



*Proposed Amendments to
the Central List Regulations:
National Non-domestic Rates
and Local Loop Unbundling*



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and Local Loop Unbundling*

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Proposed Amendments to the Central List Regulations

Introduction

1. This consultation document invites comments on proposals for the listing and occupation for non-domestic rating purposes of fully unbundled local loops in the telecoms network in England. The arrangements will be implemented through amendments to the Central Rating List (England) Regulations 2005 (SI 2005/551) (as amended) (“the Regulations”).
2. This document proposes these arrangements should take effect from 1 April 2008 and is in two parts:
 - a consultation paper setting out the proposals
 - a partial regulatory impact assessment (RIA).
3. The consultation paper should be read alongside the partial RIA which contains a more detailed discussion of the issues and the options. The options we have identified are as follows.

Option 1: Do nothing

Option 2: Designate local loop unbundling operators on local lists

Option 3: Designate local loop unbundling operators on the central list

Option 4: Maintain British Telecommunications PLC (“BT”) as the rateable occupier of fully unbundled local loops.

4. **The Department’s preferred option is for BT to remain in rateable occupation of fully unbundled local loops: option 4.**

Partial RIA

5. The partial RIA, which sets out in more detail the costs, benefits and risks of the proposals, is at Annex A. It was prepared prior to the recent changes in the Impact Assessment process and therefore does not follow the new template. Following consideration of responses to this consultation, the partial RIA will be updated and a new format Impact Assessment will accompany any subsequent legislation.
6. You are invited to comment on the partial RIA as well as the proposals set out in this consultation paper.

Invitation to comment

7. Comments on this document, by e-mail or in writing, should be sent to;

Communities and Local Government
Business Rates and Valuation Division
Zone 5/B1
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Bressenden Place
London
SW1E 5DU

e-mail: localloops@communities.gsi.gov.uk

Fax: 020 7944 4099

8. The closing date for responses is 16 October 2007.
9. When commenting, please make clear whether you represent any organisation or group, and in what capacity you are responding. A summary of responses to this consultation will be published by 9 January 2008 on the Communities and Local Government website.
10. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
11. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
12. The Department will process your personal data in accordance with the DPA and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.
13. This consultation document has been produced in accordance with the Government's Code of Practice on Consultation. The principal criteria governing this Code are at Annex B.

Background

14. Since August 2000 customers have been able to obtain telephone and broadband services from operators other than BT, using the telephone network provided and owned by BT. This is achieved by connecting the “local loop” (copper wires) that connects BT’s network from the local BT telephone exchange to the customer’s property to another operator’s network. Customers can choose an operator other than BT to supply broadband services only or broadband and telephone services. The technical name for this process is local loop unbundling and the operators other than BT that supply telephone and broadband services to customers using BT’s network are known as local loop unbundling operators.
15. It is important to note there are two forms of local loop unbundling. If an operator other than BT is providing broadband and telephone services to a customer, this means the local loop has been “fully” unbundled and the line is physically taken over by the local loop unbundling operators. Where an operator other than BT is providing just broadband and BT continues to provide telephone services to the end user, this means the local loop has only been “partially” unbundled and the local loop remains physically connected to and part of BT’s network.
16. This consultation is concerned only with “fully” unbundled local loops. BT is considered to occupy partially unbundled loops, based on the principles of rateable occupation.
17. Local loop unbundling has implications for the way in which business rates apply to BT’s network. This is because the occupier of a property, not the owner, is ordinarily liable to pay business rates on their property.
18. Unless legislation specifies otherwise, if an operator other than BT supplies both broadband and telephone services to a customer, ie the local loop is fully unbundled, it is that operator which occupies the local loop and the local loop is not part of BT’s property (or “hereditament”) in business rates terms.
19. At present, however, the Regulations specify that all local loops are treated as occupied by BT and are included in its centrally listed hereditament in England¹. BT is therefore liable to rates for local loops irrespective of the identity of the local loop unbundling operator. Under this arrangement BT is able to charge, at a level that reflects the costs it incurs, local loop unbundling operators for the service of providing unbundled local loops. Business rates are one such cost and are therefore recoverable in the cost-oriented charges. The Regulations provide that fully unbundled local loops will continue to be treated as part of BT’s hereditament until 31 March 2008. These arrangements were put in place by the Secretary of State, in exercise of powers conferred by sections 64 and 65 of the Local Government Finance Act 1988.
20. Aside from the Regulations, the Secretary of State’s powers to group together hereditaments and designate a person as being in occupation of the combined single hereditament have been exercised in relation to certain caravan sites and other telecommunications apparatus. See the Non-Domestic Rating (Caravan Sites) Regulations 1990 (SI 1990/673) and the Non-Domestic Rating (Telecommunications Apparatus) (England) Regulations 2000 (SI 2000/2421) respectively.

¹ Local lists are compiled by the valuation officer for the billing authority in which the non-domestic hereditament is situated; the central list is compiled by the central valuation officer and has existed in England since 1990 for the purposes of rating large networks which would not sit comfortably on local lists.

2005 Consultation

21. During 2005, the then Office of the Deputy Prime Minister consulted on proposals for a short term solution for the rating treatment of fully unbundled local loops, which would come into force on 1 April 2006. The Government proposed continuing to treat BT as the occupier of fully unbundled local loops and also invited initial comments on possible options for the long term arrangements to inform further consultation. A copy of the summary of responses to the previous consultation is attached at Annex C.
22. Following the 2005 consultation, the Government decided that BT would remain in rateable occupation of all fully unbundled local loops in England until 31 March 2008.
23. This consultation paper invites views on the long term arrangements for rating fully unbundled local loops which will need to be put in place with effect from 1 April 2008.

Approach to the long term solution

24. The central issue in determining the long term solution to the rating of fully unbundled local loops is whether the Secretary of State should exercise her powers to determine special arrangements for their listing and occupation (i.e. options 2, 3, and 4 (see paragraph 3 above)) or whether the usual arrangements should apply (i.e. option 1, and see paragraph 18 above).
25. Work since the 2005 consultation has clarified the factors on which the Secretary of State believes that decisions on the long term arrangements for the listing and occupation of fully unbundled local loops need to be based.
26. These factors do not include the charges or potential changes in the charges paid to BT by other operators for the fully unbundled local loops they are using to supply broadband and telephone services to customers. These charges will continue to be regulated by Ofcom, discharging its statutory functions for regulating the telecoms industry.
27. The Government acknowledges that potential changes in costs are a key issue for businesses but this does not mean that the Secretary of State should exercise her powers under sections 64 and 65 of the Local Government Finance Act 1988 for the purpose of producing a particular cost outcome for either BT or the other operators. The proper basis for deciding the long term arrangements is what would deliver the most cost-effective, practical and sustainable arrangement for administering the rating of fully unbundled local loops.
28. It is also important that the long term solution is able to cope with external changes, for example, in the EU's regulation of the industry.

Objective

29. The long term arrangements for the listing and rateable occupation of fully unbundled local loops need to:

- cater for the large number of frequent changes in the operators that are using fully unbundled local loops to supply broadband and telephone services to customers
 - minimise administrative costs and burdens for stakeholders including billing authorities and the valuation office agency
 - allow independent valuation officers to carry out their statutory duties.
30. The arrangements must also recognise the independent regulator's role in regulating the telecommunications market.

