contained herein would alter the Undertakings in a material respect as they concern the operation of mechanisms originally envisaged under the Undertakings. Whilst Ofcom is not obliged to consult on non-material changes to the Undertakings, it is of the opinion there is value in consulting in order to obtain views and comments that will help Ofcom in reaching its decision as to whether to agree, or not, to the proposed requests. In addition, Ofcom has previously stated that it would consult again on Wavestream and believes it is appropriate to consult on the Redcare and Pathfinder requests as they update existing exemptions.

- 1.8 The Enterprise Act requires that Ofcom should “have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition”. Ofcom’s competition concerns were set out in its *Strategic Review of Telecommunications Phase 2 Consultation Document*⁶. In considering the case for agreeing to exemptions from the Undertakings, Ofcom must consider whether this solution is materially and negatively affected by the exemptions in question.
- 1.9 As stated in paragraph 1.7, Ofcom does not consider the proposed exemptions to be material, and it therefore follows that they can not in any way materially affect the comprehensive solution that the Undertakings represent. Furthermore, Ofcom considers that these exemptions will not have a negative impact on the comprehensive solution. In reaching this view within this consultation, Ofcom has considered the following factors where appropriate:
- whether there would be, or would likely be, harm to customers of BT, consumers of BT and other Communications Providers and the wider public in general if the exemptions were accepted or not accepted due to, for instance, a reduction in effective competition or disruption to the services customers receive;
 - whether there would be demand from Communications Providers (other than BT) for an EOI product to which the exemptions relates; and
 - the length of time for which the exemptions will be granted and whether the amount of resource that would be needed to accelerate development of an EOI product is warranted balanced against other resource requirements (i.e. proportionality).
- 1.10 Ofcom is proposing to agree to the proposed exemption requests based on considering each against the three factors stated in paragraph 1.9.
- 1.11 Although Section 155 of the Enterprise Act does not apply in this instance, Ofcom notes that the period stipulated for consultation in the Act is a minimum of 15 days. It is Ofcom’s view that given the scope of these requests and the timing of the publication of this consultation, a 5 week consultation is appropriate. Ofcom intends to publish a final statement with respect to the exemption requests within this consultation in March 2008.

⁶ http://www.ofcom.org.uk/consult/condocs/telecoms_p2/

Section 2

Background

- 2.1 On 22 September 2005 British Telecommunications plc ("BT") offered, and Ofcom accepted, a set of undertakings ("the Undertakings") pursuant to section 154 of the Enterprise Act 2002 ("the Enterprise Act"). The Undertakings addressed issues that had been raised by Ofcom as it considered whether to refer certain markets to the Competition Commission in relation to the provision of fixed telecommunications. The Undertakings were accepted by Ofcom in lieu of making such a reference at that time. Ofcom's reasons for accepting the Undertakings, together with the Undertakings themselves, are set out in full in the document entitled *Final statements on the Strategic Review of Telecommunications, and undertakings in lieu of a reference under the Enterprise Act 2002*⁷.
- 2.2 At the time the Undertakings were formulated it was realised that in the interest of reaching a conclusion in a timely manner, to ensure that the benefits of the Undertakings could be felt by consumers as quickly as possible, it would be inappropriate to consider all BT's products in the context of which products to which Equivalence of Inputs (EOI) should apply. In addition, during the course of BT's implementation of the Undertakings a number of processes or services have been identified by BT for which it has requested exemptions from certain sections of the Undertakings.
- 2.3 In this consultation, Ofcom is publishing three requests for exemption. These are for Wavestream, the Openreach input into the Redcare Fire and Security product and the provision of backhaul in the Pathfinder trial.
- 2.4 Ofcom originally consulted on a request for exemption for Wavestream in October 2006⁸. Based on feedback to that consultation and the analysis carried out within the Leased Lines Market Review currently being progressed by Ofcom, BT has submitted a revised request, which is included in this consultation.
- 2.5 Ofcom agreed to a request for exemption for the Redcare Fire and Security product in June 2006⁹. This exemption included a Ready For Service (RFS) date of 30 June 2008 by which time Openreach should supply the input product on an EOI basis unless no reasonable demand existed for the product from other CPs. Openreach has now informed Ofcom that no reasonable demand has emerged and has therefore asked for an additional exemption to update the RFS date to be nine months after any reasonable demand emerges.
- 2.6 In October 2007, Ofcom agreed an exemption for some elements of the Pathfinder trial¹⁰. This exemption expires on 31 December 2007. BT has now requested an extension to this exemption in line with the trial.
- 2.7 Following on from this consultation on these three requests, Ofcom intends to publish a statement with respect to these requests in March 2008.

⁷ http://www.ofcom.org.uk/consult/condocs/statement_tsr/

⁸ <http://www.ofcom.org.uk/consult/condocs/btrequests/>

⁹ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/requests/>

¹⁰ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/part4/>

- 2.8 Ofcom is proposing to agree to these requests from BT. Ofcom's reasons for this position is explained in Section 3. Ofcom invites comments on this approach.
- 2.9 The envisaged scope of the proposed exemptions is set out in BT's submission contained in Annex 5 to this document. The proposed wording of the agreement to the exemptions is contained within Annex 6. This document has been drafted to reflect Ofcom's position prior to the consultation and will be updated as necessary for the statement to reflect any changes made as a result of considering stakeholder comments.

The exemptions process

- 2.10 The possibility of there being products and/or services about which a decision would need to be made with respect to EOI was recognised and anticipated in the Undertakings. Section 5.46 of the Undertakings not only sets out the general principle of when EOI will apply (5.46.1) but also sets out a list of products to which EOI will not apply (5.46.1(a) – (i)). In addition, Section 5.46.2 envisaged that there were products which would exist at the date the Undertakings came into force (22 September 2005) and which AS¹¹ (now known as Openreach) would supply, but which Ofcom and BT would have to subsequently agree whether or not EOI should apply, or whether the product should be withdrawn from supply by AS.
- 2.11 Under the terms of the Undertakings (Section 5.46.2) BT and Ofcom are required to agree the action to be taken in respect of products and services which fall under Section 5.46.2. The original Undertakings gave BT and Ofcom until 21 January 2006 to review these products and determine what should happen to them. This period has subsequently been extended on a number of occasions:
- from four months to eleven months¹² to allow the initial set of requests from BT to be fully considered;
 - to 22 December 2006¹³ to allow for consultation on the more complex requests;
 - to 31 March 2007¹⁴ to allow for further consideration of the outstanding fibre requests; and
 - to 31 December 2007¹⁵ to allow for the completion of the statement on three of the four requests and to allow for the information gathered during the Leased Lines Market Review to be taken into account in regard of the Wavestream request.
- 2.12 In parallel with this consultation, Ofcom plans to agree a further variation to the Undertakings to allow for the conclusion of the consultation process for Wavestream.
- 2.13 Section 5.46.1(g) of the Undertakings allows Ofcom and BT to agree products that do not need to be supplied externally. The Redcare Fire and Security request is made under this section of the Undertakings.

