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Response to Wholesale Local Access (WLA) Market Review – Consultation on pricing proposals for Duct and Pole Access (DPA) remedies

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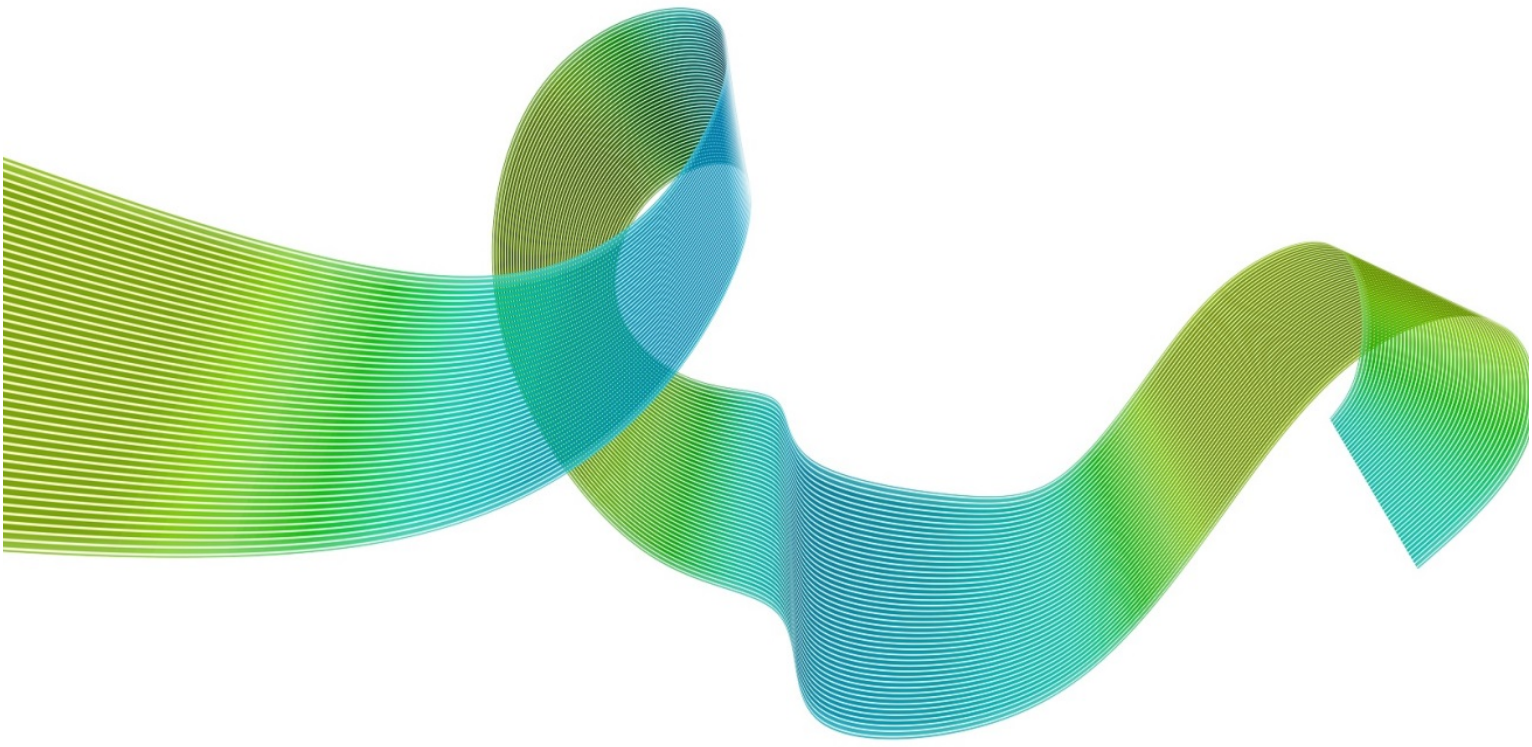

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Hyperoptic Introduction

Hyperoptic is a Code Power operator founded in 2011 by Dana Tobak and Boris Ivanovic. Hyperoptic is the largest provider of 1 Gb residential broadband in the UK across 28 cities with ambition to service significantly more. We have installed or are in the process of installing to over 350,000 residential homes and nearly 2,500 business units.

