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23 February 2005

Mr Peter Black  
Telecommunications Adjudicator  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Subject: Bulldog BT Dispute Regarding LLU Fault Repair Terms and Conditions

Dear Peter,

As you may be aware, Bulldog engaged in a formal dialogue with BT in May 2003 in an attempt to resolve differences in key LLU prices, terms and conditions that continued to threaten the success of Bulldog's broadband business in the UK. Although BT and Bulldog reached full resolution on two of the twelve issues and partial resolution on five of the issues, no progress was made on the remaining five issues, including LLU fault repair levels. In view of the lack of progress of such negotiations, Bulldog referred the matter to OFCOM for resolution on 26 March 2004.

Following OFCOM's decision to establish a Telecommunications Adjudication Scheme for LLU on 13 May 2004, Bulldog withdrew the dispute and brought the relevant process related issues (including LLU fault repair levels) to the attention of the Telecommunications Adjudicator in July 2004. A formal SOR detailing fault repair requirements based on the concept of equivalence with BT's relevant wholesale products was submitted to BT on behalf of all LLUOs, including Bulldog, on 20 September 2004. BT's response to the fault repair SOR, delivered on 4 November 2004, failed to deliver parity between LLU fault repair levels and those available to BT on both a wholesale and retail basis.

Despite ongoing discussions between BT and the LLUOs, facilitated by the Telecommunications Adjudicator, no progress has been made to resolve the disparity between BT's position and the SOR since 4 November 2004. (In fact, BT has recently withdrawn its 4 November 2004 offer to provide an enhanced plus, five hour LLU fault repair service by March 2005.) Bulldog has therefore decided to refer the dispute related to the MPF/SMPF fault repair levels to the Telecommunications Adjudicator for Ruling in accordance with the Dispute Resolution Rules for Local Loop Unbundling of 28 June 2004.

Full details of the scope of the dispute, the relevant ex-ante conditions and details of the Bulldog BT commercial negotiations are provided in the attached submission.

Please do not hesitate to contact me should you wish to discuss this further.

Kind regards,

Diane Mills  
Head of Strategic Planning and Regulatory Affairs  
Bulldog Communications Limited

Bulldog BT Dispute Regarding LLU MPF/SMPF Fault Repair Terms and Conditions

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## Section A - Preliminary Information

### 1. Summary of Dispute

Under the terms of SMP Conditions FA2 and FA9, BT has an obligation to provide LLU (Local Loop Unbundling) facilities on non-discriminatory terms and conditions. Bulldog alleges that the terms and conditions under which BT offers fault repair services for fully unbundled MPFs (Metallic Path Facilities) and SMPFs (Shared Metallic Path Facilities) to LLUOs (Local Loop Unbundling Operators) are discriminatory in relation to the terms under which BT offers equivalent services both to itself and to other telecommunication providers.<sup>1</sup>

The LLU fully unbundled MPF product is technically equivalent to the MPF over which BT delivers both wholesale and retail voice and data services including PSTN, SDSL and leased line products that are delivered over copper. However, the fault repair service levels of BT's wholesale PSTN, SDSL and leased line products are significantly more attractive than the service levels offered for BT's LLU fully unbundled MPF product. The LLU care levels offered by BT for LLU fully unbundled MPFs do not therefore allow LLUOs to offer equivalent wholesale or retail products that compete with BT's portfolio of data and voice products.

BT's LLU SMPF product is technically equivalent to the local access product over which BT provides its wholesale and retail ADSL products (both IPStream and DataStream). Despite product similarities, however, the care levels provided with BT's LLU SMPF product are inferior to those of BT's IPStream and DataStream ADSL End User Access products and the retail products delivered over these wholesale platforms.

Through the SOR dated 20 September 2004, LLUOs requested that BT provide standard and enhanced care levels for MPFs/SMPFs that would provide parity with BT's SDSL/ADSL End User Access products. (BT's care levels for its wholesale ADSL End User Access product are identical to those offered for its wholesale SDSL End User Access product and thus a common set of care levels was requested for both MPFs and SMPFs.) In addition, LLUOs requested an enhanced plus care level that would provide parity with BT's PPCs (Partial Private Circuits). The terms and conditions of such care levels included response times, repair times, activation lead times, restrictions and eligibility criteria.

BT responded to the 20 September 2004 SOR on 4 November 2004 with an offer to match BT's WLR (Wholesale Line Rental) response and repair times as well as an offer to match BT's PPC response and repair times. BT's offer did not address other terms and conditions such as activation lead times, restrictions and eligibility criteria. BT also refused to provide LLUOs with a margin on response and repair times, even through this principle had been fully endorsed by BT in its formulation of its wholesale broadband product care offerings. (A summary of the SOR and BT's response is provided in Table 1.)

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<sup>1</sup> The MPF/SMPF provides the copper connection between the NTP at the end user premises and the internal tie cable (which provides the connection to the HDF (Handover Distribution Frame) which subsequently provides the link to the LLUO equipment. The subject dispute refers to care levels for both the MPF/SMPF and the associated tie pair (within a tie cable), though for simplicity, reference is made throughout this submission simply to the MPF/SMPF fault levels, on the understanding that the associated tie pair is also included. At present, BT refers to such fault repair levels as Priority B faults.

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Despite ongoing discussions, facilitated by the Telecommunications Adjudicator, no progress has been made to resolve the fundamental disparity between the LLUO request and BT's offer on LLU care levels. In fact, in January 2005, BT withdrew its 4 November 2004 offer to match PPC response and repair times on technical grounds. Bulldog has therefore decided to refer this matter to the Telecommunications Adjudicator for a Ruling, in accordance with the Dispute Resolution Rules for Local Loop Unbundling of 28 June 2004 and Guidelines of 14 October 2004.

### 2. Contact Details for Bulldog Communications

Contact details for Bulldog Communications are as follows:

Address: Bulldog Communications Limited  
26 Red Lion Square  
London  
WC1R 4HQ  
England

Switchboard: +44 20 7164 1000  
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Website: <http://www.bulldogbroadband.com>

For further information relating to this dispute, please contact Diane Mills, Head of Strategic Planning and Regulatory Affairs, contact details for whom are as follows:

Address: Diane K Neil Mills  
Head of Strategic Planning and Regulatory Affairs  
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26 Red Lion Square  
London  
WC1R 4HQ  
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Email: [dianemills@bulldogbroadband.com](mailto:dianemills@bulldogbroadband.com)

### 3. Business Details for Bulldog Communications

Bulldog Communications Limited is an infrastructure-based provider of data and voice services, serving the UK business and residential markets on both a wholesale and retail basis. Bulldog began selling ADSL and SDSL services, delivered over LLU, in October 2002 and continues to play a leading role in the LLU market. The use of LLU enables Bulldog to differentiate its products from BT's products (including both IPStream and DataStream) and this has proven to be an important consideration for both wholesale and retail customers.