¹¹ Since the Undertakings came into effect BT has created Openreach to fulfil the duties (as defined in the Undertakings) of Access Services.

¹² <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/variation1.pdf>

¹³ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/var3.pdf>

¹⁴ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/variation6.pdf>

¹⁵ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/variation8.pdf>

- 2.14 Section 11.9 of the Undertakings allows for an exemption from providing products on BT's next generation network on an EOI basis where it would not be reasonably practicable to do so. The request relating to Pathfinder is made under this section of the Undertakings. In parallel with this consultation, Ofcom also plans to agree a temporary extension to the current exemption for the Pathfinder trial to allow the consultation process to be completed.
- 2.15 Section 155 of the Enterprise Act 2002 requires that Ofcom consults where it proposes to amend the Undertakings in a material respect. However, Ofcom does not consider that the exemptions and agreements contained herein would alter the Undertakings in a material respect were they to be agreed as they concern the operation of mechanisms envisaged when the Undertakings were offered by BT and accepted by Ofcom. Whilst Ofcom is not obliged to consult on non-material changes to the Undertakings, it stated in Exemptions Part 1¹⁶ that it would decide whether or not to consult on any such changes in the future on a case-by-case basis. Ofcom is of the opinion that the issues under consideration in this consultation are of sufficient interest to stakeholders that there is value in consulting with stakeholders to obtain views and comments that will help Ofcom in reaching its decision as to whether to agree, or not, to these requests from BT.
- 2.16 Although Section 155 of the Enterprise Act does not apply in this instance, Ofcom notes that the period stipulated for consultation in the Act is a minimum of 15 days. It is Ofcom's view that in this instance, given the scope and timing of this consultation document, a 5 week consultation is appropriate.

¹⁶ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/requests/>

Section 3

Ofcom's reasoning with respect to the proposed exemption requests

Introduction

- 3.1 In this section, Ofcom sets out its position in respect of BT's requests for exemption from its Undertakings under the Enterprise Act 2002 and its reasons for adopting that position. Ofcom, through this consultation, invites comments on the described proposal from interested stakeholders.
- 3.2 The full text of BT's requests for exemption is reproduced in Annex 5 and the proposed wording of agreement to the exemptions is set out in Annex 6. Respondents are strongly recommended to consider the text in Annex 5 and 6 before answering the questions which follow. The reasoning Ofcom puts forward in this section in respect of BT's requests is based on the information available to Ofcom at the time of publication and Ofcom reserves the right to change its position with respect to any request as a result of the consultation process or any other information that comes to light during the consultation. Any such change will be fully explained in the subsequent statement due for publication in March 2008. The wording in Annex 6 reflects Ofcom's current position in respect of the requests.
- 3.3 The Enterprise Act requires that Ofcom should "have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition". Ofcom's competition concerns were set out in its *Strategic Review of Telecommunications Phase 2 Consultation Document*¹⁷. In considering the case for agreeing to exemptions from the Undertakings, Ofcom must consider whether this solution is materially and negatively affected by the exemptions in question. Ofcom does not consider that the exemptions contained herein would alter the Undertakings in a material respect were they to be agreed as they concern the operation of mechanisms envisaged when the Undertakings were offered by BT and accepted by Ofcom. Hence, Ofcom does not consider the proposed exemptions to be material and it therefore follows they can not in any way materially affect the comprehensive solution that the Undertakings represent. Furthermore, Ofcom considers that the requested exemptions will not have a negative impact on the comprehensive solution. In reaching this view and in considering the requests within this consultation Ofcom has considered the following factors where appropriate:
- whether there would be, or would likely be, harm to customers of BT, consumers of BT and other Communications Providers and the wider public in general if the exemptions were accepted or not accepted due to, for instance, a reduction in effective competition or disruption to the services customers receive;
 - whether there would be demand from Communications Providers (other than BT) for an EOI product to which the exemptions relate; and
 - the length of time for which the exemptions will be granted and whether the amount of resource that would be needed to accelerate development of an EOI

¹⁷ http://www.ofcom.org.uk/consult/condocs/telecoms_p2/

product is warranted balanced against other resource requirements (i.e. proportionality).

- 3.4 Since the acceptance of the Undertakings, BT has branded its Access Services division, as referred to in the Undertakings, as Openreach. Therefore, this document refers to Openreach throughout.

Wavestream Exemption

- 3.5 BT's Wavestream product provides dedicated wavelengths for the exclusive use of the customer. The customer can choose the service that will be carried over each wavelength (predominantly high speed data services) and can add additional wavelengths and, hence, capacity at relatively low incremental cost and with short provisioning lead times. The service is split according to the length of the circuit: 'Connect' offers service up to 35km; 'Regional' is an extended reach version of Connect; and National provides nationwide coverage. Connect and Regional employ a dedicated fibre path whereas National only employs a dedicated fibre path as far as BT's core Wavelength Division Multiplexing (WDM) network whereupon the wavelength is routed over shared fibres.
- 3.6 BT's original request for exemption for the Wavestream product set proposed to move Wavestream Connect onto an EOI basis, but to exempt the Regional and National products. Ofcom consulted on this request in October 2006¹⁸. The responses to this consultation are summarised below.

Responses to previous consultation

- 3.7 Within the consultation of October 2006¹⁹, Ofcom asked the following questions in relation to Wavestream:

Question 16: *What do you believe are the implications, both positive and negative, with respect to competition of BT making available the Wavestream Connect product on an EOI basis? Please fully explain your answer.*

Question 17: *What do you believe the EOI WES/WEES product which replaces Wavestream Connect should be? What form do you believe the End-User restrictions on Wavestream Connect, Regional and National should take? Please fully explain your answer.*

Question 18: *Do you believe it will be possible to replicate, commercially and technically, the Wavestream Regional and National products using your own network infrastructure combined possibly with the Connect product? If not, what in your view are the barriers to replicability? Please fully explain your answer.*

Question 19: *Do you believe that Ofcom should agree to this request from BT for an exemption in respect of Wavestream? If you do not, please explain why.*

- 3.8 Responses on these questions were received from BSkyB, BT, C&W, Synetrix, Thus and Viatel.