Previous to Hyperoptic, the co-founders had started and managed Be Broadband in 2005-6 prior to acquisition by O2. Be was the first to launch ADSL 2+ in the UK, offer Annex M for an increased upload speed, and outstanding customer service. Prior to Be, Boris Ivanovic ran Sweden's Bostream from 2000-2004, offering LLU, Wholesale, and FTTB.

Hyperoptic was founded to bring the UK's broadband infrastructure to the next level creating a new full fibre infrastructure, offering 1 Gb services and raising the level of expectations on the role of connectivity in British households. Customers get the wired speeds they expect and we have over 95% customer satisfaction rating consistently on our quarterly surveys.

Our initial business model focused on obtaining Wayleaves from private and public landlords and installing a new fibre infrastructure to those residents and businesses in multi-tenanted buildings. We have signed Wayleaves with 100 new build developers and over 1000 freeholders including large asset management companies, local authorities, housing associations, registered providers, RTMs, and independent freeholders. Generally, we offer our installation services to those stakeholders free of charge, and residents sign up and pay for our services as any other ISP with competitive rates despite superior products. As we service both high end flats and social housing we have a range of products to allow residents to choose their preference – but in all cases residents get access to dependable, consistent fibre speeds and performance.

Previous to PIA, we have focused on buildings in urban areas with 50 units and above (business units of 10 units and above) – however, we have successfully used PIA to expand our business model and enable us to service smaller buildings (25 units and above) in a commercially viable way.

We are responding to this consultation in the mindset of how changes to the PIA remedy in definition, scope and process will support the Strategic Review and its ultimate aim of moving the UK towards a future with multiple competing fibre infrastructures and further allow expansion of our business model and addressable market.

In addition to being the developer and operator of the UK's largest privately funded Full Fibre network, we are well positioned to give input on the current environment for Full Fibre development as it relates to the PIA remedy – we have been working with Openreach for the past two years to use PIA in its current form, were key participants in the Proof of Concept of 2016, and are using PIA in over 10 urban areas nationwide.

Network Infrastructure & Installation Process

Hyperoptic generally use EAD and EAD/LA circuits to connect buildings and businesses to our core network, utilising where appropriate BT Exchanges as PoPs to allow us to take advantage of the EAD/LA product set. We install our own last mile infrastructure within buildings and developments ensuring that we have end to end control of our customers experience.

Despite the current coverage of both Openreach's FTTC network and Virgin's DOCSIS network, the majority of our retrofit homes are not able to otherwise receive superfast broadband (>24 Mb) and are generally receiving in the 5-10 Mb range. While Fibre is occasionally available in New Builds, our differentiated product offering and customer experience give us an advantage over other providers.

Generally, Hyperoptic installs our network at our own cost and risk of capital return. We solicit registrations of interest from residents to ensure that we maximise both our time and capital expenditure.

We continually aim for efficiencies in working practices and cost savings in materials and services in order to further expand our addressable market to be able to offer the fibre services to more premises.

As Hyperoptic does not insist nor expect exclusivity, there is no opportunity cost to the building of allowing our network to be installed. Residents can take service at their convenience and we maintain competitive pricing along with marketing leading product specifications.

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Products and Pricing

Hyperoptic offers three Broadband products available with or without a phone line, on either a monthly or annual contract. Here is the product information for our annual contract taken with a phone service.

1Gb Fibre Broadband & Phone

£63 a month

IDEAL FOR

PACKAGE DETAIL

- 1Gb download and upload speed
- Phone service included
- Includes free evening and weekend calls
- Free set-up and connection worth £240
- 12 month contract
- Broadband Only service available

100Mb Fibre Broadband & Phone

£38 a month

IDEAL FOR

PACKAGE DETAIL

- 100Mb download and upload speed
- Phone service included
- Includes free evening and weekend calls
- Free set-up and connection worth £240
- 12 month contract
- Broadband Only service available

