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July 30, 2012

Via Electronic Filing

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

EX PARTE LETTER

RE: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25

Dear Secretary Dortch:

On July 26, 2012, BT met with Julie Veach, Acting Bureau Chief, Wireline Competition Bureau ("WCB"), Carol Mattey, Deputy Bureau Chief, WCB; Trent Harkrader, Division Chief, WCB, Telecommunications Access Policy Division ("TAPD"); Ernesto Beckford, Attorney Advisor, WCB / TAPD. Representing BT were Kim McMann, President of BT's Consumer Packaged Goods Division and head of BT's operations for the US and Canada, Sheba Chacko, Senior Counsel and Head, North American Regulation and Global Telecoms Policy, and Jennifer Taylor Hodges, VP, US Government Affairs.

BT explained that premature deregulation of market power in the special access services market is causing anticompetitive issues for BT in the downstream global managed network services market. BT asked for fairness, a level playing field and why BT cannot obtain in the USA the same remedies that Verizon calls for in the UK market – namely, prices "as low as possible in order to facilitate a genuinely competitive marketplace and drive down prices for customers," and "a clear set of remedies are in place for TI [legacy] products and for AI [Ethernet] products." *See Verizon Business Response to Ofcom - BCMR Call for Inputs (June 2011)*, available at http://stakeholders.ofcom.org.uk/binaries/consultations/bcmr-inputs/responses/Verizon.pdf. [1] Regulated TDM and Ethernet access at cost-oriented prices is what Verizon enjoys and presses for in the UK market, despite greater regulatory controls in the UK such as functional separation, and greater price competitiveness in the UK of business access

[1] Verizon's submission to the UK regulator, OFCOM, is attached hereto at Appendix 1 with explanatory notes.

products like Ethernet.[2] It is clear from Verizon's submission that the economic principles it favors in the UK are the ones that it believes promotes competition and hence should be the same ones that the Commission should apply in the USA.

BT also urged that the Commission undertake the following on USF contribution reform - (i) adopt the MPLS Industry Group's proposal as an interim measure, (ii) widen the USF contribution base by including broadband access revenues in the assessable base, and (iii) simplify and eliminate market-warping exemptions such as the systems integrator exemption.

Please contact the undersigned with questions.

Sincerely,

Sheba Chacko
Head, North American Regulation and Global Telecoms Policy, BT

cc: Julie Veach
Carol Mattey
Trent Harkrader
Ernesto Beckford
Angela Kronenberg

[2] *See Ovum , Enterprise Ethernet Services Forecast (Sept. 2010),* attached hereto at Appendix 2.

Appendix 1

Verizon Business Response to Ofcom - BCMR Call for Inputs (June 2011)

Explanatory Notes

The attached was submitted by Verizon in response to the UK regulator's call for comments on its consultation on the UK's business access services market (also known in the UK as the "Business Connectivity Market Review").[3] Verizon's arguments in the UK context, which are summarized below, have equal or greater applicability to the US market.

To the UK regulator, Verizon argues that "prices of core access products should be as low as possible in order to facilitate a genuinely competitive marketplace and drive down prices for customers." It states that, "the most effective way to achieve this is to ensure that operators who have SMP [significant market power] in the relevant markets adhere to strict ...[price] controls." It also states that, "the market will benefit if, in future, ...[price] controls are set over three years rather than four .... This would help to ensure that BT would not unfairly benefit to the same degree if it were able to "beat" the cap in later years of the charge controls, i.e. if it were able to reduce its costs below the level of the ... [price] control. Verizon also considers that it can only be to the benefit of the market concerned if it [BT] is subject to regulatory scrutiny on a more frequent basis."