¹⁸ <http://www.ofcom.org.uk/consult/condocs/btrequests/btrequests.pdf>
¹⁹ <http://www.ofcom.org.uk/consult/condocs/btrequests/btrequests.pdf>

- 3.9 Thus and BT agreed with Ofcom's proposal to agree to the request. The other respondents did not agree to the exemption as previously requested by BT. These concerns fell into two main areas. First, exempting both the Regional and National variants would not allow other CPs to compete with BT. Second, the Wavestream products sold by BT's downstream divisions should consume an EOI input from Openreach.
- 3.10 On the first of these concerns, there was general agreement that the Wavestream Connect product should be provided on an EOI basis, as stated in the original request. However, there was concern that it was proposed that a WES/WEES input would be used, as it was felt that this would reduce the functionality of the product.
- 3.11 Thus stated that if Connect was made available on an EOI basis, Openreach should ensure the product was used to provide access and did not impact infrastructure investment.
- 3.12 The majority of respondents argued that the Regional and National products should be moved onto an EOI basis as well as the Connect product.
- 3.13 Some respondents stated Wavestream (or dark fibre) should be available on an EOI basis to allow them to build out backhaul and core networks.
- 3.14 A number of respondents (including Synetrix, Cable & Wireless and Viatel) argued that access to dark fibre should be made available from Openreach on an EOI basis. As stated above, some of these respondents indicated a desire to use Openreach fibre to build out their own regional networks.
- 3.15 BSkyB suggested that the Wavestream National product should consume the Connect product as an equivalent input, so that a National circuit would become two Connect circuits at the ends with a core section in the middle. The core section would not be provided on an equivalent basis.
- 3.16 There were differing views on End-User restrictions. Cable & Wireless stated the same restrictions as applied to Ethernet products should be in place, namely, restricting circuits to be between End-User sites or End-User equipment co-located at a CP's site and a CP's point of handover. Thus also agreed that some form of End-User restrictions should be included. Viatel, on the other hand, argued that there should be no such end-user restrictions.

Changes to the request

- 3.17 Based on the responses to the consultation, Ofcom and BT have discussed Wavestream further and BT has submitted an updated request. This asks for exemptions from EOI as follows:
- for Wavestream Connect and Wavestream Regional, an exemption until 31 December 2008, the day after which will be the RFS date, to allow BT to move the supply of Wavestream onto Openreach provided EOI products and until 31 December 2010 to allow for the migration of Connect and Regional circuits onto the EOI products, except where a customer refuses to agree to an existing contract being migrated by this date; and
 - an exemption for Wavestream National. This exemption will run until 31 December 2010 by which time it may be reviewed.

- 3.18 Ofcom's view is that moving Wavestream Connect and Wavestream Regional into Openreach to be provided on an EOI basis is appropriate because these products utilise the access and backhaul networks.
- 3.19 The request does not propose a Wholesale Extension Service/Wholesale End-to-End Ethernet Service (WES/WEES) input, but does propose limitations on End-User sites. These will limit Wavestream circuits to connecting End-User to End-User or End-User to CP's Point of Presence (POP) and will therefore limit the use of these products in providing network infrastructure. Ofcom believes this is the appropriate approach as it does not agree that CPs should be able to build out core networks using infrastructure provided by Openreach on an EOI basis.
- 3.20 A number of options have been discussed with regards to Wavestream National, based on the responses to the previous consultation.
- 3.21 The option to split National into separate sections (separating access and backhaul from core) and making the access and backhaul section available on an EOI basis was considered. As the nature of the product precludes interconnect at the wavelength level, any such separation at the backhaul/core boundary would involve terminating the circuits by inserting equipment. This would effectively replace a single Wavestream link with a chain of Wavestream links. Given that the equipment is a significant element to the high cost of the product, Ofcom believes this approach may be detrimental to consumers as it will act to increase the cost of the product. It also reduces the flexibility required by customers. Therefore, Ofcom believes it is not practical to split the Wavestream National circuit to include upstream products in the access and backhaul networks.
- 3.22 Ofcom also discussed with BT making Wavestream National available on an EOI basis. This option was discounted as it would make available the core network on an equivalent basis. Ofcom believes this approach may inhibit infrastructure deployment.
- 3.23 The option of withdrawal of the Wavestream National product was discounted as Ofcom believes the current take-up of the product demonstrates it provides customer value, and so to withdraw it would be likely to have a detrimental impact on customers.
- 3.24 Ofcom therefore considered the impact of exempting Wavestream National from EOI. This product provides very high bandwidth capacity across longer distances, including core network segments. We believe there are alternative options for a CP to meet these requirements through self-supply or through purchase of appropriate wholesale inputs from another CP, or a combination of the two. Therefore, we do not believe that exempting the Wavestream National product from being provided on an equivalence of inputs basis will necessarily be to the detriment of consumers.
- 3.25 Ofcom believes that there may be consumer harm caused if it does not agree to this request, as BT may be forced to withdraw one or all of the Wavestream product variants. Further, Ofcom believes that moving the Connect and Regional variants into Openreach allows CPs to compete on an equivalent basis, and that it is not practicable to provide an EOI input into the Wavestream National product, as explained above. Therefore, Ofcom believes it is appropriate to agree to the exemption requested by BT.

Question 1: *Do you agree that Ofcom should agree to this request to exempt Wavestream Connect and Wavestream Regional until 31 December 2008 (and to 31*

December 2010 for existing contracts) and Wavestream National until 31 December 2010 from being provided on an EOI basis from Openreach? If you do not, please explain why.

Redcare Fire and Security Exemption

- 3.26 The Redcare Fire and Security product provides alarm transmission to alarm receiving centres which in turn provide managed and monitored alarm systems over the Redcare network to occupiers of alarmed premises. It provides a sub-voice frequency transmission path on the copper local loop which is used for line integrity checking and a signalling path in the speech band. This Narrowband Line Sharing product is provided by Openreach but is only available to BT.
- 3.27 On 15 June 2006, Ofcom agreed to an exemption requested by BT in relation to the Redcare Fire and Security product²⁰. In the statement agreeing to this request Ofcom highlighted that the RFS date for moving this product onto an EOI basis was 30 June 2008, unless there is no reasonable demand for the product from other CPs.
- 3.28 Since Ofcom agreed to the exemption, Openreach has consulted on a proposed product to assess whether reasonable demand exists²¹. Following consultation, Openreach has informed Ofcom that there has been no reasonable demand from CPs for this product.
- 3.29 Therefore, Openreach has requested that a further exemption is agreed such that the product can continue to be provided by Openreach on a non-EOI basis until such time as reasonable demand from other CPs arises. When such demand arises, the RFS date for the EOI product will be nine months from the date on which the reasonable demand arose, but shall not be earlier than 1 January 2009.
- 3.30 Ofcom is minded to agree to this request because it would be an inefficient use of Openreach resource to develop EOI products where no demand exists externally to BT. We believe the commitment to provide the product if demand materialises is sufficient to ensure that customers of BT and other CPs are not adversely affected by agreeing to this exemption.
- 3.31 Ofcom would also be interested in the views of respondents as to possible reasons for the lack of reasonable demand from CPs, and whether these are related to conditions applied to the downstream retail products.
- 3.32 It should also be noted that if CPs indicate reasonable demand in response to this consultation, the RFS date will be no earlier than 1 January 2009, unless the CP can demonstrate it has presented this requirement to Openreach prior to this consultation.

