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February 29, 2016

Via Electronic Filing
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

EX PARTE LETTER
RE: ***WC Docket No. 05-25, RM-10593, GN Dkt No. 13-5***

Dear Secretary Dortch:

On February 25, 2016 BT met with Commissioner O'Rielly and his chief of staff Robin Colwell. Sir Michael Rake, Chairman of BT plc, Bas Burger, President of BT in the Americas and BT Conferencing, Sheba Chacko, Senior Counsel and Head, Americas Regulation and Global Telecoms Policy, and Jennifer Taylor Hodges, Vice-President of Government Affairs for the US, represented BT in this discussion.

During this meeting, BT explained why special access services are key to the provision of managed network services to multinational customers and why a level playing is essential for the availability of choice and innovation to US consumers. BT also brought to Commissioner O'Rielly's attention the highlights of a study it filed with its reply comments on February 19, 2016, in the above-referenced docket which highlights are set forth in items 1-4 of the attachment to this letter. Item 5 of the attachment responds to claims that have been made that regulation in the UK has dis-incentivized investment.

If you have any questions regarding any matters discussed herein please contact the undersigned.

Sincerely,

SChacko

Sheba Chacko
Head, Americas Regulation and Global Telecoms Policy, BT Americas Inc.

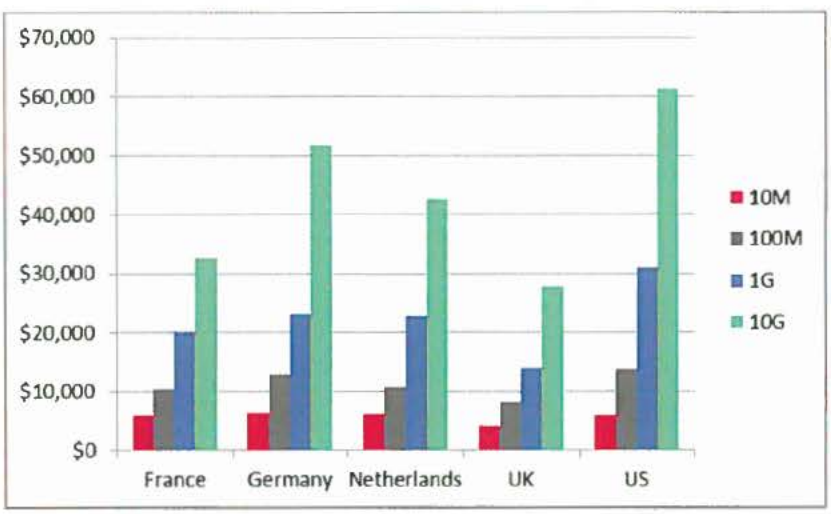
cc: Robin Colwell

KEY FINDINGS FROM WIK STUDY BENCHMARKING INTERNATIONAL REGULATION OF ETHERNET ACCESS SERVICES AND OUTCOMES FOR CONSUMERS

1. **The rigor with which regulators apply responsible regulation to enduring bottleneck business access services correlates to better outcomes for consumers**

- Of the regimes examined in the attached study (France, Germany, the Netherlands, and the UK) the UK has the strictest regime for regulating Ethernet and business access services generally, followed by the Netherlands, France and lastly Germany. The US does not apply economic regulation to the vast majority of Ethernet access services sold in the US despite dominance of incumbents over business access facilities. Interestingly this order of precedence largely correlates to outcomes observed for consumers in terms of lower Ethernet service prices paid by business consumers, an absence of onerous terms and conditions of service, entry level speeds being higher, and faster adoption of and migration to advanced technologies at higher bandwidths taking place in countries with stricter Ethernet services regulation.
- Furthermore, up to 1 Gbit/s, the main costs drivers of Ethernet services do not vary much over the different bandwidths, so while pricing is a commercial decision, the increases in prices between the various speeds of Ethernet access services in the US are much higher than the increases in prices between bandwidths in the countries analyzed in the attached study.