On the subject of regulation of legacy and Ethernet access services, Verizon explains that regulation of both the Ethernet and legacy access products is necessary. It states that "Ethernet products are a newer technology and the AI [Ethernet] market remains less mature than TI [legacy]. From Verizon's experience it is clear that some data services customers may [now] find the relevant technologies interchangeable but this is not the case for others, most notably voice, where only TI [legacy] products are appropriate." Therefore, Verizon states that, '[i]t is of utmost importance that a clear set of remedies are in place for TI [legacy] products and for AI [Ethernet] products, regardless of whether they are considered to be in separate markets or not." It also states that "although TI [legacy] services are no longer attractive for new business offerings they do remain important due to the number of existing customers who are reliant upon these services. As such Verizon considers it is far too early to consider withdrawing regulation in this area at this time."

On the subject of cost orientation regarding business access services, Verizon is adamant that"cost orientation has left too much discretion to BT in the past, with highly detrimental

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[3] *Ofcom, Business Connectivity Market Review*, Consultation (June 2012) available at http://stakeholders.ofcom.org.uk/consultations/business-connectivity-mr/.

results for competition and consumers. Strict …[price] controls, thoroughly tested, should therefore be imposed in the future, and … they should be set over a shorter period of time.'

BT has also provided a glossary at the end of Appendix 1 to aid with understanding UK-specific terminology.

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Verizon Business Response to Ofcom -
BCMR Call for inputs
Non confidential version

Introduction

Verizon Business ("Verizon") is the global IT solutions partner to business and government. As part of Verizon Communications – a company with nearly $108 billion in annual revenue – Verizon Business serves 98 percent of the Fortune 500. Verizon Business caters to large and medium business and government agencies and is connecting systems, machines, ideas and people around the world for altogether better outcomes.

Verizon welcomes the opportunity to respond to Ofcom's call for inputs on the forthcoming Business Connectivity Market Review.

As this is a pre-cursor to Ofcom's consultation on the BCMR market review, Verizon has concentrated on highlighting the key issues and matters that Ofcom should focus upon in the forthcoming consultation. As such this submission does not advocate specific outcomes for all of the policy issues and concerns raised.

Response to Ofcom's questions

The following section of the response addresses specific questions raised by Ofcom in the call for inputs. For ease of reference, the question numbers quoted correspond to those utilized by Ofcom in the call for inputs document.

Question 1: Do you agree with our "no material change" considerations as set out above? In particular, do you agree with Ofcom that:
1.1 The characteristics of Traditional and Alternative Interface products are such that separate markets continue to exist for TI and AI products?

As a Communications Provider solely offering services to the business sector, wholesale access products are very important to Verizon and therefore the availability of such products, at competitive prices, remains critical to our business model. As such, Verizon holds the view that continued regulatory controls must remain in place to safeguard access to the necessary wholesale inputs and thereby support competition to the benefit of customers.

We now address the specific question regarding the market definition for TI and AI products. Verizon considers that a continued finding of separate markets would be the most appropriate definition and would result in greater simplicity and clarity in the regulation. Ethernet products are a newer technology and the AI market remains less mature than TI. From Verizon's experience it is clear that some data services customers may [now] find the relevant technologies interchangeable but this is not the case for others, most notably voice, where only TI products are appropriate. Verizon recognises however that there are valid arguments both ways in relation to this question. We are fully aware that in some EU Member States the regulator has already defined a single market. Ultimately, the market definition is of less significance than the remedies imposed. It is of utmost importance that a clear set of remedies are in place for TI products and for AI products, regardless of whether they are considered to be in separate markets or not.

In our view this is imperative not least to address the significant issue of the lack of a viable migration path from PPC to Ethernet. Currently, a practical migration path is not offered by BT, with the only process that is available requiring a cease of the existing PPC and then a new provision for the Ethernet circuit (cease and re-provide). Such a solution is impractical for business customers, who rely on highly robust continuity of service. Despite requests to BT to address this issue, BT has not engaged meaningfully with industry. The lack of a viable migration path acts to stifle competition as alternative operators are forced to pay higher charges for PPCs while being effectively blocked from taking advantage of the benefits associated with Ethernet. Ultimately this leads to consumer detriment, as there is less choice in the market at competitive prices. Ofcom should therefore make this issue a priority in its review.