Question 2: *Do you agree that Ofcom should agree to this request from BT to exempt the Openreach Narrowband Line Sharing product, which underpins the Redcare Fire and Security product, from being provided on an EOI basis until nine months after reasonable demand for this product emerges among other CPs? If you do not, please explain why.*

²⁰ <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/requests/statement.pdf>

²¹ <http://www.openreach.co.uk/orpg/products/llu/narrowband/narrowband.do>

Pathfinder

- 3.33 On 3 October 2007, Ofcom granted an exemption to BT related to the Pathfinder trial²². This request relates specifically to the way in which Openreach provides backhaul services to six small sites within the Pathfinder trial (the local exchanges at Wick, Bedlinog, Southerndown, Bonvilston, Peterston and Sully). At these local exchanges, the exemption means that the backhaul circuit provided by Openreach is connected directly onto the copper MSAN. This means that should demand from another CP arise at these exchanges, BT would need to install a fibre MSAN in order to support multiple backhaul circuits, and this would mean the timescales for deployment would be different to those experienced for the initial deployment.
- 3.34 Ofcom granted the exemption because it was for a limited scope trial, because there was no demand from other CPs at these six sites and because the end date was 31 December 2007.
- 3.35 BT has now requested that the end date of this exemption be extended until 31 December 2008 in line with the timeframe for the trial. The scope of the exemption, limited to the provision of backhaul to six small exchanges, remains the same.
- 3.36 Ofcom proposes to agree to this request from BT. This is based on considering the request against the factors stated in paragraph 3.3. Ofcom does not believe that granting this exemption will cause harm to customers of BT or other CPs given that the request relates to a limited scope trial. Also, Openreach has indicated that there are no CPs other than BT providing service at these exchanges, nor have forecasts to do so been provided, and so there appears to be no current demand from CPs other than BT for an EOI product at these exchanges. Finally, the request covers the limited period of the Pathfinder trial up to 31 December 2008.
- 3.37 Ofcom's view is that it will be unlikely to agree to any further extension to this request unless there are exceptional circumstances.

Question 3: *Do you agree that Ofcom should agree to this request from BT to extend until 31 December 2008 the exemption from EOI obligations for the provision of backhaul connectivity to six exchanges within the Pathfinder trial, as no demand exists from other CPs? If you do not, please explain why.*

²² <http://www.ofcom.org.uk/telecoms/btundertakings/exemptionsandvariations/part4/>

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 25 January 2008**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/wavestream/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response (see Annex 3), to indicate whether or not there are confidentiality issues. This response cover sheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email steve.perry@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response cover sheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Steve Perry
Floor 4
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4109
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Steve Perry on 020 7783 4151.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm on their response coversheet that this is acceptable).

- A1.9 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex so that non-confidential parts may be published along with the respondent's identity.
- A1.10 Ofcom reserves its power to disclose any information it receives where this is required to facilitate the carrying out of its statutory functions.
- A1.11 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use in order to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/account/disclaimer/>

Next steps

- A1.12 Following the end of the consultation period, Ofcom intends to publish a statement in March 2008.
- A1.13 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.14 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.15 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.16 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals. In this case, given the limited scope of the consultation and the date of publication, we believe a period of 5 weeks is sufficient.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed coversheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your coversheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)

Annex 4

Consultation questions

Question 1: Do you agree that Ofcom should agree to this request to exempt Wavestream Connect and Wavestream Regional until 31 December 2008 (and to 31 December 2010 for existing contracts) and Wavestream National until 31 December 2010 from being provided on an EOI basis from Openreach? If you do not, please explain why.

Question 2: Do you agree that Ofcom should agree to this request from BT to exempt the Openreach Narrowband Line Sharing product, which underpins the Redcare Fire and Security product, from being provided on an EOI basis until nine months after reasonable demand for this product emerges among other CPs? If you do not, please explain why.

Question 3: Do you agree that Ofcom should agree to this request from BT to extend until 31 December 2008 the exemption from EOI obligations for the provision of backhaul connectivity to six exchanges within the Pathfinder trial, as no demand exists from other CPs? If you do not, please explain why.

Annex 5

BT's exemption requests

PRODUCT: WAVESTREAM

Legal basis: 5.46.2a)

1. Product description and reasons for request

WaveStream products are retail wavelength-based services offering protected and managed point-to-point services. The electronics enabling the service are very costly, therefore it is not practicable to deliver longer WaveStream services using a sectionalised build with each section built from two or more standalone access and core components.

This exemption request seeks an exemption under sub-paragraph (a) of the second sentence in section 5.46.2 of the Undertakings to enable Openreach to:

- continue temporarily to support new supply of WaveStream Connect and WaveStream Regional services until Openreach launches suitable WaveStream products, for both end-user to end-user and end-user to Communications Provider (CP) point of presence (PoP), on an EOI basis. This will be achieved by 31 December 2008 for the EOI inputs into WaveStream Connect and Regional. In effect the Openreach products will include those currently supplied by BT Global Services under the WaveStream Connect and WaveStream Regional names, with such further options as consultation with Communications Providers (CPs) warrants. BT Global Services will retail those services to End-Users. Many existing BT Global Services contracts are of three or five years duration. Some of these contracts can be migrated to the new EOI input on renewal. Others will need to be renegotiated, a process which may take some time depending upon the customers' requirements.
- continue temporarily to support the installed base of BT Global Services WaveStream products for their remaining Existing Contracts duration. This will include these services as currently configured plus such wavelength, speed or interface upgrades on those circuits as were promised as options within those current contracts. "Existing Contracts" means relevant BT contracts which are in effect prior to or on 31 December 2008. For retail contracts entered into between now and the RFS date, and where their duration might extend beyond the IBMC, BT will be mindful of the IBMC date and the need to migrate to the Openreach EOI input product by that time.
- continue to support new BT Global Services supply of WaveStream National services without making similar services available externally, subject to a restriction of use to WaveStream End-Users only and cost stack rules ensuring full recovery of Openreach costs. The exemption with respect to WaveStream National services will apply up to and including 31 December 2010. Ofcom and BT may upon review by 31 December 2010 agree to modify this exemption in terms of both scope and duration.