20Mb Fibre Broadband & Phone

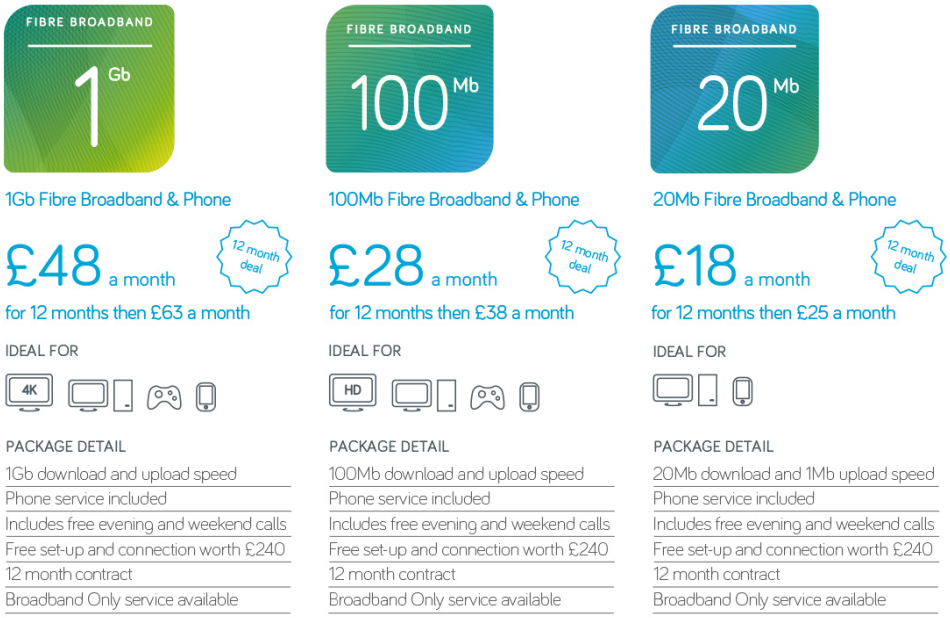
£25 a month

IDEAL FOR

PACKAGE DETAIL

- 20Mb download and 1Mb upload speed
- Phone service included
- Includes free evening and weekend calls
- Free set-up and connection worth £240
- 12 month contract
- Broadband Only service available

Our current offer to customers demonstrates our commitment to value and accessibility of our full fibre products:



Financing

Hyperoptic is privately owned by Managers, Employees, and through investment from George Soros' private investment fund Quantum Strategic Partners. We have not received any BDUK or other public funds other than installation contributions from the Connected Voucher Scheme.

In 2016, we received a €25m loan from the EIB and in 2017 have secured a further £100m loan, a substantial proportion of which we intend to use to aggressively expand our network to reach millions of homes.

WLAMR Relevance

Hyperoptic was particularly inspired by Ofcom's 2016 Strategic Review of Digital Communications and wholeheartedly agrees with Ofcom that the industry can do more to focus on Full Fibre solutions that will last generations. BT has had for too long unequivalent access to its ducts and poles and has used that access to further its monopolistic control of that network.

Hyperoptic makes use of Ofcom regulated products in a unique way from other operators, as such the opinions and proposals expressed herein are likely to diverge from both larger mainstream operators and other alternative providers. We offer both Residential and Business products and in particular utilise EADs and PIA (and Dark Fibre if/when released) to provide an alternative to BT's NGA products thus providing choice to consumers and businesses who previously could only consume BT wholesale products.

The outcome of the WLAMR – specifically the definition, scope, and processes for PIA - has the potential to fundamentally shape the ability of consumers and SMEs to buy and use 1 Gb broadband in the near future.

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Response Summary

Topic	Response
Methodology to calculations for maximum charges	Hyperoptic is in agreement with Ofcom's proposed methodology, but has concerns over the minimum diameter remaining at 25mm in all areas of the network and charges for joint enclosures.
Financial limit	Hyperoptic agrees that a financial limit should apply and with the method used to calculate it, however definitions require more clarity.
Ancillary charges	Hyperoptic agrees that price regulation is required and that a basis of charges condition be used, but has some concerns about the approach suggested to agree the rates at which telecoms operators can recover these charges from BT
Regulatory reporting	Hyperoptic is in broad agreement with Ofcom and is supportive of the necessary reporting to support effective regulation aimed at helping telecoms operators reduce risks of investing into PIA deployments

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Response Questions

Annex 4: Consultation Questions

Question 3.1: Do you agree with our proposals for setting the level of the cap on PIA rental charges?

Hyperoptic agrees with the proposal to set caps on the levels of PIA rental charges and broadly agrees with the methodology laid out by Ofcom.