[Confidential material has been removed.]

### 4. The Relationship between Bulldog Communications and BT

[Confidential material has been removed.]

## Section B - The Issues in Dispute

### 5.1 Regulatory Background

Bulldog's business was founded on the basis of fair and non-discriminatory rights to the local access network, conferred to competing telecommunication operators through the introduction of LLU, implemented in the UK through an amendment to BT's former licence (Condition 83) on 8 August 2000:

"24. The licensee shall not (whether in respect of the charges or other terms or conditions applied or otherwise) show undue preference to, or exercise undue discrimination against, particular persons or persons of any class or description as respects the provision of any of the matters to which this Condition relates.

25. The licensee may be deemed to have shown such undue preference or to have exercised such undue discrimination if it unfairly favours to a material extent a business carried on by it in relation to the doing of any of the things mentioned in paragraph 24 so as to place at a significant competitive disadvantage person competing with that business in a Relevant Market."<sup>2</sup>

Non-discriminatory access to the local loop was also mandated through EC Regulation 2887/2000, which came into force on 2 January 2001:

"11. Pricing rules for local loops should foster fair and sustainable competition, bearing in mind the need for investment in alternative infrastructures, and ensure that there is no distortion of competition, in particular no margin squeeze between prices of wholesale and retail services of the notified operator."<sup>3</sup>

"3.2 Notified operators shall from 31 December 2000 meet reasonable requests from beneficiaries for unbundled access to their local loops and related facilities, under transparent, fair and non-discriminatory conditions. Requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity. Where access is refused, the aggrieved party may submit the case to the dispute resolution procedure referred to in Article 4(5). Notified operators shall provide beneficiaries with facilities equivalent to those provided for their own services or to their associated companies, and with the same conditions and time-scales."<sup>4</sup>

Condition 83 and EC Regulation 2887/2000 continued to be in effect, pursuant to Paragraph 9 of Schedule 18 of the Communications Act 2003, until publication of OFCOM's WLAM (Wholesale Local Access Market) Statement of 16 December 2004. Through the WLAM (Wholesale Local Access Market) Review, OFCOM determined that BT has SMP (Significant Market Power) in the wholesale local access services market

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<sup>2</sup> Refer to Paragraphs 24 and 25 of BT Licence Condition 83, in effect from 8 August 2000 and continued under OFTEL's *Continuing Licence Conditions After 25 July 2003* statement of September 2003.

<sup>3</sup> Refer to Recital 11 of EC Regulation 2887, in effect from 2 January 2001.

<sup>4</sup> Refer to Article 3.2 of EC Regulation 2887, in effect from 2 January 2001.

within the UK (excluding the Hull Area). Such defined market includes LLU services.<sup>5</sup> As a result, OFCOM imposed certain SMP conditions on BT including SMP Condition FA2 (Requirement not to unduly discriminate) and FA9 (Requirement to provide Local Loop Unbundling) which reaffirmed the non-discrimination requirement for LLU services that had been previously captured under Licence Condition 83 and EC Regulation 2887/2000:

“FA2.1 The Dominant Provider shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with Network Access.”

“FA9.1 Where a Third Party reasonably requests in writing Local Loop Unbundling Services, the Dominant Provider shall provide those Local Loop Unbundling Services.

FA9.2 The provision of Local Loop Unbundling Services in accordance with paragraph FA9.1 shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as OFCOM may direct from time to time.

FA9.3 The Dominant Provider shall comply with any direction OFCOM may make from time to time.”

Bulldog firmly believes that BT has failed to provide LLU facilities on non-discriminatory terms, as required by Licence Condition 83, EC Regulation 2887/2000 and SMP Condition FA2. The alleged infringement applies to BT’s provision of both fully unbundled and shared MPFs and applies to the period August 2000 to present. Such infringement has materially affected Bulldog’s ability to compete with BT, particularly as a provider of both data and voice services.

## 5.2 Issues in Dispute

The subject dispute relates to care levels offered for MPFs/SMPFs through LLU. As such, the relevant issues include all terms and conditions relating to fault repair:

- Fault response and repair time, hours of operation and level of effort to provide such care levels;
- Activation lead times (before such care levels take effect);
- Restrictions on and applicability of care levels;
- SLGs (Service Level Guarantees) for failure to provide agreed care levels.

Bulldog has requested equivalence of outcome between LLU fault repair times and those offered by BT for its wholesale broadband (ADSL and SDSL IPStream/DataStream) and leased line (PPC) products delivered over copper.

## 5.3 Product Equivalence

The fully unbundled and shared LLU products may be used to deliver a diverse range of products that compete with BT’s wholesale and retail voice and data products. As

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<sup>5</sup> Paragraph 1.3 of the OFCOM Review of the wholesale local access market states that “Local loop unbundling (“LLU”) services fall within the wholesale local access market and co-location.”

such, Bulldog maintains that BT's LLU products are technically equivalent to the following products provided by BT for use in its wholesale and/or retail offerings:

- i. LLU fully unbundled MPFs are technically equivalent to the MPFs over which BT provides its wholesale PSTN (ie, Wholesale Access), retail PSTN, wholesale SDSL (ie, IPStream SDSL and DataStream SDSL), retail SDSL, wholesale leased line (ie, PPC) and retail leased line (ie, Megastream) products that are delivered over copper;
- ii. LLU SMPFs are technically equivalent to the SMPFs over which BT provides its wholesale ADSL (ie, IPStream ADSL and DataStream ADSL) products and retail ADSL products.

### 5.3.1 LLU Fully Unbundled MPFs and BT's Products Delivered Over Fully Unbundled MPFs

As discussed above, the fully unbundled MPF product that BT offers through LLU is physically and operationally comparable to that provided to BT itself for the provision of its own wholesale and retail PSTN, SDSL and leased line products. Full details pertaining to the physical and functional equivalence of the products under consideration are set out below.