BT requests an exemption under section 5.46.2a) to enable Openreach to continue to supply existing inputs into the BT WaveStream portfolio without Openreach having to productise or make such inputs available externally, as described above.

2. Legal basis, scope and duration

- Legal basis: sub-paragraph (a) of the second sentence in section 5.46.2
- Scope: exemption from section 5.46.1
- Duration: exemption for Openreach's inputs:
 - o into BT Global Services' WaveStream Connect services up to and including 31 December 2008, the day after which will serve as an RFS date, unless otherwise agreed with Ofcom; and
 - o into BT Global Services' WaveStream Regional services up to and including 31 December 2008, the day after which will serve as an RFS date, unless otherwise agreed with Ofcom; and
 - o into BT Global Services WaveStream products in respect of the installed base for the remaining Existing Contracts duration, with migration to the Openreach EOI products to be completed by 31 December 2010 in the case of both WaveStream Connect and WaveStream Regional, the day after which will serve as an IBMC date, unless otherwise agreed with Ofcom; and
 - o to new BT Global Services supply of WaveStream National services up to and including 31 December 2010. Ofcom and BT may upon review by 31 December 2010 agree to modify this exemption in terms of both scope and duration.

For the avoidance of doubt:

- "Existing Contracts" means relevant BT contracts which are in effect prior to or on 31 December 2008, including both services as currently configured and such wavelength, speed or interface upgrades on those circuits as were promised as options within those current contracts.
- The WaveStream Connect and WaveStream Regional brands will be retained by BT Global Services, and the Openreach EOI inputs into WaveStream Connect and WaveStream Regional will be commercialised under Openreach brands.

3. Identification of the products involved

WaveStream uses Wavelength Division Multiplexing (WDM), a technology that transmits multiple wavelengths of light along a single fibre. WaveStream offers customers up to 32 channels, each of 2.5Gbit/s or 10 Gbit/s over a single dedicated fibre pair with duplicated path options for improved availability. This results in an upgradeable service with a very high upper bandwidth limit of 32 x 10Gbit/s with the trade-off that there is a significant cost for the electronics involved. WaveStream products are protocol independent and available throughout mainland UK. Customers for WaveStream require flexibility, resilience, extremely low latency and security, which means that for many customers the service is not suited to shared fibre solutions. The electronics enabling DWDM-based services are very costly; therefore it is not practicable to deliver longer services using a sectionalised approach if it requires separate Network Termination Equipment (NTE) pairs for each of the standalone access and core components.

BT Global Services currently sells three WaveStream Products:

WaveStream Connect is constructed from a short-distance dedicated fibre route of up to 35km radial length (subject to fibre route distance of 60km) and terminal NTE without intermediate electronics.

WaveStream Regional service is similar to WaveStream Connect but uses intermediate regenerators/repeated electronics to extend reach.

WaveStream National uses a different shared-fibre approach to extend reach beyond 35km, using wavelengths derived from a pre-existing core DWDM network. For WaveStream National, provision requires an NTE at each customer premise extended over dedicated fibre and connecting directly to the existing DWDM electronics at BT's core nodes.

Further details about BT's WaveStream product can be found at:

http://www2.bt.com/btPortal/application?origin=mb_content_detail.jsp&event=bea.portal.framework.internal.portlet.event&pageid=mb_pns_catalogue&portletid=mb_pns_catalogue&wfevent=link.Product&com.bea.event.type=linkclick&oLDesc=link+to+product&oSiteArea=mb.corp&oPJsp=mb_content_detail.jsp&oPt=mb_pns_catalogue&oLName=mbpnsproduct&oOJsp=mb_prod_detail.jsp&oPg=mb_pns_catalogue&siteArea=mb.corp&PorS=products&productDetail=products/wavestream.xml

4. Description of the way in which the product is provided on terms other than EOI

There is currently no EOI input into retail WaveStream. The systems and processes for providing, maintaining and repairing WaveStream products do not sit within Openreach but rely on Openreach inputs (in particular fibre circuits, civil works and engineering services provided under an internal trading agreement) which are neither formally productised nor available to other CPs.

5. Description of the solution proposed

Openreach will support the BT Global Services WaveStream Connect and the WaveStream Regional business from 1st January 2009 with appropriate input products, available on an EOI basis and configured with customer premises NTE at both ends plus linking fibres, up to a radial distance limit of 35km (in the case of WaveStream Connect) and 70km (in the case of WaveStream Regional), by moving the existing BT Global Services WaveStream Connect and WaveStream Regional services into Openreach.

Openreach will provide new input products on an EOI basis to CP customers, who will be restricted from using these products to build or extend core networks or where the intent is to replicate a core network. For shorter-distance customer requirements the Openreach products will connect both customer sites, leaving the CP to provide a retail service wrap. The retail WaveStream Connect and WaveStream Regional names will be retained by BT Global Services, as will the existing customer relationships.

For the purpose of this exemption:

- WaveStream Connect circuits includes all current WaveStream circuits up to a radial distance of 35km radial, without intermediate electronics;

- WaveStream Regional circuits includes all current WaveStream circuits of a radial distance of between 35km and 70km, with or without intermediate electronics;
- Current WaveStream Regional services in excess of 70km will be treated as WaveStream National services and will continue to be provided by BT Global Services.
- BT retains the right to construct customer solutions, including WaveStream services, using non-BT fibre.

6. Justification for the exemption and impact on CPs

The impact of this approach on CPs is that new wavelength based services will be made available from Openreach on an EOI basis, intensifying competition for customers with very large data transfer needs. This should create new opportunities for CPs without access or backhaul fibre in locations appropriate for the customers they wish to serve, and increases competition faced by those, including BT, who do. The proposal encourages the provision of competing core network infrastructure for that relatively small number of customers requiring connections between sites a considerable distance apart.

The exemption is required to protect existing contractual commitments and to provide a transitional period while EOI solutions are developed and implemented.

PRODUCT: THE BT RETAIL REDCARE FIRE AND SECURITY MONITORING PRODUCT

Legal basis: section 5.46.1(g)

1. Product description and reasons for request

BT Retail's Redcare business currently provides a Fire and Security Monitoring product. This product is underpinned by an internal Narrowband Line Sharing (NBS) product provided by Openreach, which is not currently externalised or available on an EOI basis.