1.2 We should retain the main bandwidth breaks for traditional interface products but combine 34/45 Mbit/s and 155 Mbit/s services?

Verizon would agree that the market conditions are such that these services should be combined. However, ✂

One area where Verizon disagrees with Ofcom's 'no material change' view is in relation to demand for bandwidth. It is clear that customers are demanding ever greater bandwidth and there is increased emphasis on the competitiveness of higher bandwidth products. Verizon therefore holds the view that Ofcom should consider whether there is SMP on products above 1G and if so it should introduce a charge control. As a general principle, Verizon considers that the prices of core access products should be as low as possible in order to facilitate a genuinely competitive marketplace and drive down prices for customers. It is clear that the most effective

way to achieve this is to ensure that operators who have SMP in the relevant markets adhere to strict charge controls.

There is a clear and pressing need for a low bandwidth Ethernet solution at the 2Mbit level. Fibre to the cabinet, one potential solution suffers from a lack of backhaul capability and is only suitable for unbundled exchanges. These limitations make this offering unusable for Verizon and therefore is another example of where competition continues to be restricted. One option would be to regulate EFM which we consider falls into the AISBO market.

1.3 VPNs continue to be outside the business connectivity markets? Please explain why.

Ofcom's view of 'no material change' for these services is reasonable and Verizon therefore agrees that VPNs should continue to fall outside of the scope of this review. However, this highlights the need for continued regulatory obligations to ensure the ongoing provision of leased line inputs at prices that allow the alternative operators to compete effectively in the market.

Question 2: What are your views on the extent to which broadband products can be used effectively for the delivery of business connectivity? How do you think this might change over the next 3 to 4 years?

Verizon holds the view that broadband products are vitally important and are of major significance to our business. They represent a cost effective alternative to PPCs in many business to business applications for new business offerings. However, there is a gap in the current portfolio of product offerings for CPs such as Verizon; what is required urgently is an uncontended backhaul solution. Unfortunately, Verizon does not consider that such an offering will be available in the foreseeable future.

So whilst broadband product take up will increase rapidly for new service provision, Verizon is concerned that the picture will not change significantly over the next 3 to 4 years in terms of migrations away from traditional services. This is due to the migration limitations referenced above in response to Q1.1, where the potential for upgrading the existing customer base is being suppressed, to the detriment of competition and customers. A viable, cost effective migration solution is required before broadband services can be considered as providing an alternative solution for the installed base. Again, this is an area that Verizon considers Ofcom should focus on in its review.

One particularly important issue here is the regulation of FTTC and other NGA broadband services. These are traditionally viewed from the perspective of retail

(consumer) broadband services, however the business impacts are at least as important if not more so. These products have the potential to be absolutely transformative for the UK, bringing services traditionally only available to large businesses in major conurbations to the whole county. This could genuinely change the economic outlook for some parts of the country. However, in order for this potential to be realised, there needs to be a proactive, dedicated regulatory workstream dealing with the creation of business-grade FTTC and FTTH products and, crucially, addressing the requirement for uncontended backhaul. We would strongly urge Ofcom to tackle these questions.

Question 3: What are your views on the existence of a break in the market for Ethernet services provided at speeds above 1 Gibt/s; and the extent to which WDM-based products are part of the business connectivity market? If you consider they are, do you think they are part of the Traditional Interface market, the Alternative Interface market, or constitute a separate market within the business connectivity market? How do you think this might change over the next 3 to 4 years, given the rate of growth in bandwidth demand?

Verizon considers that, although there is a demand for high bandwidth circuits, which will increase over the coming years, the major requirement in the immediate future will continue to be for circuits up to 1G. As such, Verizon considers that there is a need for a break in the market for Ethernet services above 1Gbit/s and that 1G services should be available on an EOI and transparent basis, especially for backhaul.

In relation to WDM based products, conditions have changed significantly since the last review. The differences Ofcom highlighted between WDM products and other TI/AI services during the previous review now no longer generally apply. As such, with the increasing importance of WDM products, it is appropriate for them to be included in this review. However, Verizon holds the view that the current conditions for the provision of WDM products is working satisfactorily and that regulatory intervention is not necessary.