#### *Product Descriptions and Care Levels*

##### (a) BT's Wholesale LLU Fully Unbundled MPF Product

For the purposes of LLU, an MPF is defined as "a pair of copper wires that runs from an MDF (Main Distribution Frame) at a BT local exchange to a customer's NTE (Network Terminating Equipment) at his home or business premise."<sup>6</sup> On the basis of the ANFP (Access Network Frequency Plan), both narrowband and broadband services may be provided over fully unbundled MPFs based on POTS, ISDN, ADSL, SDSL and HDSL technologies though such products must conform to the specifications established in the ANFP.<sup>7</sup> The technical specifications for the MPF product are detailed in BT's SIN 349.

A fully unbundled MPF may be provided either as a new provide or as a transfer, depending on the existence of a commercial PSTN contract for the MPF at the time of LLU order placement.<sup>8</sup>

Under the terms of the ANF Agreement, BT offers both a standard and enhanced fault repair service for MPFs. The standard service provides an MPF repair target time of 28 working hours (available Monday through Friday from 0800 through 1700) and offers compensation for failure to achieve this target.<sup>9</sup> The LLU enhanced MPF care service (TotalCare) provides a four clock hour response target and 24 clock hour repair target on a 'best endeavours' basis. Contractually, BT has not offered a

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<sup>6</sup> Refer to *Draft Consultation and Draft Direction of Charges for Metallic Path Facilities and Tie Cables*, OFTEL, November 2000.

<sup>7</sup> Refer to *Proposed Solution for the ANFP (Access Network Frequency Plan) for BT's Metallic Access Network*, OFTEL, June 2000.

<sup>8</sup> If there is a PSTN contract on the MPF at the time of pre-order enquiry, BT considers the line to be a transfer; otherwise the line is considered a new provide, regardless if any physical work is required to activate the line.

<sup>9</sup> The 28 working hour MPF fault repair target and SLA were effected through *LLU Service Level Commitments and Compensation*, OFTEL, 23 August 2001. Compensation levels of £1.10 per working hour to a maximum of £10.00 per working day were determined.

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compensation scheme for failure to achieve the LLU TotalCare repair targets. The TotalCare service level is only available on Stage 1 of the fault repair process (which provides a basic line test) and is invalidated if the fault is escalated to Stage 2. TotalCare is also invalidated if the end user cannot be contacted at all times during the repair process.<sup>10</sup> Furthermore, such LLU TotalCare is not effective until expiry of the handback period (earlier of five working days from handover or one working day from acceptance of the circuit).

In the response dated 4 November 2004 to the SOR of 20 September 2004, BT offered to improve the LLU MPF care levels as follows:

- Proposal to align the LLU MPF (shared and fully unbundled) repair and response times with those offered on the BT Wholesale Access product by March 2005;
- Agreement to apply care levels to the metallic pair access, tie pairs and the shared and MPF jumpers (note typographical error in this section of BT's response);
- Proposal that care packages would apply only to first stage faults; the second stage fault process would be reserved for 'special investigations';
- Agreement that clock would stop (but enhanced care level will not revert to standard) if BT is unable to continue testing the circuit due to failure of the customer or end user to provide appropriate assistance or access;
- Agreement that BT would provide SLGs;
- Proposal of a five hour enhanced (enhanced plus) package to be made available equivalent to the service provided for PPCs, subject to confirmation of demand.

### (b) BT's Wholesale PSTN Product (Wholesale Access or WLR (Wholesale Line Rental))

On 1 September 2002, BT introduced a wholesale line rental product entitled Wholesale Access. In addition to the basic MPF component, the product includes wholesale level PSTN product-specific components such as the PSTN line card, exchange space, and directory listing facilities and as such is a wholesale equivalent of the retail PSTN product:

"Wholesale Access is a BT PSTN voice SP (Service Provider) product, which enables SPs to offer their own branded telephony service to their own customers using the BT network. BT will provide, repair and maintain these lines. BT will provide a consolidated bill to the SP for all of their services. The SP sets their own prices and bills their End Users."<sup>11</sup>

BT offers both residential and business variants of the Wholesale Access product, differentiated on the basis of directory listing features and termination options. The residential product is terminated on an NTE whilst the business product may be

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<sup>10</sup> Paragraph 4 Part IV Schedule 6 of the ANF Agreement stipulates that "The Operator acknowledges that if it is unable to arrange immediate access to Customer premises or appropriate Operator personnel on a 24 hours a day, 7 days a week basis until the fault is resolved under paragraph 7.3.1, BT may treat the fault report at the StandardCare level of maintenance."

<sup>11</sup> Refer to *BT Wholesale Access Product Description*, 26 June 2003.

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terminated on either an NTE or NTPP. Provision of the Wholesale Access product is effected either as a new line or as a transfer of an existing line.

Three fault repair options are available: StandardCare (available Monday through Friday 0800 through 1700 providing repair by the end of the working day following the day on which the fault is reported); PromptCare (available Monday through Saturday 0800 through 1700 providing a four hour response and repair by the end of the working day following the day on which the fault is reported); and TotalCare (available 24 hours per day, seven days per week providing a four hour response and 24 hour repair target). Compensation is payable for failure to achieve the repair targets (35 percent of the monthly rental for StandardCare/PromptCare and 55 percent of the monthly rental for TotalCare).<sup>12</sup>

### (c) BT's Retail PSTN Product

BT Retail provides a standard PSTN service over MPFs:

“BT's standard service for telephony is provided on the PSTN (Public Switched Telephone Network) exchange line (the Ordinary line). Ordinary lines will be classified or reclassified by BT as residential or business lines depending on the main use of the line or the premises to which it is provided.”<sup>13</sup>

The distinction between business and residential relates primarily to value added services at the retail level; business lines are provided with a business directory listing (and must be in a company name) whilst residential lines are provided with a residential listing (and must be in an individual name). Although BT claims that it does prioritise business lines over residential lines for fault repair services, there does not appear to be a contractual cover for such enhanced service care.

Additionally, BT categorises PSTN lines into new provides versus take-overs, the distinction based on the amount of work required to bring the line into service rather than the pre-existence of a commercial contract:

“A new line is where there has been no previous BT PSTN connection at the location, or is in addition to other BT lines at the premises. Additionally, it may be a replacement to another line at the premises that may have been used for supply of certain other services. New line charges may also apply if BT is unable to utilise existing wiring or installations, or if new wiring/routing is required.”<sup>14</sup>

The MPF serves as the principal component underlying the PSTN voice service offered by BT. In addition to the MPF, however, the PSTN service also includes additional product-specific components such as a PSTN line card, exchange space and retail level services (including marketing, customer service and billing). Furthermore, because the physical MPF (and associated maintenance and repair) is provided through the PSTN product, the PSTN service itself is a contractually required component of BT's wholesale and retail ADSL products. (Refer to discussion below.)

