Verizon Narrowband Consultation Response

Introduction

1. Verizon Enterprise Solutions (“Verizon”) welcomes the opportunity to respond to Ofcom’s Narrowband Market Review consultation[1].

2. Verizon is the global IT solutions partner to business and government. As part of Verizon Communications – a company with nearly $131 billion in annual revenue – Verizon serves 98 per cent of the Fortune 500. Verizon caters to large and medium business and government agencies and is connecting systems, machines, ideas and people around the world for altogether better outcomes.

3. Please note the views expressed in this response are specific to the UK market environment and regulatory regime and should not be taken as expressing Verizon’s views in other jurisdictions where the regulatory and market environments could differ from that in the UK.

4. This submission covers:

- Wholesale Line Rental (WLR) and Wholesale Call Origination (WCO)
    - WLR
        - Summary
        - Market definition – product substitution
        - Significant Market Power (SMP) analysis and remedies
        - Alternative remedies to BT’s SMP
    - WCO
    - Summary of WLR and WCO
    - Legal analysis
- ISDN
- Interconnect
- Wholesale Call Termination (WCT) (including termination rates)
- Quality of Service
- Fibre rollout

Wholesale Line Rental (WLR) and Wholesale Call Origination (WCO)

WLR

Summary

[1] https://www.ofcom.org.uk/consultations-and-statements/category-1/narrowband-market-review

5. In summary, while we generally agree with the overall market definition and SMP analysis for WLR, we cannot understand Ofcom's logic to remove the charge control in this market. In light of the evidence presented we strongly suggest that a charge control should be retained for WLR.

Market definition – product substitution

6. In general, we agree with Ofcom's conclusions regarding market definition for wholesale fixed access. However, we detail below a few points which would support Ofcom's finding that neither mobile nor VoIP are sufficient constraints.

7. Firstly, we are disappointed to see that the specific needs of large business consumers and business-to-business (B2B) providers have not been fully considered in this consultation. Compared to the analysis carried out by Ofcom in the Fixed Access Market Review (FAMR) 2014 statement[2], there has been very little analysis of large business customers who often have specific needs for narrowband lines which are different to residential customers. This is significant oversight in Ofcom's consultation and has implications for its analysis of the constraints and substitutes for WLR. By focusing almost exclusively on residential consumers, Ofcom has presented a one-sided view of the constraints of mobile and VoIP.

8. Ofcom places a lot of weight on the possibility for consumers to substitute to mobile, implying that it is a constraint on WLR prices. However, ultimately Ofcom considers that mobile access is not a sufficiently strong substitute to fixed narrowband access for the majority of residential and business consumers.[3] We agree with this, and note the following points in relation to UK business customers to support Ofcom's view:

    - In the UK, mobile does not offer the same qualities as fixed line which are particularly valued and demanded by business customers, in particular reliability and quality. Indeed this is also noted as being true for residential consumers too[4]. This is particularly pertinent when thinking about the range of applications for which a narrowband line is used, including some of the legacy narrowband technology which is still in place in the UK such

[2] FAMR 2014 statement. Specifically, see paragraphs 3.36 to 3.39 on mobile constraint for businesses; paragraphs 3.44 to 3.49 on VoIP constraint; and paragraphs 3.111 to 3.115 on BT's SMP. https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/narrowband-broadband-fixed/fixed-access-market-reviews-2014/statement

[3] See paragraph 4.57 of the NMR consultation.

[4] See paragraph 4.139 of the NMR consultation.

as alarms and monitoring systems, emergency lines, external helplines from lifts in buildings which are very common in the business market. Some of these applications cannot be replaced by mobile as they are reliant on a stable and secure connection, and this is unlikely to change in the medium term. [✂]

- In addition, currently in the UK mobile is not an effective way to provide standard fixed line services that business customers expect such as conference calling, call recording, call transfer etc. These services are of particular importance to businesses rather than residential consumers.

- Coverage in the UK is also an issue for mobile compared to fixed line. For example, indoor coverage of mobile for voice services is much lower at only 89% of premises spread across all operators[5] and many end users doubt the quality of the reliability of mobile networks. This is especially true of large businesses where good quality calls are important for business, and poor quality calls will have a reputational impact on companies.

- The Ofcom analysis did not take account of the increased capital costs for mobile to be a substitute (i.e. for handset purchases). Again this is particularly true for large businesses who would have to purchase a lot of hardware in order for this to be a viable substitute.

9. Ofcom also suggests that Voice over IP (VoIP) could be a constraint, especially for business consumers, but ultimately concludes that broadband access is not a sufficient indirect constraint to be included in the relevant market.[6] We agree with this, and note the following in relation to VoIP substitution for business customers in the UK market:

    - On VoIP substitution, Ofcom said that large businesses are likely to take up VoIP, but that this will depend on the availability of good quality/reliable access.[7] We agree that this is the case, but note that this heavily depends on having a good quality internet connection and good network coverage. In this case, providers are dependent on the rollout of fibre to areas where

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[5] See Connected Nations 2016 report, page 2, Dashboard table. This is a combined total for 2G, 3G, and 4G. Individual operators will likely vary and be lower, and the take-up of 4G for voice will be lower. Ofcom also notes at paragraph 5.2.5 of the Connected Nations Report that the previous way of measuring indoor mobile voice coverage was not sufficient to deliver a good consumer experience, as such, this shows that mobile is even less of a substitute for fixed calls, especially for business.
https://www.ofcom.org.uk/__data/assets/pdf_file/0035/95876/CN-Report-2016.pdf
[6] See paragraph 4.67 of the NMR consultation.
[7] See paragraph 4.160 of the NMR consultation.

business customers require it (e.g. business parks) to provide such a reliable service, and therefore this increases the reliance on BT. We set out our concerns about BT's rollout of fibre at the end of this document.