Key considerations

31. Bearing in mind the overall objective of this consultation exercise, there are a number of factors that help to determine what we consider to be the most practicable long-term arrangements for local loop unbundling. These focus on the potential impact of different options on the principal stakeholders in local loop unbundling and can be addressed under the following main headings:
- Growth of local loop unbundling markets;
 - Changes in occupation;
 - Valuations; and
 - Appeals.

Growth of local loop unbundling markets

32. The UK Broadband market is one of the most competitive in the world. Consumers enjoy a wide choice of broadband providers and low prices. In deciding the best way forward on local loop unbundling, a key factor is the extent to which the local loop market is expanding. In June 2005, it was projected that approximately 1.5m local loops would be unbundled by the end of 2007². However, an Ofcom report³ published in April 2007 states that by February 2007 there were over 1.7 million unbundled local loops⁴ in the UK, compared to only 365,000 at the end of 2005. Over 1,300 of BT's 5,600 exchanges were local loop unbundling enabled, extending the availability of unbundled local loop based services to two-thirds of the UK population. One factor considered to be stimulating sector growth over the past year was the introduction of a new local loop unbundling regulatory regime following Ofcom's Strategic Review of Telecommunications in 2005. The rate at which the 1.5m milestone has been surpassed suggests the local loop unbundling market is expanding rapidly.
33. If unbundling continues at the current rate, the permanent arrangements to replace those coming to an end on 31 March 2008 will need to be able to cope with the rapid

² Ofcom: Broadband Regulation statement, 30 June 2005

³ *The Communications Market: Broadband, A Digital Progress Report*. See: http://www.ofcom.org.uk/research/cm/broadband_rpt/broadband_rpt.pdf

⁴ This figure includes both fully and partially unbundled local loops

number of changes to occupiers of loops and the potential for a considerably higher number of 'new' hereditaments on rating lists as more and more fully unbundled local loops are separated from BT's hereditament. If all unbundled loops were considered to be occupied individually by local loop unbundling operators and listed on local rating lists, this would significantly increase the current total estimated number of hereditaments from 1.7m⁵. This is because each of the fully unbundled local loops could represent a single hereditament. As there are approximately 28.9m loops in the UK, the potential implications for the administration of the business rates system as a whole are clearly enormous.

34. Although it is difficult to estimate them exactly, the costs falling on local authorities and the VOA in managing the system with such a huge potential number of hereditaments would be substantial and wholly disproportionate. The impact of these increased costs may also fall disproportionately on particular local authorities depending on the demand for broadband/telephone services in their areas. Local loop unbundling is likely to be more widespread in the areas where the customer base for broadband services is greater. Data from the Office of National Statistics (ONS) show that in 2006 the South East had the highest percentage (48 per cent) of households with access to broadband internet⁶. As more loops are unbundled, the greater the pressure there would be on local rating lists in these areas.

Changes in occupation

35. In addition to its rapid expansion, the local loop unbundling market is fluid and dynamic and is led primarily by consumer demand. It is the consumer of local loop unbundling services who decides when a loop should be unbundled. For example, customers who decide they no longer want broadband from a particular internet service provider (ISP) are able to switch – contract permitting – to another provider of their choice. In rating terms, unless special arrangements are made, the occupier of the loop will change when the customer switches their broadband/telephone provider. Recent figures published by USwitch⁷ show that more than 234,000 people move ISP every month⁸. These figures could be taken as an indication of how frequently changes in rateable occupation occur, although the 234,000 figure will include dial-up customers and also those customers receiving services through partially unbundled local loops where local loops would not be separated from BT's hereditament. Nevertheless, the high figure does indicate the flexibility available to consumers in deciding which company they receive their internet and telephone services from, and the extent to which this choice is being exercised.
36. At present, the frequent changes in customers' broadband and telephone service arrangements impose a relatively low administrative burden on those managing the rating system. This is because all loops in England are currently contained in BT's single central rating list hereditament and any switch by a customer between service providers has no effect on BT's business rates liability. There is therefore no requirement on the central billing officer to issue a new rate demand every time a customer changes service provider.

5 Local Government Financial Statistics England, 2007.

6 First Release: *Internet Access, Households and Individuals*. ONS website

7 <http://www.uswitch.com>

8 <http://news.bbc.co.uk/1/hi/technology/6175983.stm>

37. By contrast, changes between service providers would result in significant associated administrative burdens for VOA, ratepayers and local/central billing officers if all unbundled local loops were placed on local lists (under option 1 or 2 (see paragraph 3 above)) or if the unbundled local loops occupied by each local loop unbundling operator were identified separately on the central list (option 3). In either scenario, each list alteration would require a new bill to be sent to the ratepayer.
38. So far as BT is concerned, the Government's understanding is that the administrative burden associated with local loop unbundling will continue to exist for BT regardless of whether it continues to be designated as the rateable occupier of fully unbundled local loops, because BT has to ensure the cost-oriented rental charge associated with the process of unbundling local loops is paid by the relevant local loop unbundling operator.
39. In 2006/07, the total cost to local authorities for administering the business rates system as a whole was approximately £83m, averaging £235,649 per authority. These costs would increase considerably if local loop unbundling operators were in occupation of loops and listed on local rating lists, under options 1 and 2; each new unbundled loop would have to be identified and would require billing authorities to continually adjust local loop unbundling operators' liability and send out revised bills. There would be a corresponding increase in enforcement burdens. It is very difficult to estimate how much costs would increase for billing authorities, particularly as there are no figures available to show how many of the estimated 1.7m unbundled loops have been fully unbundled. However if we assume that all the 1.7m unbundled local loops were fully unbundled and separately listed on local rating lists, as under option1, the number of hereditaments would double to 3.4m. On this basis the cost of administering the system, which currently stands at £83m per year, could as much as double to £166m. This shows that the costs increases could be considerable.
40. Similarly, identifying local loop unbundling operators separately on the central list (option 3) would increase the administrative burdens and costs for central Government (as billing authority for central list ratepayers) and the VOA, in terms of identifying each new unbundled loop, amending the relevant central list entries, reassessing rates liability and issuing revised rates demands. Again it is difficult to estimate how much this increase would be but it clear from the USwitch figures (more than 234,000 people moving ISP every month) that the number of revised rate bills issued by central Government would be likely to increase considerably given the frequency with which loops are expected to change occupation.
41. There are 94 hereditaments on the central rating list and because of the nature of the centrally listed hereditaments, changes in occupation happen fairly infrequently. However, when changes happen it is often difficult for the central valuation officer and the Government to acquire the correct information to ensure ratepayers are billed correctly. This information gathering process can be time consuming particularly when trying to establish the exact date rateable occupation changed hands. In this situation there is no incentive on the new occupier to notify the central valuation officer of the change.
42. In addition, any scenario that resulted in the recalculation of rates liability would also increase the burden on ratepayers who would have to handle the increased number of business rate bills.

Valuations

43. Under the current arrangement, BT's hereditament is valued as a whole with local loop unbundling operators contributing to BT's business rates liability through the annual local loop unbundling rental charge. This arrangement is considered to be administratively straightforward and would continue under option 4.
44. If option 1 is adopted and local loop unbundling is removed from BT's assessment and listed individually, each fully unbundled local loop would constitute a single hereditament which would have to be valued individually by the valuation officer. BT's hereditament would have to be constantly reassessed each time a local loop was fully unbundled and the rating assessments of local loop unbundling operators involved in the unbundling process whether on local lists, as under options 1 and 2 or on the central list, as under option 3, would also have to be reassessed frequently to ensure ratepayers' assessments were correct. The basic extra costs for the VOA would be the cost of identifying when and where unbundling had taken place and making the changes to central or local list entries.