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<sup>12</sup> Refer to *BT Wholesale Access Contract*, Schedule 4, Paragraphs 3 and 5, 1 July 2004.

<sup>13</sup> Refer to *BT Price List*, Section 1 Sub Part 1.

<sup>14</sup> Refer to *BT Price List*, Section 1 Sub Part 4. Bulldog has recorded details of a case in which BT Retail has offered to provide a PSTN service as a take-over even though the line on which the service was being provided had been inactive for over three years and installation of an NTE was required.

Three fault repair options are available: StandardCare (available Monday through Friday 0800 through 1700 providing repair by the end of the working day following the day on which the fault is reported); PromptCare (available Monday through Saturday 0800 through 1700 providing a four hour response and repair by the end of the working day following the day on which the fault is reported); and TotalCare (available 24 hours per day, seven days per week providing a four hour response and 24 hour repair target). Compensation is payable for failure to achieve the repair targets on a per diem basis, reflecting the monthly rental, to a maximum of four months' rental if the repair service is not delivered within ten days of the target time.<sup>15</sup>

(d) BT's Wholesale SDSL Product (IPStream SDSL and DataStream SDSL)

BT Wholesale offers both an ATM interconnect wholesale SDSL service (DataStream) as well as an IP based wholesale SDSL service (IPStream).

In order to provide SDSL services based over the DataStream product, operators are required to purchase several components: an SDSL End User Access, which provides the physical network between the end user's premises and the DSLAM; a Virtual Path, which provides connectivity between the exchange and the point of interconnect; a DSLAM port reservation; and either an In-Span Handover/ATM port/footway box or a BT Customer Access Link, which provides the connectivity between BT's SDSL network and the operator's network.

As mentioned above, the DataStream SDSL End User Access provides the physical network between the end user's premises and the DSLAM, including the MPF, and as such includes the NTE, DSLAM, ADSL line card, exchange space, and tie-cable connecting the DSLAM to the MPF. The DataStream SDSL End User Access product is available in four speeds: 256 kbps, 512 kbps, 1 Mbps and 2 Mbps.

BT's IPStream product consists of two components: (i) the connectivity from the end user premises to the point of interconnect with the service provider (ie, the End User Access) and; (ii) the aggregate link from the BT broadband access server in the BT network to the customer premises or to the internet (ie, the BT Central or Central Plus).

BT's SDSL DataStream and IPStream products are all provided as new lines, providing that spare pairs are available for provisioning:

“In the case of an SDSL End User Access, [it] can only be provided to End Users over a Metallic Pair, over which there can be no other operational service (including PSTN) terminating on a BT master socket forming part of the BT Network. It will be the Customer's responsibility to inform the End User of this constraint. It is BT's responsibility upon receipt of a CRF to determine whether or not the End User has a Metallic Pair available. Where the Customer requests the installation of a Metallic Pair to the End User's Site, BT will install the Metallic Pair and the

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<sup>15</sup> The repair times for both PromptCare and TotalCare were stipulated in the BT PSTN terms and conditions published on 10 April 2002 and applied to both residential and business services. Since this date, BT has published separate terms and conditions for each of the residential and business variants and such terms and conditions no longer specify repair targets though the *BT Price List* clearly confirms availability of such repair levels.

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Customer will pay the Metallic Pair installation charges which are detailed in the BT Price List.”<sup>16</sup>

BT defines the End User Access associated with its SDSL broadband products inclusive of the MPF:

“End User Access means the physical network (excluding the Metallic Pair in the case of ADSL only) between the DSLAM and an End User’s Site over which the Service is made available to the End User. The End User Access is also known as BT DataStream Home, BT DataStream Office and BT DataStream Symmetric.”<sup>17</sup>

Two levels of fault repair are offered for the End User Access: StandardCare (which provides repair within 40 clock hours) and EnhancedCare (which provides a three clock hour response time and 20 clock hour repair time). No restriction to Stage 1 of the fault repair activity is applied and the enhanced level applies from handover. In the event that an end user is unavailable, the clock stops for purposes of SLGs. Compensation is payable for failure to achieve these timescales (20 percent of the monthly rental for StandardCare and 50 percent of the monthly rental for EnhancedCare).

### (e) BT’s Retail Broadband SDSL Product

BT’s retail SDSL broadband offering consists of different packages reflecting different speeds (512Kbps, 1Mbps and 2Mbps) and service packages. It is understood that BT’s retail SDSL broadband is delivered over the IPStream platform.

Broadband SDSL has been productised as Business Broadband Advanced and designed specifically for business customers. The package includes:

- choice of speeds (512 kbps, 1 Mbps and 2 Mbps);
- 10 email addresses;
- 20 Mbytes of web space;
- 1 static IP address (with option for more);
- enhanced level of care (in tariff).

The SDSL circuits are carried over new copper wire and do not support traditional telephony (unlike ADSL).

The in tariff level of care provides a four hour response and 24 hour repair, available 24 hours per day, seven days per week. Failure to clear the fault within 24 hours, entitles the end user customer to a rebate of one day’s rental for the affected part of the service for every day (or part thereof) the service is faulty.<sup>18</sup>

### (f) BT’s Wholesale Leased Line Product (PPCs (Partial Private Circuits))

BT’s PPC product is a set of network components that is available only to a PECN (Public Electronic Communications Network) for the provision a private circuit to a

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<sup>16</sup> Refer to *BT IPStream Terms and Conditions, Schedule 1, Paragraph 2.1 (e)*, 13 January 2005.

<sup>17</sup> Refer to *BT Conditions for DataStream Service*, 13 January 2005.

<sup>18</sup> Refer to *BT Conditions for BT Business Broadband Advanced Service*.

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third party.<sup>19</sup> PPCs are delivered both over copper and fibre, largely determined by the speed of the circuit. The PPC routes from a PoH (Point of Handover) between the PECN's network and BT's network, across the BT network to the third party, to supply a transmission path at the appropriate bandwidth.