Question 4: Do you consider that:
4.1 There is still a separate market for trunk segments provided with a Traditional Interface which warrants SMP assessment for the purpose of considering ex-ante regulation;

Verizon maintains that there is a separate market for trunk segments and that this does warrant SMP assessment. As Ofcom identifies, there has not been a significant change in this market since the last review and therefore there is no reason to consider that SMP no longer exists in this market or that competition would exist

without the appropriate regulatory remedies. It is clear from recent events that the need for ex-ante regulation remains vital to ensure ongoing competition.

4.2 The trunk routes identified in the last market review are still relevant to inform the definition of the trunk market; and

Verizon agrees with Ofcom's view that there has not been a significant change since the last review to warrant a further review of the trunk routes in relation to the trunk market.

4.3 The analysis and identification of Trunk Aggregation Nodes carried out in the last BCMR are still relevant for competition and market entry. Please explain why.
From Verizon's perspective, the reduction in the number of TANs as a result of the last review had a negative impact on competition as it resulted in an increase in costs due to the grouping of nodes and the resulted amendment of costs between trunk and terminating segments (the E & F charges).

Question 5: Do you think that separate markets could now exist for access and backhaul products? If you do, please explain why.

Verizon is not entirely clear exactly what this question means. However, on balance it holds the view that it is possible that separate markets could now exist for access and backhaul products. The changes in BTs access points which determine which elements (trunk or terminating segments) are purchased, along with a CPs network reach, means there could well be separate markets. Furthermore, the greater the disaggregation the greater the ability to ensure visibility of the actual cost of provision of a service. As such, Verizon would welcome such a review.

Question 6: Do you think that separate markets could now exist for broadband backhaul products and, separately, for mobile backhaul products? If so, please explain your reasons.

Verizon offers no response to this question.

Question 7: Do you think there are other sources of demand for symmetric broadband origination outside the services mentioned above which are relevant to our assessment? If so, please explain your reasons.

No

Question 8: Do you agree that the three parts of our analytical approach discussed in paragraph 1.31 are still relevant and continue to provide an effective tool for

assessing competitive conditions and for considering regulatory obligations? In particular, do you agree with Ofcom that:
8.1 the approach to identifying geographic markets used in the last BCMR is still appropriate, or is there any additional perspective that we should appraise to inform our competition assessment?

Verizon had reservations about the process Ofcom adopted during the last BCMR for deciding whether certain geographic markets were deemed competitive or not and those concerns remain. Ofcom's main determining factor was based on a CPs network reach rather than on actual competition. Verizon considers this was and remains a flaw. In addition, geographic markets add a layer of complexity and uncertainty which acts to deter competition.

8.2 the definition of the CELA from the last BCMR is still relevant? and

As per the response to Q8.1, no.

8.3 there continues to be a trunk market which is national in scope? Please explain why.

Verizon agrees the situation is unlikely to have changed much since the last review and to conduct the analysis again would only be a distraction.

Question 9: Do you think that Ofcom should consider the extent to which other local geographic markets exist in the UK outside the CELA, and excluding Kingston upon Hull? Please explain the reasons for your answer.

No. From our experience of the market it is clear that BT remains the dominant national carrier. As we question the validity of the finding that there is a separate market in CELA, we also hold the view that to look for the existence of other local geographic markets would be an unnecessary and fruitless exercise which would detract from the core issues Ofcom should consider in its review.

Question 10: In the last BCMR, we found no SMP provider in the market for high bandwidth 622 Mbit/s TISBO and high bandwidth AISBO provided at speeds above 1 Gbit/s in the UK and, separately, in Kingston upon Hull. Do you consider that deregulation has worked well in these markets? Do you think that the competitive conditions in these markets have improved, or do you consider they have deteriorated? Please explain, providing examples where appropriate, based on your company's first-hand experience.