Appeals

45. Ratepayers may appeal to their local valuation officer – known as 'making a proposal' – against the rateable value of the hereditament shown on the local rating list. Similar arrangements apply to properties which appear on the central rating list.
46. Under the present arrangements, BT – as the rateable occupier of their hereditament on the central rating list – may make proposals under the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2005 (SI 2005/659), as amended. They may, for example, make a proposal against the rateable value of their central list hereditament, or against an alteration to that rateable value made by the central valuation officer. There are also other grounds on which BT may make a proposal. They are, however, confined to making proposals against their single listed hereditament which encompasses all local loops, whether or not unbundled. It is not open to them to make proposals against the rateable value of their single listed hereditament as a result of progressive unbundling of loops.
47. Placing fully unbundled local loops as separate hereditaments on local lists (option 1), however, has the potential to have a significant impact on the appeals system. While this may be unlikely to occur in practice, it remains a theoretical possibility that proposals could be made against each of the individually listed unbundled local loops. The local loop unbundling operators occupying the unbundled local loop could make a proposal against the rateable value of that loop, while BT could make one against the valuation of its remaining hereditament. Any subsequent change in occupation from one operator to another would provide the opportunity for a fresh right of appeal. In addition, alterations to the rateable value of a loop by a valuation officer could give rise to further proposals.
48. Furthermore, proposals affecting individual fully unbundled local loops could lead to the risk of local loop unbundling operators paying different amounts for identical types of hereditament. This could be viewed by Ofcom and the European Commission as having a negative impact on competition in the market as the tax liability for unbundled local loops would be inconsistent throughout the market. This problem does not exist under

the current arrangements because BT is liable for the rates on all unbundled loops and all local loop unbundling operators pay the same annual rental charge for the loops they unbundle.

49. If fully unbundled local loops occupied by local loop unbundling operators were aggregated and listed on either local lists or the central rating list (options 2 and 3) the potential for a significant rise in the number of proposals would still exist. This is because even with aggregated assessments the occupiers of loops will continue to change on a regular basis and therefore valuations would have to be continually reassessed. The continually changing assessments would trigger the right to make a proposal, and thus give rise to appeals, and potentially to inconsistent tax liability between the aggregated hereditaments of local loop unbundling operators. BT would also have the right to make an appeal each time a loop was fully unbundled, therefore doubling the potential impact.

Further possible measures to supplement the preferred option

50. The Government's preferred option is for BT to continue as the rateable occupier of fully unbundled local loops for the reasons outlined above. However, another issue connected to the occupation and rating of fully unbundled local loops is that when a loop becomes fully unbundled, BT is not able to make a proposal to have its rateable value altered as a result in the same way it would be able to if local loops were not included as part of its central list hereditament. This is because unbundling involves nothing that clearly constitutes a material change of circumstances (MCC) for rating valuation purposes.⁹
51. Of itself, the preferred option does not change this and the Government considers the following possible supplementary measures would provide BT with the opportunity to make MCC proposals in respect of LLU while remaining in occupation of the loops.

Splitting BT's hereditament

52. The first possible measure involves splitting fully unbundled local loops from BT's central rating list hereditament and designating BT as occupier of the new fully unbundled local loop hereditament. Splitting fully unbundled loops from the rest of BT's network will provide BT with the opportunity to make proposals as a consequence of progressive unbundling. The effect of progressive unbundling on the value of BT's core network could be taken into account because the unbundling process would involve a change in the "occupation of other premises". At present, unbundling is not considered a material change because all local loops are occupied by BT for rating purposes.
53. Under this supplementary proposal, it would not be possible for individual local loop unbundling operators to appeal against the valuation of the unbundled local loop hereditament.
54. If BT's hereditament were to be split, Ofcom could continue to maintain and manage the local loop unbundling rates re-charge in the local loop unbundling annual rental fee as they do now, in agreement with BT and local loop unbundling operators.

⁹ See regulations 3 and 4 of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2005 and paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988

55. However, separating fully unbundled loops from BT's hereditament to create two hereditaments could create similar administrative burdens for VOA as found with options 1, 2, and 3 because both the fully unbundled local loops hereditament and the hereditament comprising the rest of BT's network would have to be frequently reassessed. This would in turn result in regularly altered bills for BT. The impact of this may be mitigated by the fact that the VOA would only be concerned with the additional fully unbundled local loop hereditament rather than those of numerous local loop unbundling operators as with options 1, 2 and 3.
56. To enable the VOA to properly value the unbundled local loops hereditament and BT's remaining core network, further cost information would be required. This information is not readily available to the VOA and would have to be provided by the relevant businesses involved in local loop unbundling.
57. If the hereditament was to be split, we consider it might be difficult in practice for this to happen before the 2010 revaluation because of the necessity to develop a predictive valuation model for unbundled local loops. Before 2010, the hereditament would also have to be valued based on 2003 market values, which presents certain difficulties in terms of valuation practice, although on its own this would not be a bar to earlier implementation of a split.

Legislate so that local loop unbundling is a MCC

58. The second, and in our view better, approach to providing BT with the ability to make proposals relating to MCCs is to make regulations which will allow progressive unbundling to be considered an MCC.
59. At present, events associated with local loop unbundling which would otherwise amount to a MCC as a result of involving a change in the "occupation of other premises" or "physical changes in the locality" are overridden by BT being prescribed as the occupier of all unbundled local loops. However, the Secretary of State has powers¹⁰ to prescribe assumptions in relation to the valuation of properties that could be used to provide that local loop unbundling amounted to a material change of circumstances. This would permit BT to make a proposal as a result of progressive unbundling and the central valuation officer to have regard to the consequences of unbundling on the rateable value of BT's core network.
60. The main advantage of making regulations to change the application of the MCCs is that it could be implemented in practice more quickly and easily than the alternative of splitting BT's hereditament, given the need in the latter case to develop a separate predictive model for the purposes of valuing the separate local loops hereditament.
61. We are interested in stakeholders' views on whether either of these two supplementary arrangements should be implemented if the Government proceeds with its preferred option for the long term solution to the rating and occupation of fully unbundled local loops (option 4).

¹⁰ See paragraph 2(8) of Schedule 6 to the Local Government Finance Act 1988

Conclusion and proposal

62. Taking account of all the factors identified above (aside from the supplementary arrangements discussed in paragraphs 50 to 61), our preferred option is **option 4** – continue with BT as the rateable occupier of fully unbundled local loops. We consider this approach to be the most practical, administratively straightforward and cost-effective long-term arrangement for unbundled local loops.
63. If the Government proceeds with option 4, of the further possible measures, our preferred approach is to also make regulations so that local loop unbundling is a MCC.
64. **The Government therefore proposes that BT should continue to be designated as the rateable occupier of fully unbundled local loops and that regulations should be made so local loop unbundling is a MCC.**

The Consultation questions

Question 1

Do you agree with the preferred option that BT remains in rateable occupation of fully unbundled local loops? If not, why not? Which option would you favour (whether one of the four listed above or a different one)?

Question 2

Do you think the best way to give BT MCC rights in respect of local loops is through (a) splitting the hereditament as described in paragraph 52; or (b) making a statutory instrument that would allow MCC rights to apply to BT as described in paragraph 59?

Question 3

What are the advantages or disadvantages of the two different approaches outlined in question 2 above?

Question 4

Are there issues which the Department has failed to take account of in relation to its proposals?