A PPC has three main network elements:

- The Point of Handover (A-end): This is a 'big pipe' connection between the PECN's network and the serving SDH node in the BT network. The high-capacity PoH infrastructure is supplied as either ISH (In-Span Handover), ISH Extension (In-Span Handover Extension) or CSH (Customer Sited Handover). Multiple circuits can be handed over at a single PoH.
- The Third Party End (B-end): This is the connection between the third party's site and the nearest BT serving exchange.
- The Circuit: This is the connection across the BT network between the PoH and the third party site. Circuits are available at the following bandwidths: 64 kbps; n x 64 kbps; 1 Mbps; 2 Mbps; 34 Mbps; 45 Mbps; 140 Mbps and 155 Mbps and are offered both over copper and fibre, depending primarily on the speed of the circuit.

PPCs are supplied with RegularCare (in tariff) though EnhancedCare is also available for a premium rental charge.

PPC RegularCare:

- BT will acknowledge receipt of a fault report within one hour of a Working Day (Monday to Friday excluding UK public and bank holidays between 0800 and 1700);
- BT will respond to a fault report received before 1700 within one working day;
- If fault is not resolved within two Working Days of receipt of fault report, compensation is payable to operator (100 percent of the monthly rental for the faulty circuit per working day or part thereof of delay in repair);
- Working day is any day Monday to Fridays (excluding UK public and bank holidays) between 0800 and 1700.

PPC EnhancedCare:

- BT will acknowledge receipt of a fault report within one hour;
- BT will respond to a fault report within four hours of receipt of a fault report;
- If fault is not resolved within five hours of it being reported, compensation is payable to operator (15 percent of the monthly rental for the faulty circuit per hour or part thereof of delay in repair);
- Working day is a period of 24 hours commencing at any time (including Saturdays, Sundays and Public and Bank holidays).

For both care levels, where a total loss of service occurs to a circuit in any twelve month period three or more times, the operator shall be relieved to pay rental

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<sup>19</sup> Refer to *BT Partial Private Circuit Handbook*, Issue 1.15 of 21 October 2004.

charges in any subsequent month where total loss of service occurs, until such time as twelve consecutive months have passed without a fault.<sup>20</sup>

The third party end component of the PPC can consist of copper or fibre infrastructure. However, care levels (standard and enhanced) are offered on the same terms for both types of infrastructure.

(g) BT's Retail Leased Line Product (Megastream)

Amongst the range of private circuits offered by BT, Megastream provides a dedicated point to point service in different speeds: Megastream 1 operates at 1 Mbps, Megastream 2 operates at 2 Mbps and Megastream high bandwidth circuits operate at 34 Mbps, 45 Mbps, 155 Mbps and 622 Mbps.

These circuits may be delivered over copper or fibre (largely depending on the speed of service) and offer TotalCare as the in tariff care level.<sup>21</sup> TotalCare offers a five clock hour repair target. Compensation is paid for failure to achieve the target repair time either on a per diem basis or on a percentage of rental reduction (whichever is greatest) to a maximum of 100 percent of the annual rental.

*Comparison of Care Levels for Fully Unbundled MPFs*

As indicated above, existing fault repair timescales, as specified in the ANF Agreement, do not provide parity with even the most basic of BT's products that are provided over copper. Of the comparable non LLU products under consideration (PSTN, SDSL and leased lines), the PSTN products, both wholesale and retail, offer the most basic fault repair service and the existing LLU care levels do not provide parity with even these products.

The LLUO SOR of 20 September 2004 was based on the concept of equivalence between LLU fully unbundled MPFs and BT's wholesale SDSL products at the standard and enhanced levels. In addition, equivalence between LLU fully unbundled MPFs and BT's PPCs at the enhanced plus level was requested in order for LLUOs to be able to provide business level services. Furthermore, an additional time margin was requested to reflect the additional interface that LLUOs face in the provision of wholesale services and the additional components that LLUOs must investigate during the fault investigation process. (In fact, BT fully endorsed this principle in its IPStream and DataStream repair targets in providing a 20 hour wholesale target on the basis that this would allow operators to offer a 24 hour retail target.)

BT's SOR response of 4 November 2004 partially addressed the disparity between LLU and non LLU care levels by offering to meet the response and repair targets for the wholesale PSTN (ie, WLR) product as well as the PPC product, though BT did not address issues related to terms and conditions such as activation timescales, restrictions and eligibility criteria nor did BT offer a margin in the response and repair targets.

5.3.2 LLU SMPFs and BT's Products Delivered Over SMPFs

The shared MPF that BT offers through LLU is technically and functionally comparable to the local access product provided to BT itself for the provision of its own ADSL wholesale and retail services. Full physical, operational and commercial

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<sup>20</sup> Refer to *BT PPC Standard Handover Agreement Annex E*.

<sup>21</sup> Refer to *BT Price List*, Section 12 Part 9 Sub Part 5.

characteristics of each of the relevant products for comparison purposes are presented below.

*Product Descriptions and Care Levels*

(a) BT's Wholesale Shared MPF Product

For the purposes of LLU, a shared MPF provides access to the high frequency channel of an MPF:

“A local loop is a pair of metallic wires that runs from the NTE (Network Terminating Equipment) at an end user's premises to the MDF (Main Distribution Frame) within the local serving MDF site. BT has to unbundle these loops (ie, it has to allow competing operators access to either the full frequency spectrum of these loops or the non-voice band frequency spectrum). In the latter case, also referred to as shared access, the competing operator supplies high-speed data services over the non-voice frequencies (high frequency channel), while BT continues to provide voice services over the remaining frequencies (low frequency channel).”<sup>22</sup>

Shared lines must conform to the ANFP (Access Network Frequency Plan).<sup>23</sup>

Because SMPFs are only provided over MPFs that also have a BT PSTN contract (either wholesale or retail), all shared lines are considered as transfers though BT is in the process of developing a product that simultaneously provides both the PSTN and SMPF products.

The standard service provides an SMPF repair target time of 28 working hours (available Monday through Friday from 0800 through 1700) and offers compensation for failure to achieve this target.<sup>24</sup> The LLU enhanced SMPF care service (TotalCare) provides a four clock hour response target and 24 clock hour repair target on a 'best endeavours' basis. Contractually, BT has not offered a compensation scheme for failure to achieve the LLU TotalCare repair targets. The TotalCare service level is only available on Stage 1 of the fault repair process (which provides a basic line test) and is invalidated if the fault is escalated to Stage 2. TotalCare is also invalidated if the end user cannot be contacted at all times during the repair process.<sup>25</sup> Furthermore, such LLU TotalCare is not effective until expiry of the handback period (earlier of five working days from handover or one working day from acceptance).

(b) BT's Wholesale ADSL End User Access Product

BT Wholesale offers both an ATM interconnect wholesale ADSL service (DataStream) as well as an IP based wholesale ADSL service (IPStream).