- Furthermore, we note that while there has been a large increase of VoIP minutes, much of this is unmanaged VoIP which is less of an option for large businesses due to the lack of guarantee in quality (and the potential reputational and operational risks that carries). We note that Ofcom agrees with this position at paragraph 4.165 of the consultation document.

10. Given the above, we consider that there are no sufficiently substitutable options for Verizon when providing solutions to large businesses across the UK without the use of the WLR product. We also consider that this is unlikely to change because:

    - While technology improvements (e.g. in mobile and VoIP) are continuing, this is likely to take some time, and will only really accelerate when there is no other option e.g. when BT switches off its Public Switched Telephony Network (PSTN) network in 2025. At that time, it is likely there would be other significantly stable, reliable solutions other than fixed narrowband lines.

    - There are a number of applications which use fixed narrowband lines which will never switch and as such there is a risk of excessive pricing e.g. alarm lines, pin points, emergency lines in elevators, support lines in case of other line failure. There is no alternative option for these applications, and as such, if WLR is subject to a weaker regulatory remedy as proposed, given BT's enduring market power they are at risk of excessive pricing by BT. They should therefore be protected by a charge control. We believe that Ofcom has failed to evaluate the impact and likelihood of excessive pricing in this consultation, which should be a primary consideration whenever moving away from a charge control.

<u>Significant Market Power (SMP) analysis and remedies</u>

11. We agree with Ofcom that protection of access to Wholesale Fixed Analogue Exchange Lines (WFAEL) is important but we strongly disagree with Ofcom's view that moving away from a WLR charge control is the right move given the SMP analysis set out in Section 6 of the consultation document. We disagree that a fair and reasonable regime is "adequate protection" as suggested by Ofcom at paragraph 7.40.

12. There appears to be a large disconnect between the SMP analysis set out in Section 6 which suggests that while BT's SMP in WFAEL is "weakened" and the proposed deregulatory remedies. We cannot understand how Ofcom can consider that BT's SMP has weakened sufficiently to deregulate when it is clear that BT still has a very strong market power because:

- it still has a very high market share at over 55% (see Figure 6.1), and Ofcom says that this will not fall below 38% of the market due to the levels of retail fixed voice-only and split purchase consumers, and business analogue lines during the review period[8]. Ofcom also notes that BT is likely to have over 80% market share in some of the segments of the market such as SMEs[9];

- there is a lack of constraints from other services (especially given the disagreements and arguments we make above on the lack of constraint for mobile and VoIP because they are not adequate substitutes for large business consumers); and

- BT has been pricing at maximum level under the current charge control cap (i.e. it is only constrained by regulation rather than competition).

13. Even Ofcom notes the significant dominance of BT, saying that "the constraint from switching to mobile or broadband-based access is limited, and BT's pricing is also consistent with it holding SMP in the WFAEL market. We do not consider entry, expansion or countervailing buyer power are likely to prevent SMP".[10]

14. We also note that Ofcom was concerned enough about retail fixed voice-only and split purchase consumers for both line rental and call origination to conduct a retail market review[11], yet no such action has been taken for the business analogue FAELs which make up 14% of all lines[12]. This further proves that Ofcom has failed to take into account the impact on businesses, and B2B providers.

15. As a result, we consider that the decision to remove the charge control remedies and take a large deregulatory step in moving to a fair and reasonable regime is

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[8] See paragraph 6.11 of the NMR consultation.
[9] See paragraph 6.10 of the NMR consultation
[10] See paragraph 6.31 of the NMR consultation.
[11] Review of the market for standalone landline telephone services, 28 February 2017, https://www.ofcom.org.uk/consultations-and-statements/category-1/review-of-landline-telephone-services
[12] See paragraph 4.100 of the NMR consultation.

unjustified and premature. We also consider that the remedies for WLR proposed do not seem to follow from the SMP analysis earlier in this consultation.

16. In deciding whether a charge control was an appropriate remedy given BT's SMP, we note that Ofcom has not provided a clear evaluation of all the options available to it, and does not provide a full explanation of the tipping point beyond which it becomes appropriate to take such a significant step towards deregulation. It does not explain what factors led to its provisional conclusion to move to fair and reasonable as a remedy.

17. When asked about the rationale behind this proposal in our meeting with Ofcom on 6 February 2017, Ofcom said that there had been market developments which it considered in coming to its proposal; this included the increased competition and take-up of dual play through the WLA remedies (e.g. LLU) and the increased constraint from mobile. We disagree with this position. Firstly, Ofcom itself came to the conclusion that mobile was not a sufficient constraint to be included in the relevant market.[13] Secondly, we note that LLU is generally used for residential consumers, and as a B2B provider, Verizon does not and cannot realistically make use of this product. Furthermore, our business model of providing an integrated solutions for large companies (often with multiple sites in various locations across the country) does not mean that we have the option of building our own network or using LLU ourselves – it's simply not economically viable for us. We are therefore reliant on BT's network, and the WLR product. Ofcom accepts that there is little realistic possibility for providers using BT's WLR product to switch away to alternative suppliers, as they simply do not exist.[14]

18. [✂]

- [✂]
- [✂]

19. [✂]

20. As a result, in the UK, WLR and Carrier Pre-Select (CPS) are still required and we would not have a cost effective alternative for smaller customer locations or locations far away from our network without such products. [✂]

[13] See paragraph 4.57 of the NMR consultation.
[14] See paragraph 6.19 of the NMR consultation.