Verizon holds the view that deregulation has not worked and that there is a lack of competition in this market. The current arrangement favours BT and therefore Verizon would urge Ofcom to conduct a thorough review. If, as we anticipate, Ofcom determine that BT does have SMP, then Ofcom should implement a suitable remedy, which given current market conditions is likely to be a charge control.

Question 11: In the last BCMR, we also found that BT had no SMP in the CELA for the provision of wholesale leased lines (PPCs) at speeds above 2 and 8 Mbit/s and up to, and including, 155 Mbit/s. Do you consider that deregulation has worked well in these markets? Do you think that the competitive conditions in these markets have improved, or do you consider they have deteriorated? Please explain, providing examples where appropriate, based on your company's first-hand experience.

Despite concerns over the methodology employed to define the CELA, Verizon would agree that competitive conditions in the CELA have improved. However, we remain of the view that BT does still hold a competitive advantage.

Question 12: In the last BCMR, we found that BT had SMP in the market for analogue and low bandwidth digital retail leased lines and imposed SMP obligations on BT as a result. The remedies were designed to ensure the continued availability of these legacy products at reasonable prices as well as to provide transparency and regulatory certainty to BT's competitors in this market. Do you have a view as to how these remedies have worked? Do you consider that we should continue to impose regulatory obligations on BT in this market if we were to find SMP or we should rely on wholesale remedies alone? Please explain your answer.

Yes, it is important that Ofcom maintains regulatory obligations on BT in this market. Wholesale remedies alone would not provide sufficient constraints on BT, and the removal of these obligations would act to the detriment of competition and end-users.

Question 13: What are your views on how the current remedies have worked in promoting downstream competition?

The current remedies have been important and have, to some degree, helped promote competition, especially where charge controls have been imposed. In the absence of charge controls BT has maintained a significant advantage, so there is a clear requirement for the maintenance of the current charge controls, as well as additional charge controls on higher bandwidth services, where currently there are none. Verizon considers that charge controls, while considered a relatively intrusive remedy, are necessary in these markets in order to maintain effective competition. Given the disputes that have stemmed from BT's "Basis of charges" cost orientation obligations, it is clear that simply imposing cost orientation obligations is not always

sufficient to ensure that competitors are not overcharged for wholesale services. In addition, where overcharging has occurred, BT's competitors will have been restricted during the relevant period from investing or expanding to the extent they may have been able to if they had been charged fairly in the first place. This would not be the case if a correctly calculated charge control were in place. A charge control regime also provides greater certainty to the industry, which is very important in planning and forecasting future growth.

Question 14: How effective have the current remedies been in addressing the market failures identified in the last BCMR and in supporting competition and market entry? Please elaborate with some examples.

Verizon contends that there is clear evidence supporting the view that the requirement for regulation of PPC wholesale prices has not diminished since the time of the last review. This is evidenced by the high wholesale charges for PPCs in the UK, charges at a level which have consistently been amongst the highest of EU member states for the period from the last review to the present. This, in our view, reflects poorly on the effectiveness of the current regulatory remedies imposed on BT for PPCs and as a result the UK has not reaped the benefits of a more competitive market.

Question 15: How effective have the regulated access products been from an operational perspective? Please provide examples where appropriate to illustrate your answer.

Although the regulation has shown some price reductions for certain products, Verizon does not believe it has gone far enough. PPCs are still very expensive; in fact, the last price change saw a significant increase, ✂ ✂, (✂).

Question 16: Do you consider that the current set of remedies should be simplified? If so, how?

Yes, simplification would aid monitoring and enforcement of obligations. Cost orientation suffers from issues of perspective and transparency, as witnessed by a number of disputes in recent years. Strict charge controls at least have the benefit of clarity and certainty so would be more appropriate. Verizon also considers that the market will benefit if, in future, charge controls are set over three years rather than four (in line with the forthcoming requirement to conduct market reviews every three years). This would help to ensure that BT would not unfairly benefit to the same degree if it were able to "beat" the cap in later years of the charge controls, i.e. if it

were able to reduce its costs below the level of the charge control. Verizon also considers that it can only be to the benefit of the market concerned if it is subject to regulatory scrutiny on a more frequent basis.