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<sup>22</sup> Refer to *Final Charges for Shared Access*, OFTEL, 18 October 2001.

<sup>23</sup> Refer to *Proposed Solution for the ANFP (Access Network Frequency Plan) for BT's Metallic Access Network*, OFTEL, June 2000.

<sup>24</sup> The 28 working hour MPF fault repair target and SLA were effected through *LLU Service Level Commitments and Compensation*, OFTEL, 23 August 2001. Compensation levels of £1.10 per working hour to a maximum of £10.00 per working day were determined.

<sup>25</sup> Paragraph 4 Part IV Schedule 6 of the ANF Agreement stipulates that “The Operator acknowledges that if it is unable to arrange immediate access to Customer premises or appropriate Operator personnel on a 24 hours a day, 7 days a week basis until the fault is resolved under paragraph 7.3.1, BT may treat the fault report at the StandardCare level of maintenance.”

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In order to provide ADSL services based over the DataStream product, operators are required to purchase several components: an ADSL End User Access, which provides the physical network between the end user's premises and the DSLAM; a Virtual Path, which provides connectivity between the exchange and the point of interconnect; a DSLAM port reservation; and either an In-Span Handover/ATM port/footway box or a BT Customer Access Link, which provides the connectivity between BT's ADSL network and the operator's network.

As mentioned above, the DataStream ADSL End User Access provides the physical network between the end user's premises and the DSLAM, excluding the MPF, and as such includes the NTE, DSLAM, ADSL line card, exchange space, and tie-cable connecting the DSLAM to the MPF. The DataStream ADSL End User Access product is available in three downstream speeds (500 kbps, 1 Mbps and 2 Mbps).

BT's IPStream product consists of two components: (i) the connectivity from the end user premises to the point of interconnect with the service provider (ie, the End User Access) and; (ii) the aggregate link from the BT broadband access server in the BT network to the customer premises or to the internet (ie, the BT Central or Central Plus).

BT's ADSL DataStream and IPStream products are only available to end users that maintain a PSTN contract (wholesale or retail) with BT:

“The service, except as stated in Paragraph 2.1(e) below, will only be available to End Users who have and maintain a contract (whether with BT or a third party) for the use of a BT provided analogue direct exchange line which terminates on a master socket forming part of the BT Network.”<sup>26</sup>

The obligation for end users to maintain a PSTN contract for the provision of BT's wholesale ADSL products is explained by the fact that the ADSL products provide only the broadband value-added service whilst the physical MPF (and importantly associated repair and maintenance relating to all services, narrowband and/or broadband provided over the MPF) is provided through the PSTN service. BT therefore explicitly defines the End User Access associated with its ADSL broadband products exclusive of the MPF:

“End User Access means the physical network (excluding the Metallic Pair in the case of ADSL only) between the DSLAM and an End User's Site over which the Service is made available to the End User. The End User Access is also known as BT DataStream Home, BT DataStream Office and BT DataStream Symmetric.”<sup>27</sup>

BT has in fact reiterated the fact that all MPF fault repair activity (regardless of the cause of such faults) is provided by the PSTN product and not by the broadband product.

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<sup>26</sup> Refer to *BT IPStream Terms and Conditions, Schedule 1, Paragraph 2.1 (d)*, 13 January 2005. It is important to note that because BT has introduced a wholesale PSTN product, it is not necessary for end users to maintain a retail PSTN contract with BT but must still maintain a wholesale PSTN service with BT. Paragraph 2.1 (e) refers to BT's SDSL service which does not require a PSTN service on the line.

<sup>27</sup> Refer to *BT Conditions for Datastream Service*, 13 January 2005.

Two levels of fault repair are offered for the End User Access: StandardCare (which provides repair within 40 clock hours) and EnhancedCare (which provides a three clock hour response time and 20 clock hour repair time). No restriction to Stage 1 of the fault repair activity is applied and the enhanced level applies from handover. In the event that an end user is unavailable, the clock stops for purposes of failure calculations. Compensation is payable for failure to achieve these timescales (20 percent of the monthly rental for StandardCare and 50 percent of the monthly rental for EnhancedCare). Again, it is important to note that these repair times do not apply to the MPF as MPF faults are handled by the PSTN service.<sup>28</sup>

(c) BT's Retail ADSL Product

BT offers both residential and business variants of the ADSL product at the retail level. Amongst the business ADSL BT retail products, Network 1000 and Network 2000 offer high-speed Internet access for a certain number of computers (10 for Network 1000 and 20 for Network 2000). Product features include the following:

- Fixed monthly fee - no call charges;
- Intelligent Gateway with increased security, free WIFI access point and embedded firewall;
- Unlimited downloads;
- 24/7 service and support;
- free upgrade from ISDN.

Both Network 1000 and Network 2000 products offer an enhanced service consisting of a service level that guarantees repair time of 24 hours for qualifying broadband faults reported to the BT Business Broadband Technical team. Service level credits are provided for each day, or part day, the fault continues past the guaranteed repair time (24 hours) including weekends and bank holidays, equal to one day's BT Business Broadband advanced rental for every day or part day over the 24 hour guaranteed repair time. Importantly, BT has recently announced a new business broadband portfolio, which includes an eight hour repair service backed by a service level guarantee to be available from 1 April 2005.<sup>29</sup>

*Comparison of Care Levels for SMPFs*

Despite the fact that BT's ADSL services are effectively provided over SMPFs, fault repair timescales for both shared and fully unbundled MPFs have been offered on the basis of parity with BT's wholesale PSTN service.

As discussed earlier, LLU SMPF StandardCare offers a 28 working hour target fix but is available only Monday through Friday between 0800 and 1700. By contrast, BT offers an IPStream and DataStream End User Access StandardCare service that offers a 40 clock hour target, available seven days per week.

LLU SMPF TotalCare provides a 24 clock hour target fix, available at all times but is restricted to Stage 1 of the fault repair process only, is invalidated if the end user is not contactable at all times and only becomes effective following the five day handback period (or one working day from acceptance, if earlier). Furthermore, BT

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<sup>28</sup> Refer to *BT IPStream Terms and BT Conditions and DataStream Terms and Conditions*, Schedule 2 Paragraphs 3 and 5, 13 January 2005.