21. Given the above, we are concerned that Ofcom does not consider excessive pricing to be a risk of moving away from a charge control in the WFAEL market[15]. Ofcom has provided no analysis to show why excessive pricing is not an issue or at least a material consideration in this market. BT has strong SMP with a high market share of 55% for WFAEL[16], and has been pricing at the regulated cap over a sustained period, and as such price rises will be an inevitable consequence of removing the charge controls. This will particularly hit business consumers, who use narrowband lines for essential applications that need secure stable connections, as well as the rest of the 38% of the market that Ofcom itself has identified as reliant on WLR[17].

22. [✂]

23. Even as we accept that there is unlikely to be new forms of competition in these markets in the near future, we consider that Ofcom is failing to even "protect competition" which it claims to be its focus.[18] The semantic difference between 'promoting' and 'protecting' competition offers little justification for such a substantial difference in regulatory remedial action which carries a real risk of affecting outcomes for providers and customers.

24. Furthermore, we note that Ofcom does not propose any reporting requirements on BT for compliance with fair and reasonable because it considers it "disproportionate"[19]. It is beyond belief that Ofcom would take such a deregulatory step with a new form of remedy without mandating the appropriate reporting information to allow BT's compliance to be monitored and scrutinised. It is therefore unclear how Ofcom will monitor BT's compliance with fair and reasonable, or how those purchasing the WLR product will be able to know whether the charges they are paying are fair and reasonable or not. We therefore strongly disagree with the proposed removal of reporting requirements from BT in relation to WLR.

25. We also have general concerns around fair and reasonable remedies as they are undefined, hard to enforce, and there is a greater risk that disputes will not be taken up and resolved in a timely manner. While we understand that Ofcom believes it could streamline the dispute process given that it has already identified

[15] See paragraph 7.42 of the NMR consultation.
[16] See Figure 6.1 of the NMR consultation.
[17] See paragraph 6.11 of the NMR consultation.
[18] See paragraph 7.51 of the NMR consultation.
[19] See paragraph 7.53 of the NMR consultation.

SMP and the need for a remedy[20], we consider that the uncertain nature of fair and reasonable remedies, combined with the lack of reporting requirements on BT will mean that those purchasing products will be uncertain about whether they should refer a dispute to Ofcom. This lack of clarity and the investment of time, money and resource in a dispute would act as a disincentive to operators to refer disputes, and would therefore heighten the risk of excessive prices and higher prices.

26. Furthermore, we note that Ofcom is currently moving away from having guidelines on the time it can take to decide to open or resolve an investigation or Competition Act case[21], and suggests that a review of dispute guidance will follow. If guidance on disputes were to follow this same pattern, then this would add further uncertainty and makes the proposed fair and reasonable regime even less palatable. Without a clear timeframe for resolution of a dispute, potential unfair and unreasonable charges and terms could persist for even longer.

27. **Given the above, and the evidence set out in the consultation, we strongly suggest that a charge control should be retained for WLR.**

<u>Alternative remedies to BT's SMP</u>

28. The jump from a cost-based charge control to a "fair and reasonable" regime is large, is not reflective of BT's position in the market, and will be hard for operators to adapt to. Despite our view that an effective charge control remains the most appropriate remedy, we acknowledge Ofcom's desire to deregulate in this market. If Ofcom insists on lessening the remedy, we urge it to at least re-consider the strength of the remedy it intends to impose, and look at a looser form of charge control, (e.g. CPI-CPI) which might prove an appropriate "bridge" between the previous regime and its current proposal. Such a remedy would give BT more than enough pricing freedom, but also give greater certainty to competitors and ensure that prices are not excessive. In addition, this would give operators and the market more time to adapt to the deregulatory environment instead of such a dramatic step change.

29. However, if Ofcom were to continue with its proposal of moving to a fair and reasonable regime, we would expect guidance at the least to ensure that there is some protection from excessive pricing. Without prejudice to our preferred option

[20] As discussed in our meeting with Ofcom on 6 February 2017.
[21] See Ofcom's consultation on "Ofcom's approach to enforcement", 23 January 2017, https://www.ofcom.org.uk/__data/assets/pdf_file/0024/96810/enforcement-consultation.pdf

of a charge control, a “half-way house” type solution for WLR could be to have guidance that:

- Suggested that the WLR price should track the price of MPF; or
- Suggested that the current levels of WLR are fair and reasonable, subject only to change in CPI, to prevent unnecessary price rises; or
- Included a provision that requires charges for WLR to include some form of cost-orientation requirement; or
- Had a backstop option of a simple safeguard control (e.g. CPI-CPI) for WLR.

WCO

30. Our main concerns regarding the analysis and proposed remedies for WCO echo much of those discussed above in relation to the WFAEL market and the WLR product. As such, we have not repeated them in full in this section.

31. As above, Ofcom has incorrectly focused on the residential and small business market, rather than looking at the needs of larger business consumers. This is a mistake and again impacts on the remedies proposed. The discussion of the SMP analysis and the remedies is again juxtaposed and illogical.

32. We again disagree with the discussion of the constraints of mobile in the UK market, which Ofcom has overstated due to its lack of consideration of the business market. While we agree that residential consumers may have more of an ability to use mobile substitution on a call-by-call basis, this is <u>not</u> true of business in the UK (especially when considering the bundled nature of WLR and WCO).