Question 17: Do you consider that the scope of the charge control was correct in terms of the products and services subject to the control? Has the charge control been effective? Looking ahead, what changes, if any, do you consider would be appropriate for any future charge control(s)?

As per the response to Q16, Verizon does not consider the scope of the charge control was correct, as demonstrated by the number of disputes Ofcom has needed to resolve where charge controls were not the chosen remedy. Ofcom should consider applying charge controls to all those products and services that have been subject of disputes in order to provide the whole industry, including BT, certainty that the charges set have been arrived at in a fair, transparent and independent manner. Verizon considers that cost orientation has left too much discretion to BT in the past, with highly detrimental results for competition and consumers. Strict charge controls, thoroughly tested, should therefore be imposed in the future, and as mentioned in the response to Q16 they should be set over a shorter period of time.

Verizon has serious concerns about how BT calculates the costs of construction and whether its calculations are (a) cost oriented and (b) based on efficient product design. In one recent case, BT-estimated costs at the start of construction were increased by a factor of 10 by the time that Verizon received the final total. Given its experience in this area, Verizon would question whether BT construction costs are reasonably incurred and cost oriented. BT presents its charges to Verizon (and no doubt other operators) for such work in an opaque manner which means that there is little if any scope to challenge how the costs were arrived at. We therefore strongly urge Ofcom to look at whether BT is fully transparent and can be held properly to account when calculating its costs.

Question 18: What are your views on the role that passive remedies could play in this market for the promotion of downstream competition? In your view, what implications might adoption of passive remedies have on the provision of active remedies?

Passive remedies could have a significant, positive, impact on downstream competition. In particular Dark Fibre, which is not currently available from BT, if it were accessible, would greatly assist in opening up the market by reducing costs and increasing competition. Similarly, mandating the sharing of Duct access would have a similar impact of reducing costs and hence increasing competition. However, the important point to note here is that such access must be on a fair and reasonable

(i.e. cost effective) basis. If that is not the case, then the remedy becomes worthless as BT's competitors will simply not have the incentive to take advantage of it. We understand that Ofcom has already received representations on the apparent shortcomings of the duct and pole sharing remedy.

It is essential that services using passive access remedies are allowed to be used for business connectivity.

Question 19: Have business connectivity markets changed since the last review? If so, how? How might business connectivity markets develop during the next four years?

Verizon holds the view that, for the B2B sector, apart from the drive for greater bandwidth the market hasn't changed very much since the last market review. There is still a great reliance on PPCs to ensure the delivery of the required QoS demanded by businesses. It is likely this will continue to be the case for the foreseeable future, in the absence of a viable migration path to newer products such as Ethernet.

Question 20: Do you have any comments about arrangements for withdrawing regulations as TI services reach the end of their lives?

As mentioned throughout this response, although TI services are no longer attractive for new business offerings they do remain important due to the number of existing customers who are reliant upon these services. As such Verizon considers it is far too early to consider withdrawing regulation in this area at this time.

Question 21: Are there any other issues or views you would like to put forward that are not mentioned in this paper?

Verizon has nothing further to add at this time.

Verizon Business
June 2011

Glossary

AI, AISBO or alternate interface symmetric broadband origination – Refers primarily to Ethernet access and backhaul services from a customer's premise to a competing provider's point of connection ("POC").

CELA – Central and East London Area where Ofcom found in 2008 that market for certain business access service products was competitive.

Charge control – price control.

CP or OCP – Competing provider or other competing provider.

EOI – equivalence of input is the super-nondiscrimination requirement that is a feature of the functional separation regime in the UK.

Leased line – A dedicated circuit connecting one customer premise to another.

Partial Private Circuit ("PPC") – Part of a leased line consisting of: (i) local loop from the customer premises to the nearest local serving exchange; and (ii) backhaul between exchanges to a point of handover (POH) connecting to a competing provider's network. A PPC may also include an intercity trunk connection if the point of handover is located in a city other than that in which the customer's premises is located. An intracity PPC is equivalent to a special access circuit.