<sup>29</sup> Refer to BT press release at <http://www.btbandoffice.com> of 10 February 2005

has not yet offered enhanced compensation schemes as part of the LLU TotalCare packages. In contrast, IPStream and DataStream ADSL EnhancedCare provide an unrestricted 20 clock hour target fix, available at all times, with enhanced compensation schemes for failure to achieve these targets. BT's retail business ADSL broadband products Network 100 and Network 2000 - which are believed to be provided over the IPStream platform - offer a 24 hour guaranteed repair time. Such existing disparity will be even more predatory with the recently announced BT Business Broadband Network product to be launched on 1 April 2005, which offers an eight hour guaranteed repair time.

## 6. Details of Contracts

The underlying contractual platform for the provision of LLU services by BT to Bulldog is the Access Network Facilities Services Agreement entered into by Bulldog Communications on 12 September 2000, supplemented as follows:

- Supplemental Agreement dated 30 November 2001;
- Second Supplemental Agreement dated 8 February 2002;
- Third Supplemental Agreement dated 12 April 2002;
- Fourth Supplemental Agreement dated 20 November 2003.

It is, however, important to note that BT has produced a more recent version of the ANF Agreement (most recent amendment dated 30 June 2004), which is available for signature by all LLUOs. Therefore, for the purposes of this dispute, it is the terms provided by the latest ANF Agreement that are relevant.

Full copies of both the most recent ANF Agreement as well as the relevant contracts for the relevant non LLU wholesale and retail products (PSTN, ADSL, SDSL and leased lines) are provided in the attached appendices to this submission.

## 7. Resolution and Implications

### 7.1 Desired Resolution

Bulldog must be able to offer equivalent data and voice products to those which BT delivers over copper on both a wholesale and retail basis. LLU care levels must therefore represent the highest care level that is offered across BT's relevant product set, rather than the lowest. Likewise, any restrictions to the enhanced care scheme for LLU must be removed where they are not present in the equivalent BT products.

BT's IPStream and DataStream ADSL and SDSL standard care package offers a 40 clock hour repair service, on the basis that this allows operators to offer a retail level 48 clock hour repair service. BT's IPStream and DataStream ADSL and SDSL enhanced care package offers a 20 clock hour repair service, on the basis that this allows operators to offer a retail level 24 clock hour repair service. There are no restrictions to Stage 1 of the fault repair process on either product and if an end user is unavailable, the clock stops (rather than the care level degraded). Lines are provided with the enhanced care product active and hence there is no delay in activation. Faults may be reported at any time. Operational cover is offered between 0700 and 2100 Monday through Sunday though engineering visits are limited to Monday through Friday 0800 and 1800.

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As mentioned above, in order to provide an equivalent service to BT's wholesale and retail offerings, additional time margin is necessary to deal with both the additional interface and additional components that LLUOs must handle (that are provided by the End User Access but not by the LLU MPF or SMPF, such as DSLAMs). The principle of this additional interface is clearly articulated in the BT Broadband SLA Handbook:

### “End to End Fault Clearance

The context of end to end in this instance is the enabler for the SP's to commit to repair faults within 24/48 clock hours. This is split in the following way:-

- SP time at the front end of the repair process
- Standard = 40 hours BT Wholesale time for fault rectification
- Enhanced = 20 hours BT Wholesale time for fault rectification
- SP time at the back end of the repair process

The delivery of the StandardCare and EnhanceCare products within BT Wholesale will subsequently enable service providers to offer the following customer (EU) promises:

- Enhanced Care Product - BTW will provide the enabler for a service provider to offer a 24 hour promise by offering a 24/7 support, a 3 hour response and a guaranteed 20 clock hour clear.
- Broadband Symmetric Enhanced Care - BTW will provide the enabler for a service provider to offer a 24 hour promise by offering a 24/7 support, a three hour response and a guaranteed 20 clock hour clear.
- Standard Care Product - BTW will provide the enabler for a service provider to offer a 48 hour promise by delivering extended working hours support and a guaranteed 40 clock hour clear.

The Enhanced Care Product incorporates the TotalCare option and therefore TotalCare is not available on its own for the End User Access products.”<sup>30</sup>

It is application of this principle that formed the basis for the care level SOR of 20 September 2004 and the requirement under this dispute. In order to provide a wholesale product with a 40 clock hour repair target, a 32 clock hour repair target for the underlying MPF or SMPF is required.<sup>31</sup> In order to provide a wholesale product with a 20 clock hour repair target, a 16 clock hour repair target for the underlying MPF or SMPF is required. LLUOs will have responsibility for addressing other potential sources of failure of end user access services (notably line card failure), before a fault may be reported to BT LLU and therefore require additional margin in order to be able to compete with BT at both a wholesale and retail level.

In addition to response and repair timescales, in order for there to be full equivalence between the LLU (shared and fully unbundled) MPF service and the

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<sup>30</sup> Refer to *BT Broadband SLA Handbook*, Issue 10, 2 February 2004.

<sup>31</sup> The 80 percent margin (between the 40 hour and 32 hour levels) is based on the ratio derived from BT's determination between the 40 hour and 48 hour levels.

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equivalent BT products, it is imperative that all restrictions in the offering of enhanced care levels, which are not present in the BT equivalent products be removed. These restrictions include TotalCare: (i) being restricted to Stage 1; (ii) being invalidated if the end user is not contactable at all times; and (iii) not becoming effective until the expiry of the five day handback period following provisioning.

In order to achieve the equivalence required for LLU products to compete with the BT's equivalent ADSL and SDSL products (delivered over the IPStream and DataStream platforms) and well as PPCs, the following care service levels are required:

(a) Standard Fault Repair Level (MPFs/SMPFs and Associated Tie Pairs)

- Response within three clock hours and repair within 32 clock hours, available seven days per week with operational cover between 0700 and 2100, providing ability to deliver service level equivalent to that provided by ADSL and SDSL IPStream/DataStream
- Available from handover
- Applicable to all activities involved with the fault repair process (ie, first and second stage fault repair)
- Repair level to continue but timelines suspended if and during period during which end user is not available (if required for fault resolution)
- SLG for failure to achieve the repair target

(b) Enhanced Fault Repair Level (MPFs/SMPFs and Associated Tie Pairs)

- Response within three clock hours and repair within 16 clock hours, available seven days per week, 24 hours per day, providing ability to deliver service level equivalent to that provided by ADSL and SDSL IPStream/DataStream and PSTN service
- Available from handover (or within 24 hours if ordered at a later date)
- Applicable to all activities involved with the fault repair process (ie, first and second stage fault repair)
- Enhanced repair level to continue but timelines suspended if and during period during which end user is not available (if required for fault resolution)
- SLG for failure to achieve the repair target

(c) Enhanced Plus Fault Repair Level (MPFs/SMPFs and Associated Tie Pairs)

- Response within one clock hour and repair within four clock hours, available seven days per week, 24 hours per day, providing ability to deliver service level equivalent to PPCs/MegaStream products delivered over copper
- Available from handover (or within 24 hours if ordered at a later date)
- Applicable to all activities involved with the fault repair process (ie, first and second stage fault repair)
- Enhanced Plus Repair level to continue but timelines suspended if and during period during which end user is not available (if required for fault resolution)
- SLG for failure to achieve the repair target

## 7.2 Implications of Ruling

(a) A favourable outcome to this dispute would provide equivalence of outcome between BT's LLU offering and those wholesale and retail products that BT delivers over copper. Only by allowing LLUOs to offer the same care levels offered by BT to itself and its customers, will LLU be afforded the possibility to provide the diverse range of both wholesale and retail products of which LLU is capable of delivering.