33. As discussed at paragraphs 8 and 9 above, we agree with Ofcom’s conclusions that mobile and VoIP offer limited substitutability,[22] especially for business customers. In particular we note that in the UK:

    - neither mobile nor VoIP provide the same quality and reliability of a call originated on a fixed line (which can have negative reputational and operational impacts on a large business customer);
    - mobile does not offer the same capabilities as fixed lines which are used by businesses such as conference calling, extension dialling etc.;

[22] See paragraphs 4.57 and 4.67 of the NMR consultation

- the capex spend required to substitute to mobile is large (e.g. purchase of handsets), and Ofcom has failed to consider this; and

- coverage is not 100% for either mobile (particularly when thinking about indoor coverage for large business users) or VoIP (when thinking about good quality broadband connections).

34. Ofcom rightly notes that BT's SMP is high in the WCO market[23], and therefore we cannot understand how this leads Ofcom to believe that taking a large step down in regulation by removing the charge control and replacing it with an inherently uncertain remedy which will inevitably lead to price rises.

35. In particular, we note that BT continues to have strong SMP in the market with a high market share of 49% for WCO[24], there is a lack of viable substitutes for business customers, and BT has been pricing at the regulated cap over a sustained period. Price rises will be an inevitable consequence of removing the charge controls and giving BT more freedom. In this sense, we are very concerned that Ofcom does not consider excessive pricing to be a risk of moving away from a charge control in the WCO market[25]. We are also concerned that Ofcom has not included a full analysis of BT's wholesale calls on the ability of Carrier Pre-Select to compete.

36. [✂]

Figure 1

[✂]

Note: [✂]

37. Giving further pricing freedom to BT, which Ofcom says is its intention[26] (without justification); will further strengthen BT's dominance in the WCO market to the detriment of competition and consumers. The inevitable price rises that will follow from this deregulatory step will reduce our already small margins on WCO, and the extra cost will therefore be passed directly onto our consumers.

38. Together with the removal of the charge control on WLR, this will be a huge blow to competitors to BT and will particularly hit B2B providers and their business

[23] See paragraphs 6.52 and 6.54 of the NMR consultation.
[24] See Figure 6.2 of the NMR consultation.
[25] See paragraph 7.47 of the NMR consultation.
[26] See paragraph 7.110 of the NMR consultation.

consumers, especially when considering that WLR and WCO are often bought together in a bundle.

39. **Given the above, we strongly suggest that a charge control should be retained for WCO.**

40. Again, the step change from a charge control to a fair and reasonable remedy is too great, and as such we consider that a transitional stage for this market review period would be more appropriate – this could take the form of a looser charge control which would continue to provide certainty for operators, and protection from excessive pricing. Such a transition period would give operators and the market more time to adapt to the deregulatory environment instead of such a dramatic overnight change.

41. However, if Ofcom were to continue with its proposal of moving to a fair and reasonable regime, we would expect guidance at the least to ensure that there is some protection from excessive pricing. Without prejudice to our preferred option of a charge control, a "half-way house" type solution for WCO could be to have guidance that:

- suggested that the current levels of WCO is fair and reasonable, subject only to change in CPI, so as to prevent unnecessary price rises; or
- included a provision that requires charges for WCO to include some form of cost-orientation requirement; or
- had a backstop option of a simple safeguard control (e.g. CPI-CPI) for WCO.

Summary of WLR and WCO

42. In summary therefore, we consider that:

- It is illogical and premature to move to a fair and reasonable regime, and remove the *ex ante* protection of a charge control, given the evidence presented in the SMP analysis in both the WFAEL and WCO markets i.e. BT's high and enduring market shares, pricing at the regulated cap for sustained period, and the lack of viable substitutes/constraints;
- Removing the charge control will inevitably lead to price rises which will likely be passed on to consumers for WLR and WCO, [✂];

- The risk of excessive pricing is real and will particularly harm B2B providers and their business customers, particularly for applications which require a stable and reliable fixed line connection, many of which cannot be provided by mobile and VoIP (e.g. emergency lines); and

- Relying on the dispute framework will further harm and destabilise the market especially when combined with a lack of reporting.

Legal analysis

43. In addition, it is not clear from Ofcom's analysis of BT's SMP and product market definition that its statutory duties are properly discharged in light of the objectives Ofcom is seeking to attain.

44. Specifically, Ofcom is bound by relevant provisions of the Communications Act 2003 ("the Act") in respect of consumer outcomes and the promotion of competition – notably in its duties under section 3, but also in section 4 (which deals with over-riding European obligations). The Act also provides for the general circumstances in which regulation can be imposed or removed. And, Ofcom must ensure its regulation is transparent, proportionate and consistent.

45. Given the lack of analysis that would inform the removal of a price control on WFAEL and WCO, it appears that Ofcom has potentially breached its statutory duties not only to further the interests of consumers by:

    - allowing BT price flexibility which it will almost certainly use to raise prices in a market in which it has SMP. This, in turn, will likely lead to increased prices at retail level and therefore affect outcomes for consumers; and

    - removing regulation when there is no case for it to do so (and indeed strong evidence to suggest it is still needed).

46. The removal of price controls is a significant change in regulation, yet there has been no significant change in the market. Ofcom has advanced several reasons justifying its change in price regulation but none stand up to scrutiny.

    - "Ofcom is concerned about a price squeeze, not excessive pricing"

      Ofcom has offered no explanation as to how this change in regulation will deliver the outcome that this objective pursues. In addition, it is puzzling as a matter of logic to portray these competition concerns as a false dichotomy when they are not mutually exclusive. In fact, a rise in wholesale prices carries a real and substantial risk of raising prices excessively at the retail level. Removing a price control in favour of a fair and reasonable obligation is likely to do exactly that.