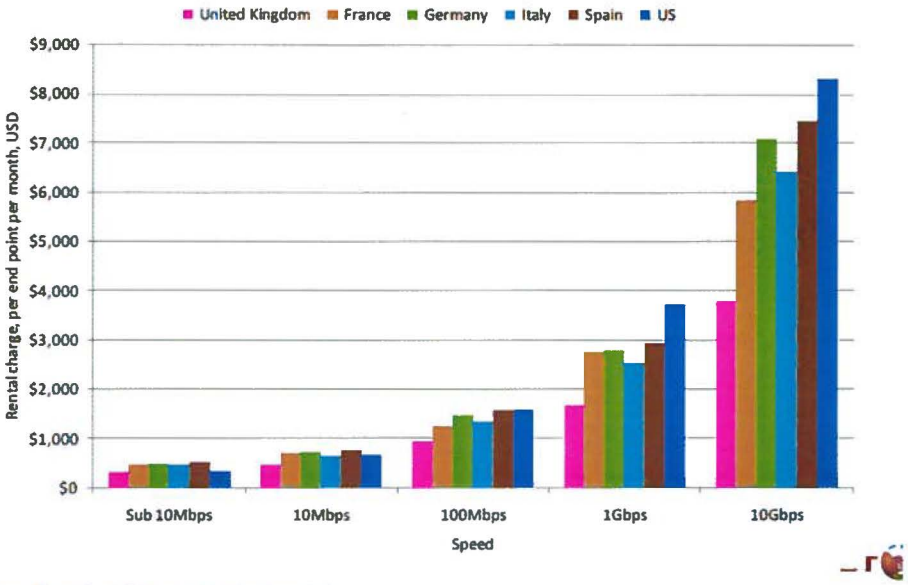
SMP – significant market power.

TI, TISBO or traditional interface symmetric broadband origination – Traditional interface services that are legacy analog and digital business access services ranging from 64 kbps to 622 Mbps. They provide symmetric capacity from a customer's premise.

Appendix 2

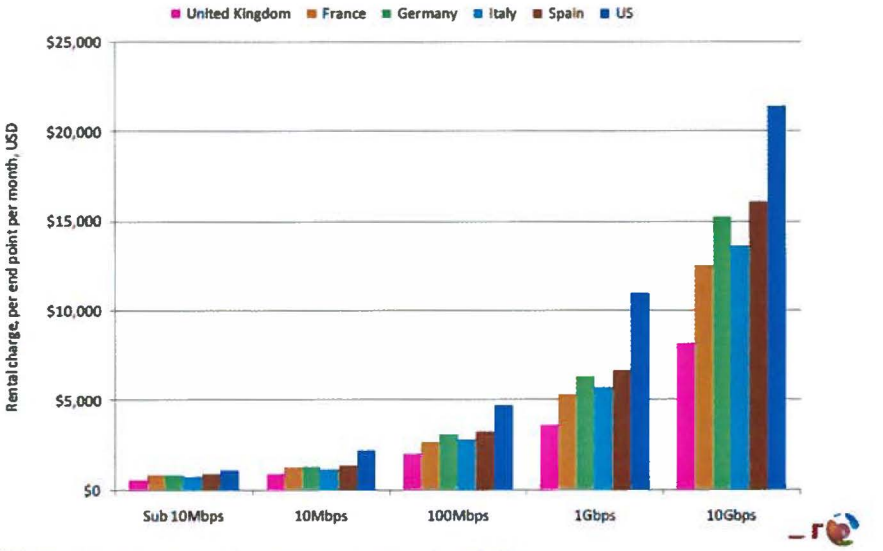
UK has lower Ethernet prices than USA

Metro Prices



Enterprise Ethernet Services Forecast, September 2010, Ovum

National Prices



Enterprise Ethernet Services Forecast, September 2010, Ovum. For national circuits, the "end point" is the port plus half of the distance of the cross-country circuit