Hyperoptic believes that the cap will provide a good deal of certainty and assist in removing some of the risk of large scale investment in PIA. We remain concerned about the rental terms and note that Ofcom proposes these are discussed and confirmed with industry in the Reference Offer. We are concerned that BT is not duly incentivised to offer long term options on rentals and there is a lack of certainty following an initial term and indeed pricing, following the review period. We recognise and fully support Ofcom's statement in paragraph 3.8 relating to the importance of regulatory consistency and predictability over time. Hyperoptic is one of many companies seeking to deploy large capital sums into PIA but as returns on this investment can stretch to beyond the period of review, this principle is material to our ability to invest wisely.

The price cap is very helpful to Hyperoptic's ability to create a large-scale investment case, but the contract governing duct space rental requires close scrutiny to complete the picture.

Hyperoptic does not fully agree with Ofcom that a minimum 25mm diameter is the correct minimum diameter on which to base rental charges throughout the network. However, we recognise Ofcom's view that a lower diameter may result in a smaller contribution from PIA users. In areas of the network where a smaller diameter cable is preferable for operational or capacity purposes, PIA users should not be penalised in so doing by having to pay a price relating to a 25mm diameter space.

We agree with Ofcom's view that where multiple cables or sub-ducts are installed and the occupy the same or less space as a 25mm diameter sub-duct that they should not attract separate rental charges in aggregate.

We note that our views are requested on the topic of box entry and exit and coil hosting/in-line splice hosting.

It is our view that charges for entering and exiting chambers should be removed to provide a simpler pricing regime. This is because:

- Hyperoptic is intending to and has already deployed large numbers of network joints (connection points) using PIA.
- Administrative overhead providing details of which chambers are occupied is significant and becomes burdensome at scale.
- Openreach network data isn't always precise enough to pinpoint actual chamber used (or planned to be used), leading to potential issues later on.
- A simple additional cost per metre on the rental charges would remove these administrative problems.

Furthermore, clarity is required on the pricing for in-line splices. Hyperoptic uses a range of joint enclosures, which are not solely associated with GPON topology. It is not clear the basis for what the charges should be for this equipment.

Question 4.1: Do you agree with our proposals for setting a financial limit for network adjustments?

Hyperoptic agrees with Ofcom's proposals for setting a financial limit for network adjustments but is concerned about potential lack of clarity around the definitions of the adjustment categories. We agree with Ofcom's view that the financial limit should include the provision for some category B adjustments and that most category A adjustments should be in scope. However, it could be possible for Openreach to delay deployments or increase the costs of planned network deployment if the definitions and mechanisms applying to these adjustments are not clearly understood and agreed with Industry.

Whilst not strictly in the scope of this consultation, Hyperoptic is concerned that the mechanisms and timescales relating to Openreach performing network adjustments is just as important to an investment case as the price. Any regime needs to oblige Openreach to perform network adjustments promptly and should penalise, in a material way, where they fall short of their obligations.

We support Ofcom's view that the provision of additional chamber capacity for the purposes of a PIA deployment should be a category A adjustment and therefore included in the financial limit.

Question 4.2: Do you agree with our proposals for ancillary charges?

Hyperoptic agrees with Ofcom that a basis of charges approach should be applied to calculating whether network adjustments exceed the financial limit.

We also support the option for telecoms providers to undertake enabling works themselves (with the opportunity to seek to recharge Openreach for those works). However, we suggest that clarity is required as to how and when the charge back rates are agreed and what adjudication process will apply if industry and Openreach cannot agree.

Hyperoptic welcomes Ofcom's proposal to set a cap of zero on charges relating to productising costs. These costs become material at scale, are unrestricted and not appropriate for a scale based deployment using PIA.

Question 5.1: Do you agree with our proposals for BT's regulatory financial reporting in relation to PIA services?

It is important that BT is obliged publish the right information to support the investment cases for telecoms operators using PIA. Hyperoptic agrees with Ofcom that appropriate reporting is required to ensure that BT does not over recover network adjustment costs and that BT's own network deployment costs are recovered on the same basis. We believe that with increasing adoption and volume of PIA the reporting requirements on BT may require revision to maintain the correct visibility and control.