In any event, although Ofcom says its aim is to prevent margin squeeze, there is no evidence that a “fair and reasonable” obligation will achieve this: it does not, on its face, prohibit margin squeeze and this assertion is not explained. Indeed there is a case that as a control on a wholesale market, this obligation cannot operate as an effective constraint on retail prices (and thereby restrict margin squeeze) at all.

- “BT’s SMP is ‘weakened’”

  Considering that none of the other usual factors of competitive pressure (from (for example) mobile, VoIP) were found by Ofcom to have an effect on BT (demand and supply side substitution), it is again odd that Ofcom should consider there is a “reduction” in BT’s SMP in the WFAEL and WCO markets to the point it finds removal of price controls are necessary. Ofcom here appears to equate SMP with market share; but this is largely irrelevant where BT’s incentives are unchanged, i.e. it still makes sense to BT to maintain high prices. Indeed, as Ofcom has recognised in its retail market review, there is a substantial part of the market which is insensitive to competition and BT will exercise upstream power on that portion or the market regardless. By focusing on this change in market share, Ofcom has failed to recognise that incentives will still drive BT to act as it has done in the past. This ought to have been given at least as much importance in Ofcom’s reasoning as the observed downwards trend in SMP.

47. Verizon also considers that there is a lack of consistency between Ofcom’s wholesale and retail market reviews. Ofcom’s principal duty is to promote the interests of consumers through competition; the primacy of competition is reinforced in its European duties. However, the combined effect of the retail and wholesale review is that for WLR customers – the very customers covered by the retail review – Ofcom seems to have abandoned competition at the wholesale level in this review in favour of retail regulation in the retail voice-only review[27]. This seems entirely inappropriate to Verizon; we consider the correct response in

[27] Ofcom’s Consultation, The review of the market for standalone landline telephone services, 28 February 2017, https://www.ofcom.org.uk/__data/assets/pdf_file/0030/97806/Consultation-Review-of-the-market-for-standalone-landline-telephone-services.pdf

a situation where competition is ineffective would be to take steps to make it more effective, not less.

48. In summary, it appears that Ofcom has not properly considered its legal duties by removing a pricing remedy prematurely and without sufficient justification. This breaches Ofcom's statutory duties because it cannot be shown to further the interests of consumers, nor to promote competition in this market when evidence, both economic but also historical, tends to show that the WFAEL and WCO markets are uncompetitive as a result of BT's SMP and behaviour indicating that it will consistently raise prices when the opportunity arises.

ISDN

49. We agree with Ofcom's market definitions for both ISDN2 and ISDN30, but note that there is again some inconsistency with the examination of IP-based services in the market definition and the analysis of SMP/Remedies discussions as set out in paragraphs 5.59 and 5.122.

50. Furthermore, the remedies do not match the SMP analysis conducted. This analysis shows that BT continues to have a very dominant share of around 100% for ISDN2 and around 65% for ISDN30. This is unlikely to change in future and therefore the risk of excessive pricing is a threat to competition.

51. While we acknowledge that the volumes of these products are declining, there is still a core set of customers who continue to use these products. Such customers of Verizon often have multi-site portfolios which can grow and change regularly (i.e. a new site added, or a site move). As such, although the customer has not changed, the new premise would need a new ISDN provision. This is particularly true of our large retail customers [✂]. We also have customers who require ad hoc temporary ISDN lines on a regular basis [✂]; again these would be considered new provisions. As such we are concerned that the proposed remedy which would only regulate the prices of existing lines would not provide protection for these new line provisions for existing customers.

52. We agree that Ofcom's proposed remedy for existing ISDN2 and ISDN30 including the fair and reasonable charges obligation (set out in Section 7), proposed charge controls of caps at nominal levels in basket arrangements (Section 8), however we request that Ofcom extends these remedies to cover all ISDN2 and ISDN30 lines, both new and existing.

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Interconnect

53. Verizon is gravely concerned with the recent changes made by BT to its charging for transit calls on the tandem layer. In its EBC briefing of 1 December 2016,[28] BT informed industry that, from 1 January 2017, for transit calls sent by an originating CP to BT at an IPEX before being routed to the terminating provider via a TDM tandem exchange, it intended to charge double tandem rates instead of single tandem as had previously been the case. This has very material financial implications for providers that are effectively compelled to use BT to transit their traffic.

54. In particular, we are concerned that:

- The definition of a double tandem transit call[29] requires there to be more than one tandem exchange, which is defined in reference only to TDM equipment[30] (with no provision for IP exchanges). Therefore, in an IPex to TDM transit call, there is still only one Tandem exchange, and as such, single tandem call rates should apply.

- As a terminating provider we have no control over the originating CP's choice of entry into the BT network, and the current, regulated SIA makes no provision for providers to access to the IP exchange in order to pick up that traffic; nor are IP exchanges included in the document that allows providers to efficiently plan their network (i.e. avoid double tandem charges).

- BT has presented this as a mere billing change. However, under the terms of the SIA, it could be considered to constitute a "system alteration", which requires a seven month notice period before implementation. As set out above we received only one month notice of this change, and had no opportunity to make any network changes that may have mitigated the financial impact[31].