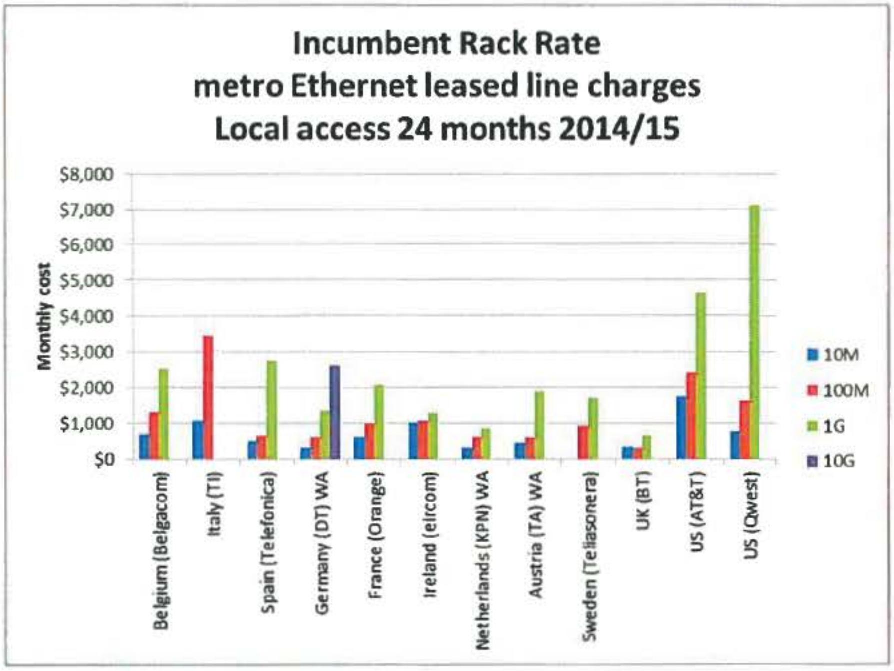
a) Ethernet Prices Paid by Consumers are Lower Where Dominance is Regulated



Average annual revenues (and hence prices paid) for metro Ethernet leased lines by speed (2013)

Source: WIK based on Ovum Ethernet Service Forecast spreadsheet to 2018

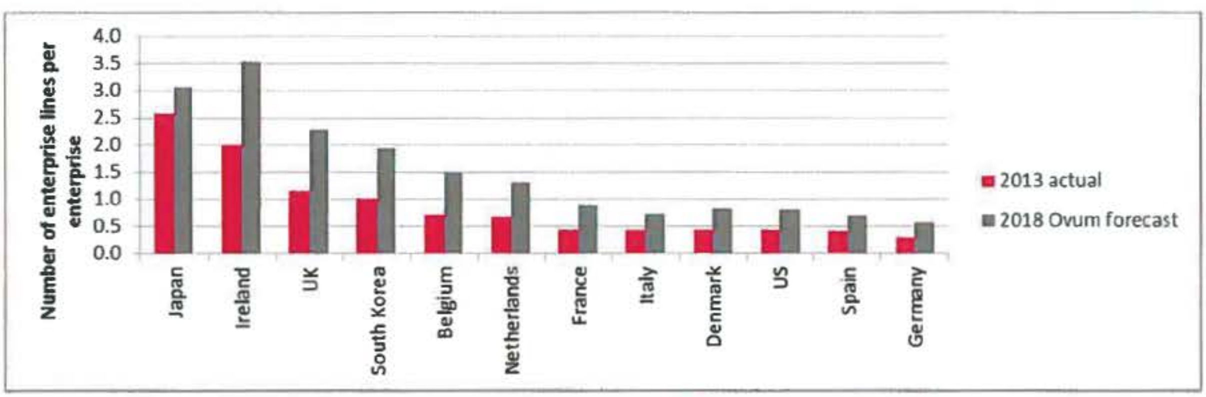
Incumbent rack rate metro Ethernet leased line charges 2014/15