Question 5

Are there any other comments you would like to make?

Annex A: Partial Regulatory Impact Assessment (RIA)

(Note this RIA was developed prior to the introduction of the new Impact Assessment process.)

Consultation on the rating treatment of fully unbundled local loops

The objective

1. The objective of this consultation is to devise long-term arrangements for the listing and rateable occupation of fully unbundled local loops. The arrangements that are finally agreed and put in place must:
 - cater for the large number of frequent changes in the operators that are using fully unbundled local loops to supply broadband and telephone services to customers
 - minimise administrative costs to stakeholders including billing authorities and the Valuation Office Agency
 - allow the independent valuation officer to carry out his statutory duties
 - recognise the independent regulator's role in regulating the telecommunications market.

Background

2. Local loops are the part of the telephone network connecting customers' premises and local telephone exchanges, each comprising two copper wires twisted together.
3. The process of local loop unbundling (LLU) involves disconnecting local loops from British Telecommunication Plc's (BT) network and re-connecting them to a competing provider's network. This enables operators other than BT to use the local loop to provide services directly to customers.
4. The provision of LLU services is aimed at stimulating provision of new broadband and voice services. LLU services are important because they allow competing providers to innovate, to differentiate their products, and to provide higher bandwidth services and a wider range of applications and service levels.
5. BT is the only provider with an obligation to sell LLU across most of the UK. Operators that buy LLU are known as LLU Operators (LLUOs).
6. There are two forms of LLU.
 - a. A shared metallic path facility (SMPF) enables the LLUO to provide broadband services, while BT continues to provide conventional voice services. This is also known as "shared access", "partially unbundled local loops" or "partial LLU".

b. A metallic path facility (MPF) enables the LLUO to provide the customer with both voice and / or data services. This is also known as “fully unbundled local loops” or “full LLU”.

7. This consultation is concerned with the treatment of fully unbundled local loops.

Current position

8. For the purposes of non-domestic rating, regulation 8 of the Central Rating List (England) Regulations 2005 (SI 2005/551) (as amended) (“the Regulations”) provides that all unbundled local loops are included in, and valued as part of, BT’s centrally listed hereditament¹¹. The Secretary of State’s powers to make this arrangement are in sections 53, 64 and 65 of the Local Government Finance Act 1988. The arrangement is time-limited to end on 31 March 2008 after which all unbundled loops will fall to be rated in the usual way, which is to say they will be valued and shown individually on local rating lists and will be occupied by the LLUO which provides broadband services through them.
9. Under Ofcom’s requirement for BT to offer fully unbundled local loops, BT is able to charge for this service at a level that reflects the costs it incurs in supplying LLU. Business rates are currently a cost incurred in supplying LLU and therefore are recoverable in cost-oriented charges.
10. BT determines how much of its rates bill relates to LLU. Currently BT does this by attributing its rates bill to its relevant network assets. BT’s current method for attributing its business rates is set out in its *Detailed Methods (DAM)* document¹². In summary, this method is based on attributing the rates bill to assets on an asset-value basis. These assets are then used as building blocks to determine the cost-oriented charges or regulated BT products, including LLU. BT currently charges LLUOs rent at £80 pa for each loop it unbundles.
11. On 30 November 2005, the Office of Communications (Ofcom) published the document *Local Loop Unbundling: setting the fully unbundled rental charge ceiling and minor amendment to SMP conditions FA6 and FB6*¹³. The document set the rental charge ceiling for fully unbundled local loops at £81.69pa per loop from 1 January 2006.
12. Ofcom sets a charge ceiling to provide certainty to potential investors in local loop unbundling. LLU is still a relatively new market and as such any uncertainty regarding the rental costs of offering services and the resulting revenue streams is likely to have a major impact on investment plans by LLUOs. Determining charge ceilings for specific LLU services will constrain BT’s ability to set charges that could hinder the development of competition. Despite BT’s rental charge reductions, Ofcom still considers it appropriate to set charge ceilings in order to ensure that BT charges are not excessive and are also both certain and transparent.
13. The non-domestic rating solution set out in this paper will not impact on BT’s ability to recover any reasonable costs for providing LLU.

11 The central rating list is maintained by the central valuation officer and is held by the Secretary of State. Local rating lists are maintained by local valuation officers and held by the billing authority whose area they relate to.

12 <http://www.btplc.com/Thegroup/Regulatoryinformation/Financialstatements/2006/Regulatoryfinancialstatements2006.htm>

13 http://www.ofcom.org.uk/consult/condocs/llu/statement/llu_statement.pdf

Rationale for government intervention

14. The current special arrangement for the rating of unbundled local loops will lapse on 31 March 2008. We do not consider that unbundled local loops are apt to be rated in the usual way and there is, therefore, a strategic requirement to develop a long-term solution that will provide a fair and sensible approach that is consistent with the whole of the rating system.

Wales

15. The Welsh Assembly Government has no plans to change the existing arrangement in Wales in advance of the 2010 revaluation. It will consider future rating treatment of local loops in the light of the solution put in place in England.

Scotland

16. Rating in Scotland is a devolved matter and the Scottish Executive will be bringing forward their own proposals in due course.

Northern Ireland

17. As with other developments around the assessment of business properties (and particularly in the case of the treatment of former public utilities) there is a convention of harmonisation with the rest of the UK. It is expected, therefore, that any changes affecting GB will be given serious consideration in an NI context and this may be the subject of further consultation with stakeholders and Assembly approval.

Consultation

18. In December 2004, the then ODPM consulted telecoms operators and proposed that, in the short term, the rates liability for unbundled local loops in England would remain with BT. In exercise of the Secretary of State's powers in sections 53, 64 and 65 of the Local Government Finance Act 1988, the Regulations provided for this until 31 March 2006.
19. In early 2005, ODPM invited a number of LLUOs and industry stakeholders to a meeting to discuss the identified options. Those invited also included representative bodies such as the UK Competitive Telecommunications Association (UKCTA) and the Broadband Stakeholder Group (BSG). A second meeting was arranged to discuss the options with BT. It was felt that separate meetings would be more useful in understanding the competing concerns of the LLUOs and BT particularly as the options affect them in different ways.
20. The Valuation Office Agency (VOA), Department of Trade and Industry (DTI) and the Office of Communications (Ofcom), as regulators of the telecommunications industry, attended both meetings and have all been consulted at each stage of the consultation process.
21. ODPM also engaged with the devolved administrations of Scottish Executive (SE) and Welsh Assembly Government (WAG).

22. ODPM conducted a consultation exercise with stakeholders between 2 December 2005 and 26 January 2006. The consultation paper "*Proposed Amendments to the Central List Regulations: National Non-Domestic Rates and Local Loop Unbundling*"¹⁴ recommended, as a further short term solution, that BT should continue to be designated as the rateable occupier of fully unbundled local loops until 31 March 2008. The consultation also set out the long term options for the rating treatment of fully unbundled local loops and the interim solution allowed time to fully investigate the basis on which the long term arrangements should be decided.
23. Following the consultation the Central Rating List (Amendment) (England) Regulations 2006 (SI 2006/495) ("the Amendment Regulations") gave effect to the Government's proposed short term solution, by amending the Regulations.
24. Communities and Local Government has since been involved in a number of discussions with Ofcom, VOA, DTI and the devolved administrations of Scotland and Wales on the long term options.
25. In May 2007, the Department again invited stakeholders to a meeting to discuss the proposed long term arrangements for LLU. Those meetings took place in June 2007 and the views expressed are taken into account in the consultation paper, where appropriate.