On 15 June 2006, Ofcom published a statement entitled *Requests from BT for specified exemptions and agreements to its Undertakings under the Enterprise Act 2002 – Part 1*. That statement included agreements to 14 requests from BT including Request No.6 in relation to the BT Retail Redcare Fire and Security Monitoring product.

Pursuant to sub-paragraph (a) of the second sentence in section 5.46.2 of the Undertakings, BT and Ofcom agreed that section 5.46.1 would not apply to any Openreach inputs (including engineering services) into BT Retail's Redcare Fire and Security Monitoring product up to and including 30 June 2008, which was intended to serve as a Ready for Service (RFS) date for Openreach's inputs into such product, and thereafter section 5.46.1 would not apply in respect of the installed Redcare base up to and including 30 June 2009, which was intended to serve as an Installed Base Migration Complete (IBMC) date for Openreach's inputs into such product.

BT and Ofcom also agreed that these RFS and IBMC dates would apply unless Ofcom and BT agreed that there was no reasonable demand from other Communications Providers (CPs) for an Openreach input into a retail equivalent to BT Retail's Redcare Fire and Security Monitoring product. It was also agreed that BT and Ofcom could in any event agree to amend the IBMC date.²³

Openreach engaged in industry consultation and briefings to gauge whether there was any external demand for such a product. Openreach requested responses to its consultation document by the end of December 2006. In the absence of any external demand, Openreach engaged in a second round of industry consultation and briefings and extended the period for providing a response until 30 March 2007. These consultation documents and briefings can be found on the Openreach website.²⁴

Openreach can confirm that at the present time there is no reasonable demand from other CPs for this product, and that Openreach believes there is unlikely to be any such reasonable external demand in the near future.

BT considers that in the absence of external demand, any requirement to externalise the NBS product and to offer it as an EOI product would be artificial and have little significance for industry. Given the absence of demand, striving to deliver to the RFS and IBMC dates

²³ Ofcom, *Requests from BT for specified exemptions and agreements to its Undertakings under the Enterprise Act 2002 – Part 1*, 15 June 2006, pp 51-52

²⁴ <http://www.openreach.co.uk/orpg/products/llu/narrowband/narrowband.do>

initially agreed between BT and Ofcom would be inefficient, and BT's limited resources would be better expended on issues that are more important to industry.

As a result, BT requests an exemption to allow Openreach to continue providing the NBLs input into the Redcare Fire and Security Monitoring product on a non-EOI basis until such time as there is reasonable demand from other CPs for an EOI input into a retail equivalent of this retail product.

In order to meet the systems separation requirements in the Undertakings, some changes will be required to the NBLs product which is currently being used as an input into the BT Retail Redcare Fire and Security Monitoring product. BT is therefore proposing to develop by 1 January 2009 a new internally traded NBLs product developed along EOI principles. From 1 January 2009, all new Redcare customers (i.e. alarm receiving centres) would be provided with new Redcare fire and security monitoring services underpinned by this new internally traded product. BT would then migrate the existing Redcare installed base onto new Redcare fire and security monitoring services underpinned by the new internally traded NBLs product, in line with the completion of systems separation on or by 30 June 2010. This proposed solution is discussed in more detail below in section 5.

For the avoidance of doubt, the proposed solution is that if reasonable demand emerges from other CPs for a fully externalised EOI NBLs product, then Openreach would further develop the internally traded NBLs product developed along EOI principles into a fully EOI and externally available product, and would do so within 9 months of that reasonable external demand emerging. The RFS date would therefore be 9 months after reasonable external demand emerging, but in any event no earlier than 1 January 2009.

In the event of an EOI product being launched by Openreach, BT also requests an ongoing exemption so that certain aspects of the existing Redcare fire and security monitoring product would not need to be "retrofitted" (e.g. maintaining the current hardwiring into the MDF).

2. Legal basis, scope and duration

- Legal basis: section 5.46.1(g)
- Scope: exemption from sections 5.46.1
- Duration: exemption from supplying a fully externalised EOI product until such time as there is reasonable demand from CPs other than BT. The RFS date for the fully externalised EOI product shall be 9 months from the date on which there is reasonable demand from one or more external CPs provided that the RFS date shall not be earlier than 1 January 2009, unless otherwise agreed with Ofcom. The IBMC date shall be 6 months after the RFS date, unless otherwise agreed with Ofcom. BT and Ofcom may also in any event agree to amend the RFS and IBMC dates.

3. Identification of the products involved

The relevant products are:

- (i) the Openreach NBLs input into the Redcare Fire and Security monitoring product, which provides alarm transmission to alarm receiving centres who in turn

sell managed and monitored alarm systems over the Redcare network to occupiers of alarmed premises; and

- (ii) engineering services in support of the Redcare Fire and Security Monitoring product.

The specifications of the BT Retail redcare Fire and Security monitoring product can be found at: <http://www.sinet.bt.com/284v1p4.pdf>.

4. Description of the way in which the product is provided on terms other than EOI

The Openreach NBLS input and engineering services in support of the Redcare fire and security monitoring services are not externalised and, as a result, the processes and systems gateways used are not EOI. This is the case of both the existing NBLS product and the proposed new internal NBLS product developed along EOI principles.

5. Description of the solution proposed

Openreach proposes to develop a new internal NBLS product developed along EOI principles and to begin trading the product internally to underpin the supply of Redcare fire and security monitoring services to new Redcare customers (i.e. alarm receiving centres) as of 1 January 2009. This new internal NBLS product will be based upon a variant of the systems solution in place for the SMPF product – i.e. provision and repair of the new NBLS product will be via the Equivalence Management Platform (EMP) Business to Business (B2B) gateway and associated dialogue services.

BT proposes to migrate the installed base of Redcare customers onto a new Redcare fire and security monitoring product underpinned by the new internally traded NBLS product by or on 30 June 2010, in line with the existing systems separation date in the Undertakings.

The elements of the solution that would not be externalised, and that would require further development to be EOI should reasonable external demand emerge, are:

- (i) Fault diagnosis;
- (ii) Billing;
- (iii) Trading agreements concerning equipment housing (including engineer access to MDF and associated equipment);
- (iv) Migration processes;
- (v) HDF;
- (vi) An agreed Suppliers' Information Note (SIN) will need to be developed to meet systems compatibility and any industry agreed change to the Access Network Frequency Plan that might arise if the technical specifications change for a new product; and
- (vii) Systems

BT will develop and transform the internally traded NBLS product into a fully externalised EOI product within 9 months of reasonable external CP demand emerging.