Source: WIK (2014) Ethernet Leased Lines: a European benchmark for EU rates - European charges as of October 2014. Published rack rates for AT&T, Qwest downloaded November 2015. $1=€0.9. WA = 'Weighted Average.' European incumbent pricing based on a term of 24 months whereas US incumbent pricing is based on a term of 36 months.

b) Ethernet Take Up by Consumers is Higher Where Dominance is Regulated

Ethernet leased lines per enterprise (>10 employees)

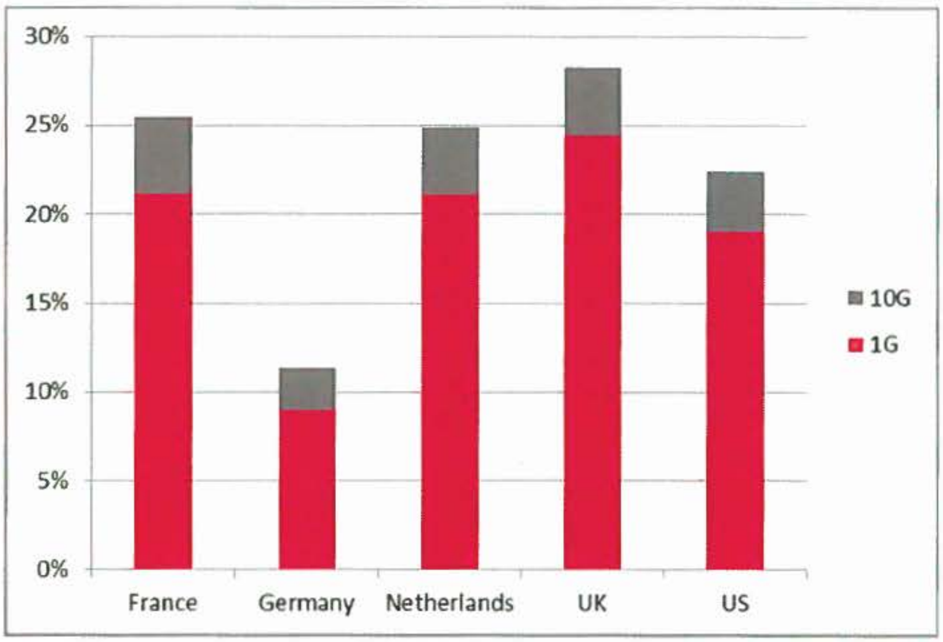


Source: WIK based on Ovum Ethernet Service Forecast spreadsheet to 2018

c) **Migration to Ethernet Services is Faster and Is Occurring at Higher Entry Level Speeds Where Dominance is Regulated**

- As of 2013, the majority of access services in the US were still legacy-TDM based, but converse was true in the UK where the majority of access services were Ethernet-based.
- Entry level speeds in the UK are 100Mbit/s and 1 Gbit/s whereas in the US the entry-level speeds consumed by consumers are equal to or less than 10Mbps or 10-50Mbps.