Rateable occupation

26. A large majority of those who responded to the 2005 ODPM consultation paper agreed with the proposal that BT should continue to be designated as the rateable occupier of unbundled local loops until 31 March 2008, at the very least. One of the issues that prompted differing views from stakeholders, however, was that concerning rateable occupation.
27. For non-domestic rating purposes, the rateable occupier is the person in actual occupation who derives benefit and retains paramount control over the land. The components of rateable occupation were set out in *John Laing & Sons v Kingswood Assessment Committee*¹⁵. They are fourfold.
 - There must be actual occupation;
 - Occupation must be exclusive for the particular purposes of the possessor;
 - The possession must be of some value or benefit to the possessor;
 - The possession must not be too transient a period.
28. The 2005 consultation paper stated that in the VOA's view, LLUOs should be considered as having actual, exclusive and beneficial occupation of fully unbundled local loops and that BT should be considered to be in rateable occupation of partially unbundled local loops.

14 Published 2 December 2005. Available at: <http://www.communities.gov.uk/index.asp?id=1162053>

15 [1949] 1 KB 34

29. Options 1–3 set out below would follow the usual principles of rateable occupation outlined above, but with variations on how, in practice, local loops would appear on rating lists. However the Secretary of State has the power to disapply the usual principles by grouping hereditaments together and specifying who shall be treated as in occupation of the resulting hereditament. These powers were exercised in making the Regulations and the Amendment Regulations, so exercising them in respect of the long term solution for the rating of LLU would not set a precedent.
30. The gas and electricity meters industries are other examples where the Secretary of State has exercised her powers to designate and group together what would otherwise be separate hereditaments and designate who is to be treated as in rateable occupation of the resulting hereditaments. Regulations provide for all the gas meters and electricity meters attached to a particular gas transportation hereditament or a particular electricity distribution hereditament to be treated as one hereditament even though the occupation of the meters may in future be separated from that of the supply networks. The Government’s approach at the time of making the relevant regulations was to promote competition in the provision of gas and electricity metering services and it was decided that the most practical way to deal with the rating issues was to ensure meters are valued along with the networks they were connected to rather than individually.

Risk assessment

Options

31. In deciding the long term strategy for the listing and rateable occupation of fully unbundled local loops following options have been identified:

Option 1: Do nothing

Option 2: Designate LLUOs on local lists

Option 3: Designate LLUOs on the central list

Option 4: Maintain BT as in rateable occupation of fully unbundled local loops

32. This paper will consider the options based on their long term viability.

Option 1: Do nothing

33. All BT’s rateable communications hereditaments in England, including local lines and telephone exchanges, are defined by the Regulations as a single hereditament. Local loops in England are also included in that hereditament so that, for rating purposes, BT is currently designated¹⁶ as the rateable occupier of all local loops regardless of whether they have been unbundled or not.
34. As of 1 April 2008, unbundled local loops will cease to be treated as part of BT’s central list hereditament. Rateable occupation of fully unbundled local loops will shift from BT

¹⁶ A “designated person” refers to the company or body registered by or bearing that name on a specified date.

to the LLUO and each loop may be listed as a separate hereditament (others may merge with “backhaul” hereditaments¹⁷) on local rating lists. This would require potentially millions of fully unbundled local loop assessments to be made on local lists. BT Openreach recently predicted 2m unbundled loops by the end of May 2007. There are no figures available to show exactly how many of these loops have been “fully” unbundled but it is likely to be large proportion. By way of illustration, Carphone Warehouse PLC currently has the highest number of unbundled loops (655,000) as part of its Talk Talk Free service. 375,000 of these have been “fully” unbundled¹⁸, while it is expected that the vast majority of the remaining Talk Talk Free customers will be transferred to fully unbundled loops in the near future.

35. To meet their duty to compile and maintain local rating lists, valuation officers would have to identify and value every unbundled local loop in their area. Billing authorities would have to identify which LLUO was providing broadband services through each loop for the purposes of billing.

Option 2: Designate the local loop unbundling operators (LLUO) on the local lists

36. Under this option all local loops occupied by the same operator in each area would be aggregated to create a single hereditament. Each aggregated hereditament would then be shown on each local list. This can be done by exchange rather than by billing authority. It would be possible to aggregate all LLUs from each exchange within one Billing Authority area by listing each exchange in that Billing Authority area.
37. Again, for the purposes of valuing each aggregated hereditament, valuation officers would have to identify which loops comprised them, and billing authorities would have to identify which LLUO was in occupation of each hereditament so that bills could be sent out.

Option 3: Designate LLUOs on the central rating list

38. This option is similar to option 2 but rather than designating aggregated hereditaments in each billing authority the LLUO is operating in, a single central list hereditament for the (aggregated) unbundled local loops occupied by each LLUO would be created.
39. LLUOs could be designated on the central list using the same description that currently applies to BT which would include their fully unbundled local loops.
40. The Regulations would need to be amended whenever new LLUOs entered the market and, in the absence of special arrangements, when the name of an LLUO already designated on the central list changed.
41. This option may also require formalising the requirement for all operators to provide regular returns to the central valuation officer to enable him to manage the valuations and ensure ratepayers are billed correctly.

17 A backhaul hereditament is a system of fibres together with ducts or supports, which convey telecommunications signals between points of presence in BT exchanges or elsewhere. A call originating on an unbundled local loop and terminating on another local loop in a different exchange area may be conveyed between exchanges over such a “backhaul hereditament”, rather than over BT’s core network.

18 <http://www.cpwplc.com/phoenix.zhtml?c=123964&p=irol-newsArticle&iD=989010&highlight=>

42. As with options 1 and 2 all LLUOs and their respective unbundled local loops would have to be identified by the VOA.

Option 4: Designate BT as being in rateable occupation of all local loops.

43. This option continues the current arrangements.
44. We consider this option to be the most straightforward to administer as the VOA has to assess just a single BT hereditament which would include all local loops. In contrast to options 1, 2 and 3 only a single rate bill would have to be issued and BT, as the ratepayer, would not be faced with the administrative burden of managing a number of different rate bills coming from a variety of billing authorities as would be the case for LLUOs under options 1 and 2.
45. The Regulations would need to be amended to remove the end date of '1 April 2008'.
46. Option 4 could be supplemented by two alternative approaches to giving BT the right to make proposals on material change of circumstances grounds, in respect of local loop unbundling (see paragraphs 71 and 72). In this way, we consider that one of BT's key concerns about the long term application of option 4 would be addressed.

Costs and benefits

Sectors and groups affected

47. Stakeholders involved in the LLU process will be affected by our proposals. These are LLUOs, BT, local authorities and VOA.

Race Equality Assessment

48. There are no racial equality issues in relation to the proposed changes.

Health Impact Assessment

49. There are no health impact issues in relation to the proposed changes.

Rural Impacts

50. Some respondents to the 2005 consultation suggested that introducing a short term solution would foster uncertainty in the broadband market and result in reduced investment in rural areas. Our proposed long term solution will allow stakeholders to plan their long term investment strategies.

Benefits

51. The aim of the Government is to ensure that the long term solution is administratively straightforward for those involved with LLU. This includes ratepayers and billing officers.

52. **Option 1: Do Nothing**

- 52.1. Option 1 produces an outcome consistent with the principles of rateable occupation. This is because LLUOs would be liable for rates on each hereditament and would have the right to appeal the rateable value of LLU.
- 52.2. The Secretary of State would not exercise her power to designate the rateable occupier and therefore no legislative action would be required.