- Whereas the SIA is a regulated contract, and the terms on which traffic is routed through BT's network using tandem switches are clear, the IP

[28] EBC briefing email from BT Wholesale, reference number IB-2684-16, "BT EBC Changes Effective from 1 January 2017".
[29] As set out in Annex C, Schedule 102 to the SIA, https://www.btwholesale.com/assets/documents/Regulatory/nsch102.doc
[30] See definition of "BT Tandem Exchange" and related definitions set out in Annex D to the SIA, https://www.btwholesale.com/assets/documents/Regulatory/Annex_D_Issue_6.0.docx
[31] As set out under Clause 4.1 of the SIA, https://www.btwholesale.com/assets/documents/Regulatory/Main_Issue_6.0.doc

interconnect is unregulated and a matter of commercial negotiation. By making this change to its charging arrangements, BT is essentially forcing providers to use their IP Exchange. Given that there is no regulation on IP Interconnect, in particular there is no requirement for BT to offer access to such a service, this puts us in a difficult position of paying double tandem rates or having to sign an unregulated IP exchange contract with no guarantee that we will continue to have access to it in the medium to long term.

55. The above demonstrates BT's continued dominance in the Interconnect market, and therefore we strongly agree that continued regulation of TDM interconnect is required. We are very concerned that BT is using its dominance to force providers into making decisions on interconnection and routing that do not make rational commercial sense.

56. In light of the above developments, we also consider that there is now a clear case for regulating IP interconnect in the UK. We are disappointed that Ofcom has not fully considered regulation for IP interconnect as set out in our 2015 CFI response[32]. A regulated IP interconnect product would mean a faster migration to a more efficient service in this market review period, without the risks associated above of lack of guaranteed access and unfair charges and terms. We hope that Ofcom will re-think its position on this matter.

57. We note that Ofcom reports that KCOM is looking to move to IP in 2021, and BT will migrate fully to IP in 2025, and that Ofcom says that it will reassess the IP interconnection in the next market review period at paragraph 18.29. This at least gives some certainty for industry and a clear timeline for CPs; however we strongly believe that Ofcom needs to consider this issue more urgently in light of BT's actions.

58. We agree that regulation should also be retained on TDM interconnect. Given Ofcom's proposal to use the TDM product as its focus, we agree with the proposed remedies for interconnect in Section 17 for both BT and KCom. On balance we agree with the design and level of the charge control on BT for interconnect, including the LRIC+ standard, given the practicalities around data gathering and the use of LRIC in WCT, which as we set out below, we strongly support.

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[32] https://www.ofcom.org.uk/__data/assets/pdf_file/0022/81571/verizon.pdf

59. That said, we would like to ensure that the TDM assets, i.e. this legacy network, should be fully depreciated and not included in the charge control so that there is a true representation of the cost to BT, which should in turn lead to lower charges and avoid over-recovery.

Wholesale Call Termination (WCT)

60. We agree with Ofcom's assessment of the market, the proposed market definition, and the analysis of SMP, as set out in Section 11.

61. On remedies, we agree that a charge control is the best form of remedy, and it is fair that it is applied to all CPs, including BT, as set out in Section 12. We agree that it is a good idea for Ofcom to publish the fixed termination rates (FTRs) on its website in a clear location.

62. We also believe the additional requirements proposed for BT including no undue discrimination, publication of a reference offer, cost accounting, and accounting separation are justified given BT's higher share of lines for call termination.

63. We agree with the approach and form of the charge control for WCT in section 13. We especially support Ofcom's use of LRIC as the cost standard. We also agree with the cost model design as set out in Section 14, including the move to CPI (rather than RPI).We support the specification of the charge control in Section 15, and are pleased that there will be one flat rate with no variation by time of day (as noted in paragraph 15.25 of the consultation) as we highlighted in our CFI response, as this provides clarity and simplicity to the regulation.

<u>FTRs for calls from non-EEA countries</u>

64. Verizon fully supports Ofcom's conclusion at paragraph 13.116 of the consultation document that all calls terminated in the UK should be subject to the fixed termination rates (FTRs) charge control, regardless of origin (including from non-EEA countries). Ofcom has rightly rejected the option of "differential regulation" for such calls.[33]

65. FTRs have a large impact on our business as a multinational telecoms company routing calls into the UK from numerous non-EEA destinations, and in particular the US, and as such, any uncertainty and/or any significant increase in the FTR rates for non-EEA countries would have significant impact on our business, as it would significantly increase costs for Verizon's US originating traffic to the EEA

[33] Ofcom defines "differential regulation" as where NRAs have allowed CPs to commercially negotiate non-EEA FTRs and/or where NRAs have allowed CPs to charge non-EEA CPs higher rates provided they are reciprocal.

and affect our ability to provide affordable voice services to US consumers calling the EEA.

66. Furthermore, as highlighted in Annex 2 of our September 2016 submission (and Annex 2 of this submission),[34] we consider that there is no alternative option in this situation, as differential treatment of non-EEA calls would violate:

- **The EU telecommunications rules** – most if not all CPs in EU member states are required to have non-discriminatory and cost-orientated FTRs, which differential regulation would clearly violate;
- **General competition rules** – as all CPs are dominant in the termination of calls onto their own network, charging higher FTRs for calls from non-EEA countries will be an abuse of a dominant position, excessive pricing, and/or discriminatory pricing; and
- **The WTO General Agreement on Trade in Services (GATS)** – differential regulation would go against the principle of service suppliers treating Members less favourably than any other[35]; that access and use of any public telecommunications transport networks and services for Members should be on reasonable and non-discriminatory terms and conditions[36]; and that “major suppliers” to interconnect with cost-orientated, transparent, and reasonable rates[37].