The fully externalised EOI solution would provide functionality comparable to that of the existing NBLS input and appropriate engineering services to support the new input. This would include use of the sub-voice frequency band on a PSTN (SMPF only) line used for

voice and/or broadband, alarm signals being transmitted in the speech band as necessary, specific jumpering of the scanners of CPs (in much the same way as there is specific jumpering today to Redcare scanners) and any other related service elements needed to support this solution.

BT considers that the nine month period to launch an EOI product is required to address the above points above (under (i) through (v)), including in particular due to the time needed to agree with industry any change to the Access Network Frequency Plan.

6. Justification for the request and impact on CPs

Since the date on which Ofcom and BT agreed the original exemption, Openreach has conducted two rounds of industry consultation and has concluded that no reasonable external demand exists for an EOI input into a retail equivalent of the Redcare fire and security monitoring product. BT considers that such external demand is unlikely to emerge in the near future. The requested exemption is therefore not expected to have a material impact on the market.

BT also considers that it would be inefficient to expend significant resources on developing an externalised EOI NBLS product in order to meet the RFS and IBMC dates initially agreed with Ofcom given that there is no reasonable external demand for such a product at this time.

PRODUCT: INITIAL IMPLEMENTATION OF BACKHAUL TO COPPER-ONLY MSANS IN BT'S NGN 21CN ("PATHFINDER")

Legal basis: section 11.9

1. Introduction

Following consultation with Industry, on 3 October 2007 Ofcom issued its Statement on exemptions and agreements to BT's Undertakings: Part 4 Request No. 1: Initial Implementation of Backhaul to Copper-Only MSANs in BT's NGN 21CN ("Pathfinder") which granted BT a temporary exemption pursuant to section 11.9 (a) that section 11.7 shall not apply to BT's provision of Network Access during BT's Pathfinder initiative for its Next Generation Network and the associated use of copper MSANs at BT's Wick, Bedlinog, Southerndown, Bonvilston, Peterston and Sully exchanges up to and including 31 December 2007, unless otherwise agreed with Ofcom.

Regular 21CN Implementation & Migration Update Pathfinder Progress Statements are communicated to and discussed with registered Consult21 Communication Providers and the implementation of the Pathfinder phase of BT's NGN 21CN is ongoing. This request seeks an extension to the duration of the temporary exemption period until 31st December 2008, unless otherwise agreed with Ofcom, to allow completion of the Pathfinder activity and the scheduled review with Industry and Ofcom prior to the commencement of national migration of PSTN/WLR services on a wider basis. The scope of the exemption requested and the exchanges impacted is unchanged from the 3 October 2007 agreement.

2. Product description and reasons for request

This request is in relation to activities required to enable BT to proceed with the initial phases of implementation of its NGN on the timeline presented to industry during the Consult21 programme.

It is limited to the PSTN migration activities within the initial implementation phase, known as "Pathfinder", of BT's New Generation Network, 21st Century Network ('21CN'). The "Pathfinder" phase overall commenced on 27 November 2006 and is currently projected to conclude at the end of December 2008.

Pathfinder stage 1 effects the migration of end-users in the Wick and Bedlinog exchanges to BT's NGN, 21CN, for PSTN service only. Stage 2 effects the migration of end-users in Southerndown, Bonvilston, Peterston, and Sully exchanges to BT's NGN, 21CN, for PSTN service only. The total number of end-users involved is under 5000. Broadband services will not be migrated in either of these 2 stages. The only EOI input products required for Pathfinder stages 1 and 2 are Wholesale Line Rental (WLR) and Openreach Backhaul Network Service (ONBS).

No issues arise with BT's use of WLR. However BT's use of ONBS in these six exchanges is not fully EOI and as a result, and on the basis of the current plan of record, a limited agreement from Ofcom under section 11.9 is needed.

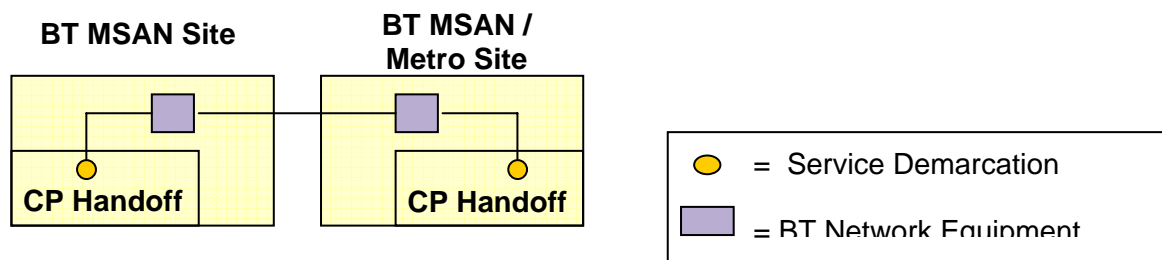
The agreement under section 11.9 that BT is requesting is in relation to how Openreach's NGN backhaul services are consumed during 21CN Pathfinder stages 1 and 2 for the Wick, Bedlinog, Southerndown, Bonvilston, Peterston, and Sully exchange sites.

Openreach NGN Backhaul Services

Section 2.1 of the Undertakings on Definitions and Interpretation describes "Backhaul Product" as a Network Access service which runs from a BT Local Access Node to a) another BT Local Access Node or b) a BT Core Node (amongst other criteria). Sections 3 and 5 specify that these are products and services to be provided by Openreach on an EOI basis.

In 21CN Openreach Network Backhaul Services provide backhaul for Communications Providers (CPs) between their equipment in BT MSAN sites, or between their equipment in a BT MSAN site and in a BT Metronode site. See figure 1.

Figure 1: Openreach Network Backhaul Services (WES-B1/2)



Deployment of MSANs (Multi Service Access Nodes) at all exchanges is a key part of 21CN enabling multiple services to be provided over mixed technologies. BT's 21CN network will have both Copper MSANs and Fibre MSANs. Copper MSANs will be installed by BT in all exchanges, as the Copper MSAN is necessary to carry voice telephony and broadband services; Fibre MSANs will be installed in exchanges where there is demand for services which have to be delivered over fibre.

As ONBS is a fibre-delivered product, to meet the EOI definition of "same" BT would normally be obliged to install a Fibre MSAN in these six exchanges for the conveyance of voice telephony services between those exchanges and their serving BT Metro nodes despite the fact that (i) forecast traffic is low *and* (ii) there is no current received or firm forecast requirement for services which need to be delivered over fibre beyond the backhaul link from BT Wholesale for the conveyance of voice telephony (and/or broadband) services.