53. **Option 2: Designate LLUOs on local lists**

- 53.1. In comparison to option 1, the advantage of this option is that it keeps the number of 'new' hereditaments on the local lists at a more manageable level; each local list could show a single local loop hereditament for each LLUO. LLUOs would be able to challenge the rateable value of their aggregated assessments on each list.
- 53.2. As with option 1 and 3, it is consistent with the principles of rateable occupation.

54. **Option 3: Designate LLUOs on central rating list**

- 54.1. Compared with options 1 and 2, this option would provide a more administratively practical way of monitoring LLUOs and assessing unbundled loops; each LLUO would have a single central list entry for their fully unbundled loops. Again, they would have a right to challenge the rateable value of that list entry.
- 54.2. This approach follows general rating practice as each operator's LLUs and the fibre backbone could be considered as one contiguous hereditament, where as options 1 and 2 do not allow for this.

55. **Option 4: Maintain BT as in rateable occupation of local loops.**

- 55.1. This option would avoid the need to separately assess fully unbundled local loops and would eliminate the considerable administrative costs generated by options 1, 2 and 3.
- 55.2. It offers a pragmatic way of dealing with the complexity and administrative burden associated with the other options. A similar approach has been successfully adopted in the Regulations for the rating of gas and electricity meters.
- 55.3. Moreover, if BT's hereditament is split or, as the Government prefers, a regulation is made, BT will have the right to make a proposal to alter its rateable value on the grounds of a material change of circumstance when a loop is unbundled. Under the split hereditament arrangement BT would have the right to appeal against the local loop hereditament and against the hereditament comprising the rest of its network.

- 55.4. If the material change of circumstances provisions are opened up to BT the consequential impact on the appeals system would be lower than under options 1, 2 and 3. This is because just BT would have the right to appeal as a result of local loop unbundling whereas under options 1, 2 and 3 both BT and LLUOs have the right to make a proposal therefore potentially doubling the impact on the appeals system.

Costs

Economic

56. **Option 1: Do Nothing**

- 56.1. Each new LLUO and LLU would need to be identified and listed and this would create a significant increased administrative burden to the VOA. It would involve the creation of potentially millions of extra assessments, which may require individual valuations requiring complex analysis of usage levels of the individual loops. It will also be necessary for valuation officers to establish whether the unbundled loops are occupied together with existing backhaul fibres, in order to define the hereditament, and to establish into which list the hereditament(s) should be entered. The cost of entering these assessments into rating lists, including the cost of information gathering, and establishing a valuation approach is estimated by the Valuation Office Agency to be in the region of £80 per hereditament, plus initial costs of £64,000. If we assume – for the purposes of illustration – that all the 1.7m unbundled local loops were fully unbundled and separately listed on the local rating lists the total cost (based on £80 per hereditament) of entering the assessments on rating lists would be £136m plus the initial costs of £64,000.
- 56.2. Significant work would be created for billing authorities and the LLUOs. A separate rate bill would be issued for each unbundled local loop. In each case the cost for the billing authority and the LLUO might exceed the rates demand itself. It is very difficult to estimate how much costs would increase for billing authorities particularly as there are no firm figures available to show exactly how many of the estimated 1.7m unbundled loops have been fully unbundled (although, as indicated above, the proportion is high, and rising). Again if we assume for illustrative purposes that all the 1.7m unbundled local loops were fully unbundled and separately listed on local rating lists, the number of hereditaments would double to 3.4m. In that particular case it might further be assumed that the cost of administering the system, which currently stands at £83m per year, could potentially also as much as double to £166m. Even allowing for the fact that this illustration is an extreme example it is clear from these figures that potentially the costs increases would be considerable.
- 56.3. Some LLUOs could escape paying business rates because their new unbundled loops had not been identified. This could result in a loss to the rating pool and some unfairness between LLUOs.
- 56.4. This option is likely to lead to an increase in costs related to proposals by ratepayers. Approximately 50 per cent of the compiled list entries in the 2000

lists have been challenged and, so far, around 20 per cent of the 2005 list entries. Although there is considerable variation in the complexity and costs of individual appeals, a very rough estimate would be around £200 per appeal for the VOA, excluding costs arising in the Lands Tribunal (and possibly superior courts). Again for illustrative purposes, in the extreme case that a proposal were made against every unbundled local loop, given that each loop would carry with it the right to make an appeal for both the operator losing the loop and the operator gaining the loop, this would amount to an additional 3.4m proposals over the five-year life of the rating lists on the basis of the 1.7m unbundled local loop connections. Even if only 50 per cent of operators with the right to make a proposal did so, this would still amount to 1.7m proposals over the life of the rating list. Similarly if 1 per cent of local loop values were challenged, this would amount to some 34,000 extra proposals at a total cost of around £8.5m. In practice it might be the case that some sort of arrangements would be required for grouping appeals relating to similar cases, but although it is equally hard to estimate how that might be done and what the effect would be on the number and total cost of appeals, the point remains that a potentially large increase in the number of appeals might occur.

- 56.5. There would also be considerable additional costs for billing authorities who would have to adjust LLUO's liability and send out revised rates bills.

57. **Option 2: Designate LLUOs on local lists**

- 57.1. As with option 1, this option could result in an increase in costs for billing authorities and VOA in particular, in keeping track of the changes in occupation of unbundled local loops. LLUOs are not required to notify VOA when unbundling a local loop. VOA would be presented with an added burden of identifying new operators and the loops being unbundled or changing hands. It is difficult to estimate the costs of listing the additional hereditaments that would be created under option 2 and keeping the lists up to date. This would depend on the number of operators in each billing authority's area and the rate at which operators entered and left the market. It would also depend on the degree to and rate at which consumers switched suppliers. But it is clear that these costs are likely to be substantially less than under option 1. If, for example, there were initially 20 operators in each of the 354 billing authorities, the initial listing costs could be as little as 1% of those of option 1, although the likely costs of keeping the list up to date would probably offset this to a large extent. The additional costs to billing authorities would probably be similarly reduced compared with those under option 1. These costs would be likely, however, to be far greater than under option 3.
- 57.2. As with option 1, this option is likely to lead to an increase in costs related to proposals by ratepayers. The dynamic and fluid nature of the LLU market means that there will be considerable movement in the number of loops occupied by different operators during the life of the rating lists. As an indication of the potential scale of changes in occupation of unbundled loops between operators, there are over 200,000 changes in customer's ISP providers each month, although this figure includes both partially unbundled and fully unbundled local loops as well as dial up customers. It is not anticipated that there would be as

many movements between telephone providers which would represent the fully unbundling process. Nevertheless, changes in the number of LLUs occupied by operators would impact on the size and hence the rateable value of the relevant hereditament. Although this option is unlikely to result in as many potential appeals as option 1, frequent reassessments of rateable values would provide the opportunity for ratepayers to make proposals. The continual movement in the number of LLUs occupied by different operators would also mean that the reassessed rateable values would be quickly out of date, a situation which is likely to lead to more proposals being made.

- 57.3. As with option 1, all operators (BT and LLUOs) will have the right to appeal as a result of loops switching between operators. It is impossible to estimate with any accuracy what the additional costs of these appeals would be, but they are likely to be significantly less than those under option 1, but far greater than those for option 3.
- 57.4. There would also be significant additional costs for billing authorities who would have to adjust LLUOs' liability and send out revised rates bills.