67. We agree with the points raised by Ofcom at paragraphs 13.104 to 13.115 of the consultation document, and would like to supplement Ofcom’s reasoning by noting that:

- Even if it *were* possible to know all the CPs outside of the EEA (which Ofcom notes is highly unlikely at paragraphs 13.108 and 13.109), in the case of differential regulation, individual FTR negotiations with each CP would need to take place. This would be incredibly burdensome, inefficient, and costly. This negotiation cost could be passed on to consumers in the form of higher prices, most likely with little benefit in terms of reduced rates (or indeed, as Ofcom noted at paragraph 13.104, such negotiations could actually result in higher FTRs). It is therefore more

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[34] https://www.ofcom.org.uk/__data/assets/pdf_file/0037/94798/Verizon-Why-Charging-Higher-than-Regulated-Termination-Rates-to-Traffic-Originating-Outside-the-European-Economic-Area-EEA-is-Not-Justified.pdf

[35] Article II of the WTO GATS.

[36] See Article 5(a) of the Annex on Telecommunications to the WTO GATS.

[37] See Section 2.2 of the Telecommunications Services Reference Paper.

efficient, less burdensome, and would put consumers at less risk to include non-EEA originating calls in the FTRs charge control, as per Ofcom's conclusion at paragraph 13.116. It is also fully aligned with Ofcom's statutory duties under the Communications Act 2003 as outlined above.

- Ofcom notes that differential regulation would result in increased costs due to the need to system changes at paragraphs 13.110 and 13.112. We agree with this point, and note that this cost would in all likelihood be passed on to consumers. Requiring CPs to modify the already complex systems in order to accommodate differential regulation, which could potentially bring no benefits or even higher FTRs, would be burdensome, disproportionate, and potentially have a negative effect on consumers through higher prices.
- As Ofcom notes, introducing differential regulation could lead to CPs trying to avoid paying higher rates through inefficient routing via multiple countries (see paragraph 13.113), or CLI masking so that it is harder to identify the originating country of the call (see paragraph 13.114). Both of these potential impacts of differential regulation would mean that tackling nuisance calls, one of Ofcom's goals in its 2016/17 Annual Plan[38] and its Proposed Annual Plan for 2017/18[39], would be harder. Specifically, inefficient routing through multiple countries would lead to greater risk of call transit data "timing out" which makes call tracing for the purposes of enforcement more difficult (if not impossible), and would mean an increased workload for Ofcom's consumer protection team in issuing trace requests to multiple CPs, with greater risk that a trace could fail and a number could continue to cause consumer harm. CLI masking would make call tracing even harder, as it can again mean that they may be further call trace requests required, and can reduce the amount of useful data available to trace calls for enforcement purposes. All of the above suggests that there is a greater risk of both inefficiency and consumer harm from adopting differential regulation for FTRs from non-EEA countries.

[38] See paragraphs 3.22 to 3.23, and pages 24 and 34 of Ofcom's 2016/17 Annual Plan available at: https://www.ofcom.org.uk/__data/assets/pdf_file/0036/59499/annual-plan-2016-17.pdf
[39] See paragraph 3.21 and page 30 of Ofcom's Proposed Annual Plan for 2017/18 available at: https://www.ofcom.org.uk/__data/assets/pdf_file/0027/94743/Proposed-Annual-Plan-2017-18.pdf

- Differential regulation may also discourage callers from contacting the UK if FTRs ultimately increased and therefore the cost to the consumer (a possibility noted by Ofcom at paragraph 13.104). This could result in a lower volume of calls from non-EEA countries to the UK, as noted by Ofcom at paragraph 13.114. This could have a greater impact when thinking about large business consumers from non-EEA countries who deal with the UK – any reduction in the calls from these consumers could have a negative impact on, not only the revenue to UK CPs through FTRs, but also on the wider UK economy. We noted in our September submission that the U.S. Trade Representative (USTR) has already identified differential regulation for FTRs as a “foreign trade barrier”, and has already raised the issue both in 2015 and 2016.[40]

- Finally, we agree with Ofcom that differential regulation would mean increased complexity of regulation for FTRs. We consider that it would be disproportionate to introduce inefficient, burdensome and complex regulation in this area. Furthermore, it would not align with Ofcom’s bias against regulation, and against the principles of being not unduly burdensome, objectively justifiable, and proportionate.

68. Please see Annex 1 to this submission which is a confidential spreadsheet detailing the surcharges currently added on top of the regulated FTRs in other European countries which have a “differential regulation” regime in place. In particular, we would highlight the following from Annex 1:

    - [✂]
    - [✂]

69. In light of the above, the points raised by Ofcom in its consultation, and the points we raised in our September 2016 submission (and Annex 2 of this submission), we believe that Ofcom should continue with its provisional conclusion at paragraph 13.116 that all calls terminated in the UK should be subject to the FTR charge control, regardless of origin (including non-EEA countries).

[40] See Annex 2 of our September Submission, https://www.ofcom.org.uk/__data/assets/pdf_file/0037/94798/Verizon-Why-Charging-Higher-than-Regulated-Termination-Rates-to-Traffic-Originating-Outside-the-European-Economic-Area-EEA-is-Not-Justified.pdf . We have resubmitted this position paper as Annex 2 to this response.

Quality of service

70. We agree with the proposals in Section 9 to retain the current Quality of Service (QoS) requirements on WFAEL (including WLR) and the ISDNs, and to put in place the enabling framework for further QoS remedies to follow in the WLA market review.

