



Internet Telephony Services Providers' Association

ITSPA Response to Consultation: Copper retirement – process for determining when copper regulation can be removed

About ITSPA

The Internet Telephony Services Providers' Association ("ITSPA") represents over 100 UK businesses involved with the supply of next generation communication services over data networks to industry and residential customers within the UK. Our traditional core members are VoIP providers. ITSPA pays close attention to both market and regulatory framework developments on a worldwide basis in order to ensure that the UK internet telephony industry is as competitive as it can be within both national and international markets.

Please note that certain aspects of the ITSPA response may not necessarily be supported by all ITSPA members. Individual members may respond separately to this consultation where a position differs. However, the ITSPA Council is confident that this response reflects the views of the overwhelming majority of ITSPA members.

A full list of ITSPA members can be found at <http://www.itspa.org.uk/>.

Introduction

As a trade association whose membership is almost exclusively involved in the production of over-the-top applications including next generation voice, we welcome any move by BT, Ofcom and others to promote better connectivity.

Our issue is not the destination; a fibre-enabled UK is a panacea successive governments have attempted to achieve and it is a project of increasing urgency as the UK risks being left behind in data infrastructure on the world stage. Our issue is with the course plotted in getting us there.

Specifically, ITSPA members are concerned as they are unable to reconcile the logic of this Consultation with the overall proposals that are still (we assume) being carried forward and the risks this introduces to businesses and the more vulnerable in society.

The Issue

In the Consultation, Ofcom make reference to several similar lines of thought, for example;

- At §3.10, *"We are keen to develop these circumstances on a rich and full base of evidence of practical, longer term issues in connecting premises to fibre"*
- At §3.11, *"So far, we have had limited information about the premises Openreach has been unable to connect. We expect that this is partly because Openreach is still relatively early in its build programme within our proposed timeline for the regulatory transition."*



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- At §3.14, “*This allows us time to consider a fuller set of data and information on fibre roll-out, and consult at a later date on the circumstances for exclusion and the information Openreach will be required to provide to Ofcom where premises are excluded.*”
- At §3.15, “*This approach gives us the opportunity to gather the necessary information and evidence, and to learn more about the challenges facing Openreach when it deploys its fibre network, so our decisions are better informed and intervention more targeted.*”

If we were to paraphrase this, we would say that Ofcom do not consider they have enough evidence or information prior to the completion of the Salisbury and Mildenhall trials (and potentially more of the PSTN closure) to be able to set certain *ex-ante* regulation.

What is sauce for the goose must also be sauce for the gander. If Ofcom are recognising an information deficit in relation to their ability to make this Significant Market Power Condition, then it stands to reason there must be at best a risk of, and at worst an actual, information deficit that affects the entire proposed *ex-ante* regime.

This is the basis of the concern of our membership; we are unable to reconcile how Ofcom can be confident in one respect of the evidence before it and so unconfident in another it reconsults on varying its plan.

At the core of this Consultation is the denominator in the equation that arrives at the 75% completion threshold that would lead to deregulation of the copper products at an exchange. We commend Ofcom for keeping an eye on the ability for BT to “game” the system. It is not a theoretical risk, BT has previous form in terms of charge-controlled baskets, the use of MBORC and other areas, which Ofcom have later intervened in.

However, there are far greater issues with the proposals not being reconsulted upon. The 75% threshold¹ is both arbitrary and unambitious. Indeed, we would like to see further information on how this figure has been set and would encourage Ofcom to push on Openreach for transparency on how the 75% figure will be assessed. For example, will the figure apply to both residential and business premises? Additionally, we would encourage Openreach to provide additional updates further to the 75% threshold being met – for example notification should be given for 80%, 85%, 90% and 95%.

There are two significant moral hazards that are presented to BT with a threshold below 100%.

1. Cherry-picking the prime residential premises.
2. Deploying fibre in such a protectionist way to protect its Ethernet (both its own managed service and its EAD product) and EFM revenues.

We consider each of these in turn.

Residential Premises

¹ While we note that the threshold itself is not subject to this Consultation, we would like to remind Ofcom of the decision in *British Oxygen Co Ltd v Minister of Technology* [1970] UKHL 4 when reviewing this response.



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It is likely to be a certain demographic group that would be early adopters of a BT fibre installation. We contend that one such group will be those residents in more affluent areas. Indeed, we would suggest that the actual rollouts of the likes of Virgin, Hyperoptic, BT with BDUK funding, and Gigaclear support the assertion that the best returns on investment follow such a deployment.

We would also imagine that the retail price point of fibre to the premises-based products, especially those that are gigabit enabled, will be more than their copper equivalents. All of this combined would suggest that an economically rationale profit-maximising entity would start with the areas most likely to take the most margin rich product and work backwards until the returns are no more than the cost of capital.

ITSPA members fear that the last 25% will be the demographic already most at risk of digital exclusion; socio-economic group DE1. After all, we already know that exchange-only lines, which have the worst properties for internet connections, are disproportionately present in social housing for example.

This issue becomes more acute when BT can declare it has “done the job” at just 75% coverage, and will have increased freedom to make things less favourable for some of the more vulnerable in society.

This group may well include those that have a life-or-death dependence on voice band data applications or other equipment that can only reliably operate over a copper product; the stop-sell proposal is a clear issue for those dependent on the copper functionality.

The unambitious target of 75% along with a lack of obvious safeguards to ensure that BT’s roll out is not demographically biased conspire to a risk of material adverse consequences.

Protectionism

Ofcom will be aware of the long-standing issue that ITSPA (and the major business focussed networks) have with business connectivity. Business parks, especially those in rural areas, the high street and other geographies continue to suffer a connectivity deficit. To gain a cost effective adequate broadband service, many of them are dependent on EFM – especially if they want to run multi-channel voice alongside business applications.

There is a moral hazard in removing regulation and potentially allowing BT to treat such installations as a cash cow. Just like their residential counterparts, there may be no effective supply side or demand side substitution to limit this potential abuse.

Some businesses take Ethernet, either as a managed service by BT, or via BT by a BT Wholesale customer, or by an alternative carrier that has unbundled an exchange. These are margin rich applications to BT which would be cannibalised by the PSTN replacement. This is another incentive that BT are presented with when planning their roll-out.

We welcome the notion that the threats are somewhat mitigated by limiting BT’s freedom to a stop-sell at 75%, with a maintenance of some charge controls until complete coverage. However, this does not address all the issues. BT’s voluntary commitments, for example, on WLR/ISDN only apply before the 75% threshold and are largely vacuous.



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ITSPA members have not received adequate assurances from BT on matters such as repairs to existing copper during the stop-sell period or adding additional lines. Is a business that hires one additional employee and needs one additional ISDN30 channel going to have to replace all their handsets and their PBX as a result?

Conclusion

There are sufficient unknowns in the entire PSTN closure, not just which premises BT will be able to exclude in its progress calculations. Some of these unknowns have real life consequences for businesses struggling in a post COVID-19 environment and for the most vulnerable in society.

While BT could game the subject matter of the Consultation absent the proposed change, there are very real risks arising from significant moral hazards on BT that strongly suggest that if Ofcom have uncertainty over any of the evidence at this stage, then Ofcom should wait before setting *any ex-ante* remedies relating to the PSTN closure.

The practical effect of this would be to extend the current market review remedies to such a time as when there is sufficient evidence available – as a minimum that is after the Salisbury and Mildenhall trials have been completed and the industry has had an opportunity to reflect on the experience.