58. **Option 3: Designate LLUOs on the central rating list**

- 58.1. Although this option should produce a lower burden on local valuation officers and billing authorities than options 1 and 2, the problem of keeping track of new LLUOs and the unbundled local loops remains and would be passed to the central valuation officer and the Secretary of State.
- 58.2. This option would require secondary legislation, albeit by negative resolution to amend the Regulations, which would require further amendment at intervals to keep up with changes in the LLUO market. Parliament might not be content to see frequent amendments to the legislation so there might be a need to wait for a suitable number of new LLUOs before making the necessary amendments. This will only be a problem if there are frequent new entrants to the market.
- 58.3. Like option 2, this option is also likely to lead to an increase in costs related to proposals by ratepayers. As with option 2, changes in the rateable value of the hereditament as a result of movements in the number of LLUs occupied by different LLUOs could give rise to proposals to the central valuation officer. Changes in the number of LLUs occupied by LLUOs could impact on the size of the central list hereditaments which in turn could affect their rateable value. Reassessments of rateable values by the central valuation officer would provide the opportunity for ratepayers to make proposals. As with option 2, the fact that there is expected to be so much movement between operators in the occupation of LLUs suggests that rateable values – however often they are reassessed – will be quickly out of date which is likely to prompt more proposals to the central valuation officer.
- 58.4. As with options 1 and 2 all operators would have the right to appeal as a result of a loop being unbundled.
- 58.5. There would be an additional burden on the central valuation officer in adjusting LLUOs' liability and sending out revised rates demands.

59. **Option 4: BT remaining in rateable occupation of all local loops**

- 59.1. This approach requires an amendment to the Regulations so that the 31 March 2008 expiry date for the current short term arrangements is revoked.
- 59.2. This option would have the least administrative impact on stakeholders involved in LLU as it continues the current arrangements.
- 59.3. Of the four options, this option will impact least on the rating appeals system. The proposal is that the loops – irrespective of the operator actually occupying them – would remain within the BT hereditament and BT would continue in overall occupation of that hereditament. In practice, this would mean that, despite the many thousands of actual changes in the occupation of LLUs expected between operators, the position regarding rating would remain stable.
- 59.4. If BT was to be given the right to make a proposal in respect of unbundling, either by splitting BT's hereditament or making regulations to allow MCC's to apply to BT, there would be a potential rise in the number of appeals, albeit at a lower level compared with options 1, 2 and 3. For example if proposals were made against 50 per cent of all unbundled local loops, this would amount to an additional 850,000 proposals over the five-year life of the rating list. Although this increase would be undesirable it is significantly less than it would otherwise be if any of options 1, 2 or 3 were to be implemented.
- 59.5. To alleviate the potential impact of an increase in the number of proposals it may be necessary to introduce a pragmatic approach to capturing the large number of material changes of circumstances local loop unbundling is expected to cause. This would be similar to the arrangements already in place to capture the many material changes of circumstances experienced by BT on the rest of its network.
- 59.6. If BT's hereditament is split, LLUOs would not have the right to appeal value of the fully unbundled local loop hereditament. This may concern LLUOs as there could be the suspicion that BT would not be incentivised to keep the value of the fully unbundled local loop hereditament low because they would simply pass the cost on to LLUOs through the annual rental charge.

Recommendation

60. Given the objectives of this consultation we consider that continuing to designate BT as the rateable occupier of local loop unbundling is the most practical and cost-effective option to pursue in the long term.
61. The central rating list exists for purposes of handling large networks which would not sit comfortably on local lists so continuing to list LLU on the central list will follow these principles. The powers conferred by sections 64 and 65 of the Local Government Finance Act 1988 allow the Secretary of State to designate BT as the occupiers of unbundled local loops.

62. Although this consultation considers the issue of listing and occupation of LLU from the perspective of identifying the most practical and cost effective administrative arrangements it is clear that the market for LLU is currently thriving. BT Openreach¹⁹ estimates that 2 million local loop lines will be unbundled by the end of May 2007 and in excess of 3.5m by the end of April 2008. The Government does not want to interrupt the growth in the market for LLU
63. If option 4 is implemented, the Government also considers that the right for BT to make an appeal, on the grounds of material change of circumstances, should be made available to BT. The preferred means of achieving this would be by making regulations, rather than splitting the hereditament.

Environmental and social

64. There are no environmental or social impacts associated with the proposed options.

Equity and fairness

65. The overall aim of the consultation is to ensure the chosen option provides equity and fairness to the ratepayer, be it BT or other telecommunications companies.
66. As stated we believe option 4 will provide the most practical solution in the long term as it is administratively straightforward for stakeholders involved in LLU.

Small firms impact test

67. It is envisaged that Options 1 to 3 would have a significant impact on all LLUOs as they would directly incur business rates liability for LLU they had previously faced as part of the rental charge paid to BT. These costs are likely to be off-set by a reduction in BT's LLU rental charge but the LLUOs will face some additional administration costs as a result of having to administer payments and through making proposals in relation to the rateable value of their local loops.
68. It is therefore possible that if any of options 1–3 is adopted the additional costs incurred by LLUOs may filter down to small businesses more generally.
69. The Government's preferred option is for BT to remain in rateable occupation of fully unbundled local loops (option 4). Ofcom have been fully involved in the development of the proposals and, as regulator of the market, have the clear view that this proposal is the approach most likely to result in a competitively neutral position and allay competition concerns. It is therefore not envisaged this will significantly or disproportionately impact directly on small businesses. United Kingdom Telecommunications Association, the trade association for telecoms companies has previously supported this approach as the long term solution.

¹⁹ <http://195.92.138.179/exchange/issue5/story2.htm>

Competition assessment

70. In accordance with the requirements of drafting a regulatory impact assessment, the Government has applied the competition filter test and concludes that there is nothing to suggest the proposed long term rating treatment of LLU negatively impacts on any particular area of the broadband/telephone market itself. The fact that the market for LLU has increased so significantly in the last two years in which this arrangement has been in place suggests that it is working. The preferred option is to maintain the status quo so we do not envisage this will create any new complications for LLUOs compared with BT. Any option that results in increased cost for LLUOs is likely to have a detrimental effect on their competitiveness in the market. It is likely that options 1, 2 and 3 may lead to increased costs for LLUOs.
71. BT, on the other hand, has previously argued that the long term application of the current arrangements (option 4) would place them at a competitive disadvantage. Their argument is understood to be that the more loops that are unbundled, the more effect it has on their hereditament that cannot be reflected in reductions of their rateable value. This is because the central rating list regulations designate BT as the rateable occupiers of all local loops which acts as an unintentional barrier to BT appealing to reduce the rateable value of the rest of their network as a consequence of progressive unbundling. If the Regulations were not in place it would be open to BT to appeal, on the grounds of a material change of circumstance, each time a local loop was unbundled.
72. We recognise that this is an important issue for BT and we understand their concerns in this regard about adopting option 4 in the long term. To address this issue the consultation paper proposes either BT's hereditament is split to allow BT to appeal against the rateable value of the rest of their network, citing progressive unbundling as material change of circumstance **or** more favourably, a Regulation is made under the powers in paragraph 2(8) of Schedule 6 to the Local Government Finance Act 1988 to give the same effect.
73. If the MCCs are opened up to BT, LLUOs will continue, as now, to pay the regulated annual rental charge to BT as a contribution to the rate liability for local loops.