Proportion of Ethernet lines at 1G and above



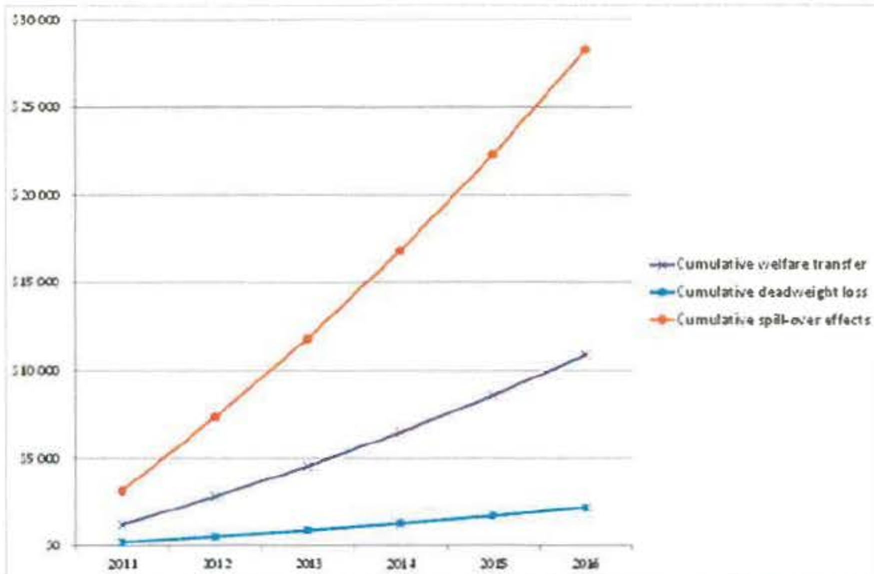
Source: WIK based on Ovum Ethernet Service Forecast spreadsheet to 2018

2. **Incumbents' can earn increasing revenues and maintain reasonable margins even if their prices are capped. BT's Ethernet service rates are cost-oriented and reduced year-on-year by the Retail Price Index-11%, yet BT's Ethernet services' revenues have increased year-on-year 2012-2015 and BT's margins have remained reasonable over this same time period.**

3. **Failure to cut incumbents' Ethernet and TDM access rates significantly will continue massive welfare transfers from US consumers to US incumbents in the billions of dollars in addition to prolonging deadweight losses and depriving the US economy of spill-over effects in the billions of dollars.**

   WIK estimates that from 2011 through 2016 welfare transfers from US businesses to primarily incumbent telecommunications providers via excessive rates paid would have been $10.9 billion, the deadweight loss, which is the reduction in US business' consumption of Ethernet access services because of excessive rates charged, would have been $2.2 billion, and spill-over effects into the broader US economy that were lost amounted to $28.3 billion

Cumulative welfare transfers, reduction in deadweight loss, and spill-over effects had the US implemented cost-based pricing for metro Ethernet in 2011 (unadjusted 2013 million USD) (2011-2016).



Source: Ovum data (2013), WIK/Marcus calculations

4. **Data from the mandatory data request corroborates what other regulators have found with respect to business access services -- access is an enduring bottleneck -- and there are more risks and costs associated with maintaining monopolistic market conditions than in addressing competitive bottlenecks through wholesale access regulation and appropriate price control mechanisms.**

Even twenty years after the enactment of the market-opening commitments of the Telecoms Act of 1996 US incumbents are still the only providers with connections into the vast majority of US business locations. This is incontestable evidence from the data collected by the FCC. This evidence is unsurprising given the experience of many other regulators including those in the UK, France, the Netherlands and Germany, which have all had to conduct regular market reviews of leased line access services over the last decade to determine where providers have dominance and apply remedies as appropriate. The experience from all these jurisdictions is that access is an enduring bottleneck. Furthermore, unless monopoly power is constrained by appropriate regulation, consumers, competitors and the broader economy pay the price.

5. Responsible regulation does not dis-incentivize investment

The US Telecom Association, which advocates on behalf of US incumbents, claims that "heavy-handed regulations" in the UK have deterred investment by BT. This is not borne out by what the FCC or Ofcom have said about the availability of and hence investment in superfast broadband in the UK for example. According to the FCC, "as of June 2015, next-generation access (NGA) coverage in the UK stood at 89 percent of households."1 According to Ofcom 152 Mbps cable and/or 76 Mbps fiber is available to 90% of UK premises.2 This is comparable or better than the deployment in the US which according to the FCC had 89% of all US households covered by high speed broadband as of the end of 2014.3 BT's and others' investments in the UK have resulted against the backdrop of regulation applied by Ofcom thus far. So the current level of regulation in the UK has not dis-incentivized investment in the UK.

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[2] See Ofcom's Communications Market Report, Aug 2015 at p 267.
[3] See FCC's International Broadband Data Report at p6.