71. However, we consider that BT's QoS continues to be a critical issue across all markets and we hope and expect to see ambitious proposals in the WLA market review in order to achieve the "step-change" in QoS promised by Ofcom in its annual plan and the Strategic Review of Digital Communications.

72. In particular, we continue to have issues with the current QoS regime, where Openreach is not subject to any meaningful pressure at the wholesale level and Ofcom has been slow to act to introduce minimum service levels and financial penalties. We note that despite our extensive response to the 2013 Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls Consultation, we have seen little meaningful improvement in QoS in the fixed access market.[41] We consider that QoS has been neglected for too long, and BT must be forced to make the necessary investments and be properly held accountable any further failings, in order to improve the outlook for its wholesale customers so all end users can get the service they deserve.

73. For example, compared to other incumbents in Europe (including those with similar FTTC rollout strategies such as Deutsche Telekom), Openreach is consistently worse in terms of provisioning and faults. Openreach has very long lead times for provision, and also is slow to give estimated dates for connection (often waiting until it is sure it can hit the deadline before confirming the connection date so in order not to miss its own target). Both of these mean that is harder for us to communicate with our customers about when they will receive their service, and makes it harder to hit our own internal targets.

74. As a global communications provider, Verizon collates data from all round the world – see Figures 2 and 3 below. [✂]

Figure 2

[✂]

[41] Consultation is available at: https://www.ofcom.org.uk/consultations-and-statements/category-2/fixed-access-market-llu-wlr-charge-controls , and Verizon response at: https://www.ofcom.org.uk/__data/assets/pdf_file/0033/79737/verizon.pdf

verizon✓

Figure 3

[✂]

Note to Figures 2 and 3: [✂]

75. We would be looking for Ofcom to introduce, as a minimum:

- Meaningful incentives to deliver a step change in QoS in all markets.
- Targets for real improvement with penalties for Openreach if these are not met.
- Greater transparency – for greater scrutiny of both Openreach's performance, and Ofcom's steps to address the issue of poor QoS in one consolidated place.

76. On a more general point, we would also like to see QoS remedies and policy initiatives for all markets contained in a singular QoS plan or roadmap rather than the current piecemeal approach.[42] This would improve transparency for improvements in QoS for industry, and enable greater clarity and scrutiny of any remedies or policies in place.

Fibre rollout

77. We consider that Openreach's choice of rolling out FTTC is an example how Openreach has in the past not consulted with industry on network strategy (industry would prefer fibre to the premise, but BT interests are best served by sweating legacy copper assets where they can still make high returns (e.g. G.Fast).

78. Given our business model of serving a small number of customers who have a large portfolio of sites spread out across the country, it is not feasible for us to build out network for those individual sites – it would not be economically viable. As a result, we are heavily reliant on the network of other CPs, and in most cases, heavily reliant on BT's network.

79. While increased FTTC roll-out is to be welcomed, we still have serious issues with the approach taken:

- Openreach cherry-picks easiest to reach areas or those favourable to BT Group first and coverage is therefore still very patchy. [✂].

[42] Currently, QoS material is spread across various market reviews, directions, and policy statements such as the Digital Communications Review (DCR). This leads to a lack of clarity.

- It also fails to be fully transparent in its costs and deployment plans. Therefore a patchwork of areas still not served (rural and non-rural), and there is insufficient information about plans for those areas still not covered.[43] Lack of deployment information in turn stifles local competition as BT's competitors fear "overbuild" by Openreach and provide no alternative.

- Business Parks on the edges of large towns have often been "missed" by roll-out (BT can charge businesses higher prices for expensive leased lines and has no incentive to roll-out FTTC here).

- There is still a large degree of dissatisfaction from SMEs on internet speeds (29% according to Ofcom's own research[44]).

80. Ultimately we cannot serve our customers with what they want, or give them any certainty on when the outlook will improve. BT has autonomy on how it conducts the roll-out. This not only makes it harder for us to ensure we deliver the best for our customers, but also limits the types of solutions we can offer e.g. VoIP. This has an impact on Ofcom's analysis of WLR and WCO, as discussed above.

81. The above issues need to be rectified. Openreach needs to be fully transparent on roll-out plans and we need the ability to influence these plans (either alone or in coalition) where it matters for us. Practically, we would like to see:

    - **Strategic independence**: Openreach's network roll-out should be determined completely independently of BT Group interests, and should serve both business and residential consumer needs. This means that rollout to business parks should be a priority.

    - **Financial independence**: Openreach should have complete control of its own finances, especially distribution of profit. Budget autonomy will help to ensure that Openreach profits are reinvested in extending and improving the network, rather than being used for other purposes. Openreach makes profits significantly in excess of its cost of capital while investment has (until recently) remained pretty flat since 2009. The current model allows Openreach to cross-subsidise riskier activities elsewhere in the BT Group.

[43] BT insisted on confidentiality clauses with local government to prevent disclosure of its implementation programme.

[44] Ofcom, January 2017, The SME experience of communications services: research report, https://www.ofcom.org.uk/__data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf

- **Transparency**: Openreach should become far more transparent. Improved industry consultation should include full transparency of costs and details of intended future roll-out so that we can give greater clarity to customers as to what is available and when. One way to solve this would be through a formal consultation process requirement. This would also provide an ability for competitors to influence Openreach's decisions, no matter their size. Verizon for example has relatively low order volumes, and therefore our voice is not as loud as some of the bigger players.

82. We hope that this can be largely achieved through the legal separation of Openreach, and that BT takes the opportunity to make concrete improvements needed. However, until these issues are resolved, there are implications for this current market review.

Verizon Enterprise Services
29 March 2017