Enforcement, sanctions and monitoring

Enforcement and Sanctions

74. The Local Government Finance Act 1988, as amended, and secondary legislation made under it, establishes the main structure of the rating system, including in relation to enforcement and sanctions. For all the above options, the enforcement of rates liability will be through the usual system.

Monitoring and Review

75. The Valuation Office Agency are responsible for carrying out all non-domestic rating valuations and will be able to monitor the effect the chosen option has on the rateable values of LLUOs and BT. Ofcom will continue to regulate the cost-oriented rental charge for LLU.

Annex B: The consultation criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

- 1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
- 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.**
- 3. Ensure that your consultation is clear, concise and widely accessible.**
- 4. Give feedback regarding the responses received and how the consultation process influenced the policy.**
- 5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
- 6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

The full consultation code may be viewed at
<http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact

Albert Joyce,
Communities and Local Government Consultation Co-ordinator,
Zone 6/H10, Eland House, Bressenden Place, London, SW1E 5DU;
or by e-mail to:
albert.joyce@communities.gsi.gov.uk

Please note that **responses to the consultation itself** should be sent to the contact shown within the main body of the consultation.

Annex C: Summary of consultation response

Overview

During 2005 the ODPM sought to establish a long term solution for rating treatment of unbundled local loops. The following four options were identified.

Option 1 – Do nothing.

Option 2 – Designate LLUOs on local lists.

Option 3 – Designate LLUOs on the central list.

Option 4 – Designate BT as being in rateable occupation of unbundled local loops.

It was considered that designating local loop unbundling operators (LLUOs) on the central rating list or continuing with British Telecommunications Plc (BT) as occupier of unbundled local loops were the two most viable options. A consultation paper was issued on 5 December 2005 which set out the four options. Given the time available to amend the Regulations and avoid the default position of each individual unbundled local loop being listed on local rating lists, it was proposed in the consultation that the current provisions should be extended for a further two years. This was considered to be the best solution to adopt in the short term to take account of the differing views of stakeholders. Below is summary of responses to the main questions posed in the consultation paper.

These are followed by a summary of other general comments received.

There were 12 respondents to the consultation of which 10 were in favour of BT remaining in rateable occupation. Many of those in favour felt the proposal should be adopted as the long term solution, either for an indefinite period or at least until the next revaluation. The minority view was that the current arrangement should be extended for no more than a year during which the Government could consider and implement alternative arrangements.

Response to Main Consultation Questions

Do you agree that BT should continue to be treated as being in occupation of fully unbundled local loops for the short term? If no, please explain your reasons.

Ten of the twelve respondents to the consultation agreed that BT should continue to be treated as the rateable occupiers. These included the United Kingdom Competitive Telecommunications Association (UKCTA), Ofcom, Royal Institute for Chartered Surveyors and five of the six LLUO respondents. Many of those in agreement felt that this proposal should be implemented indefinitely or at least until the end of the current rating list. The general feeling from these respondents was that the prospect of implementing options 1–3 in two years time would have a detrimental effect on investment decisions.

One LLUO respondent stated their disappointment that the proposal was not being considered as the long term solution and offered no further comments.

Another respondent felt the current arrangement should apply for one rather than the proposed two years. In their view, a one year extension would allow sufficient time for full consideration of the alternative options and for the alternative option to be implemented.

Do you agree that two years is an appropriate period for this short-term solution to apply? If no, please explain your reasons.

Four of the twelve respondents agreed that a two year extension was an appropriate period for the short term solution to apply. As one of the four in agreement, Ofcom qualified their support by stating their keenness to work with the VOA, ODPM, BT and LLUOs to,

“examine the financial and operational impact of the different options highlighted in the ODPM’s regulatory impact assessment with regard to both the current and future competitive environment. Ofcom considers that a fully informed decision regarding a long-term solution can be made only once this work has been completed and analysed.”

Similarly an LLUO respondent suggested the two year period was sufficient in view of the “necessary work that is required in terms of assessing the options and in pursuing a given course of action”. They also agreed that this period would provide sufficient stability in the market. The majority of those in favour of BT remaining in rateable occupation felt that this arrangement should be made permanent or last until the end of the current rating list. They felt that extending the provisions until the end of the current rating list would allow the market to mature, leaving LLUOs in a better position to support alternative arrangements.

Do you foresee any difficulties if this short term measure were to be introduced?

Some respondents were concerned that extending the current arrangement for only two years would foster uncertainty in the market and stifle investment, particularly in areas with low population density where investment returns were potentially more volatile.

The minority view was that the extension for two years went beyond what was necessary. It was felt that an extension of only one year would minimise any distortions in the market caused by adopting a rating method that was contrary to normal rating practice. In addition it was felt that BT should have the right to have their rates liability reassessed to reflect the occupation of fully unbundled loops by other operators. An extension of this argument was that, under the current arrangement, the rateable value of BT’s network hereditament could be artificially inflated. UKCTA disagreed with this, stating,

“as part of the [annual] charges which LLU operators pay to BT, they make a contribution to BT’s rates bill. Accordingly, BT is already recompensed for any detriment it may suffer.”

A number of respondents also supported this statement.

Other comments

UKCTA and LLUOs have suggested that under any one of options 1–3, LLUOs were likely to incur rating costs over and above the amount BT currently recover in rates through the annual charge. Although the exact rateable value per loop is not yet known, both those in favour of options 1–3 and those against made a number of assumptions in relation to what the rating cost per loop might be. Some respondents, for example, applied the previous multiplier (42.2) to the annual LLU charge in order to arrive at what they assumed to be the likely rating cost per loop. Using this simple formula it was assumed the annual LLU charge would be the same as a rent in rating terms. In fact, a significant proportion of the charge relates to ordering, customer service, billing, system and maintenance costs and the cost of using BT’s non-rateable plant and machinery, including the main distribution frame in the exchange. The annual charge cannot therefore be used as a proxy for the rateable value of an unbundled local loop.

In contrast to the views of UKCTA and LLUOs, one respondent suggested the likely rateable value of unbundled local loops would be at a similar level to that currently paid by LLUOs through the LLU charge. Ofcom and the VOA are attempting to identify what elements of the LLU charge are rateable costs.

As part of the argument against the adoption of any of options 1–3, some respondents suggested the prices for end users would have to increase as LLUOs would have to pass on the additional costs incurred through taking on the rates liability for unbundled local loops. This may stem from the perception that the rateable value of an unbundled local loop would represent a significant additional cost burden to LLUOs.

A number of LLUO respondents also suggested the adoption of any of options 1–3 could constitute state aid. It was argued that any of these options would result in different operators paying different amounts for the same asset and Government would not be able to establish whether the system is operating fairly. This was further compounded, argued one respondent, by the perceived lack of transparency in identifying how much of BT’s overall rate bill is attributable to local loops.

Aside from supporting the permanent implementation of option four, UKCTA and a number of other respondents identified a fifth option whereby local loops would become a separate hereditament from the rest of BT’s network. In this scenario it is considered BT would be treated in the same way as LLUOs in unbundling local loop rating terms.

The regulatory impact assessment briefly set out the four ingredients of rateable occupation and why operators involved in fully unbundling a local loop are considered in rateable occupation of those loops. UKCTA and one LLUO disputed that this was the case. The crux of their argument was that LLUOs do not exercise sufficient degree of control over the unbundled loop and therefore it is difficult to argue they are in rateable occupation. Some respondents did not comment on this but others were in agreement that LLUOs are in rateable occupation of unbundled loops.