BT could, of course, procure and install Fibre MSAN equipment for these two exchanges, but this would entail expenditure that is not required to implement Pathfinder stages 1 and 2 as planned. Alternatively, BT proposes that it connect the Openreach supplied ONBS service to the fibre ports on the Copper MSAN (that would normally be used for it to connect to a Fibre MSAN should it exist) until there is forecasted demand for services which need to be delivered over fibre and thus via a Fibre MSAN or Fibre MSAN-like technology.

BT notes that EOI does not require pre-provisioning of equipment in the absence of forecasts and that BT does, and will continue to, buy the same Openreach ONBS input product and at the same price as it is made available to any other CP. The EOI issue is simply that in these two exchanges the standard EOI ONBS product is connected to a fibre

port on a Copper MSAN rather than a fibre port on a Fibre MSAN: this form of connection is only available at a 21CN site where there is no demand for services which require delivery over fibre and where only one CP is present. In a practical sense this 'one CP' would be BT. The ONBS product itself is the same.

Were a CP to require fibre-delivered services in any of the six exchanges, BT would need to install a Fibre MSAN at that site. ONBS to a Fibre MSAN will be EOI in all respects.

3. Legal basis, scope and duration

- Legal basis: section 11.9
- Scope: agreement under section 11.9 in respect of BT's Wick, Bedlinog, Southerndown, Bonvilston, Peterston, and Sully exchanges
- Duration: Until 31 December 2008, unless otherwise agreed with Ofcom.

4. Justification for the request and impact on CPs

Given the very limited scope of the request and the fact that it will enable BT to progress the early Pathfinder 21CN implementation and deployment programme as published and discussed under Consult21 with industry, BT does not believe that this request will have any material adverse impact on CPs, end-users or competition generally. The request is reasonably practicable and proportionate given the following:

- The absence of forecast demand from CPs other than BT requesting service at these Copper MSAN-only sites does not justify the proactive installation of Fibre MSANs/Fibre MSAN-like technology, which would trigger a significant avoidable investment by BT, which cost would ultimately have to be borne by the end user.
- The development of an appropriate solution to install Fibre MSANs (or Fibre MSAN-like technology) where such demand from other CPs emerges means that other CPs will not be adversely affected by the absence of a Fibre MSAN at the time they place their forecasts.

Annex 6

Proposed legal wording for agreement of exemptions

WHEREAS:

- (a) BT has offered and Ofcom have accepted Undertakings pursuant to the Enterprise Act 2002, which took effect on 22 September 2005 (the "Undertakings");**
- (b) BT has requested Ofcom to agree that certain sections of the Undertakings shall not apply to certain products, and to agree the application of section 5.46.2 to certain products;**
- (c) On 15 June 2006 and on 3 October 2007 Ofcom published Statements setting out exemptions and agreements in relation to BT Retail's Redcare Fire and Security monitoring product and BT's Next Generation Network Pathfinder initiative; and on 18 October 2006 Ofcom published a Consultation in relation to WaveStream.**
- (d) On 14 and 22 November 2007 BT submitted second requests in relation to each of these three items;**
- (e) This Agreement wording between Ofcom and BT sets out these exemptions and agreement (as set out in BT's requests annexed hereto); and**
- (f) Access Services as referred to in the Undertakings has been established as Openreach since 22 January 2006.**

NOW THEREFORE:

Ofcom and BT hereby agree:

1. Pursuant to section 5.46.2(a) BT and Ofcom hereby agree that section 5.46.1 shall not apply to any AS inputs:
 - (a) into BT Global Services' WaveStream Connect services up to and including 31 December 2008, the day after which will serve as an RFS date, unless otherwise agreed with Ofcom; and
 - (b) into BT Global Services' WaveStream Regional services up to and including 31 December 2008, the day after which will serve as an RFS date, unless otherwise agreed with Ofcom; and
 - (c) into BT Global Services' WaveStream products in respect of the installed base for the remaining Existing Contracts duration, with migration to the AS EOI products to be completed by 31 December 2010 in the case of both WaveStream Connect and WaveStream Regional, the day after which in each case will serve as an IBMC date, unless otherwise agreed with Ofcom; and
 - (d) into new BT Global Services' supply of WaveStream National services up to and including 31 December 2010. Ofcom and BT may under this paragraph

1 (d) by 31 December 2010 upon review agree to modify this exemption in terms of both scope and duration.

In paragraph 1 of this Agreement,

- (i) "Existing Contracts" means relevant BT contracts which are in effect prior to or on 31 December 2008 but including both services as currently configured and such wavelength, speed or interface upgrades on those circuits as were promised as options within those current contracts.
 - (ii) "WaveStream Connect" circuits means all current WaveStream circuits up to a radial distance of 35km radial, without intermediate electronics
 - (iii) "WaveStream Regional" circuits means all current WaveStream circuits of a radial distance of between 35km and 70km, with or without intermediate electronics;
 - (iv) Current WaveStream Regional services in excess of 70km will be treated as WaveStream National services and will continue to be provided by BT Global Services.
2. Pursuant to section 5.46.1(g) BT and Ofcom hereby agree that section 5.46.1 shall not apply to any AS inputs into BT Retail's Redcare Fire and Security Monitoring product up to and including 9 months from the date on which there is reasonable demand from one or more external CPs, the day after which will serve as an RFS date, provided that this RFS date shall not be earlier than 1 January 2009, and thereafter section 5.46.1 shall not apply in respect of the installed base until 6 months after the RFS date. BT and Ofcom may in any event agree to amend the RFS and IBMC dates.
3. Pursuant to section 11.9(a) BT and Ofcom hereby agree that section 11.7 shall not apply to BT's provision of Network Access during BT's Pathfinder initiative for its Next Generation Network and associated use of copper MSANs at BT's Wick, Bedlinog, Southerndown, Bonvilston, Peterston and Sully exchanges up to and including 31 December 2008, unless otherwise agreed with Ofcom.

Definitions and interpretation

Words or expressions in this Agreement have the same meaning as in the Undertakings.

References in this Agreement to section numbers are references to section numbers in the Undertakings.

For the avoidance of doubt, where it is herein agreed that the requirements of section 5.46.1 do not apply:

(a) information that would otherwise fall within the definition of Commercial Information, shall only do so if it relates to SMP Products; or, in the case of sections 6.10.3, 6.13 and 6.14, to products and services described in section 6.1.2.

(b) the requirement to provide the particular product or service by means of EOI systems and processes will also not apply and existing processes and systems may continue to be used. Such usage of existing processes and systems may continue beyond the dates that trigger systems separation obligations under sections 5.44, 5.45 and 8.5 of the Undertakings. However, this does not affect BT's obligations under sections 5.44, 5.45 and 8.5 of the Undertakings.

Notices

Notices to be given under this Agreement shall be in writing.