(b) A favourable outcome to this dispute would help ensure that the LLU product will be truly fit for purpose and appropriately industrialised. Competitive LLU care levels will be delivered only by leveraging the capabilities of both the LLUO and BT networks. The current care levels in particular do not allow LLU to properly compete in the high growth broadband markets. It is clear from evidence in other European markets, particularly France and Italy, that superior care levels can be delivered without significant investments in the incumbent's testing capabilities.

(c) A favourable outcome to this dispute would support broad take-up of LLU. Allowing existing LLU competitors access to the same terms that BT offers to technically-equivalent products will improve not only competition amongst them but will also pave the way for new entrants to both the shared and the fully unbundled MPF services.

### **Section C - History of Commercial Negotiations**

After more than one year of discussions conducted primarily through the LLU Industry Group, Bulldog engaged in a formal bilateral dialogue with BT in May 2003 in an attempt to resolve differences in key LLU prices, terms and conditions that continued to threaten the success of Bulldog's broadband business in the UK. Although BT and Bulldog reached full resolution on two of the twelve issues and partial resolution on five of the issues, no progress was made on the remaining five issues, including fault repair levels for MPFs/SMPFs. In view of the lack of progress of such negotiations, Bulldog referred the matter to OFCOM for resolution on 26 March 2004. Although OFCOM deferred resolution of the pricing issues pending the WLAM Review, OFCOM commenced the dispute resolution procedure relating to fault repair levels in April 2004.

Following OFCOM's decision to establish a Telecommunications Adjudication Scheme for LLU on 12 May 1994, Bulldog withdrew the dispute and brought the relevant process related issues (including MPF/SMPF fault repair levels) to the attention of the Telecommunications Adjudicator in July 2004. A formal SOR detailing fault repair requirements based on the concept of equivalence with BT's relevant wholesale products was submitted to BT on behalf of all LLUOs, including Bulldog, on 20 September 2004. BT's response to the fault repair SOR, delivered on 4 November 2004, failed to deliver parity between LLU fault repair levels and those available to BT on both a wholesale and retail basis. BT offered both a standard and enhanced care response and repair times equivalent to those offered in WLR though restrictions to Stage 1 and activation delays were not addressed. Additionally, BT offered a five hour repair level on the basis of providing parity with the care level offered on PPCs. Whilst this repair target exceeded that requested in the SOR (five hours versus four), BT's offer was welcomed, though full terms and conditions were not provided.

There was also considerable confusion regarding inclusion of the physical copper link in BT's response. (As indicated above, the LLU MPF includes the metallic path as do BT's IPStream and DataStream SDSL products. By contrast, neither the LLU SMPF product nor BT's IPStream and DataStream ADSL product include the copper path.) BT's argument therefore that LLU care levels for MPF (shared and fully unbundled) could not be aligned with those for IPStream and DataStream was unfounded.

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Likewise, no reasoning was given to justify the disparity caused by limiting care levels to Stage 1 of the repair process. Clearly, the proposal to reserve those to 'special investigations' is very vague and leaves Bulldog in complete state of uncertainty as to the treatment which faults - at that stage - will be given.

LLUOs compiled a written response to BT's response of 4 November 2004 which was forwarded to BT on 27 November 2004. Also, two meetings between BT and LLUOs (facilitated by the OTA) were held on 24 November and 6 December 2004 to discuss both BT's response and the LLUO response to BT's comments but no progress was made to resolve differences between the two positions. A further briefing was prepared by the Telecommunications Adjudicator on 9 December 2004. In January 2005, BT withdrew its 4 November 2004 offer to provide an enhanced plus, five hour fault repair service by March 2005. This is particularly alarming for Bulldog, especially given BT's announcement on 10 February 2005 of the introduction of an eight hour repair guarantee on its new business broadband retail offering.

A further presentation by BT regarding care levels was delivered on 21 February 2005. BT highlighted the fact that by launching the WLR equivalent care package by March 2005, significant improvement would be achieved. Bulldog agrees that the WLR care levels (if similar terms and conditions were also provided) would deliver an improvement in the standard level of care in particular. Bulldog does not, however, agree that such care levels would allow LLUOs to compete with BT across the entire portfolio of products delivered over copper.

For the reasons above, BT's proposal of 4 November 2004 is unacceptable to Bulldog. By only having available care levels that fall short of reflecting best practices across products that should be aligned, Bulldog continues to be subject to undue discrimination by BT. As explained above, in order for there to be equivalence in the offering by BT of LLU and the products that are technically and operationally equivalent to LLU, it is imperative that BT allows LLUOs to offer the most competitive care levels already offered by BT for its competing products.

Bulldog has therefore decided to refer the dispute related to the MPF/SMPF fault repair levels to the Telecommunications Adjudicator for Ruling in accordance with the Dispute Resolution Rules for Local Loop Unbundling of 28 June 2004.

(A more detailed chronology of events leading to this dispute is provided in Tables 2 and 3.)

### **Section D - Declaration by an Officer of the Company**

Before making this submission to the Telecommunications Adjudicator, to the best of my knowledge and belief, Bulldog Communications has used its best endeavours to resolve this dispute through commercial negotiation and if this dispute remains unresolved, it will have a material impact on the broad take-up of LLU in the UK.

Signed:

Position in the Company:

Date:

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Table 1: Comparison of LLU Fault Repair Options

LLU (Under ANF Agreement)	LLUO SOR of 20 September 2004	BT SOR Response of 4 November 2004
<p>Standard Care:</p> <ul style="list-style-type: none"> <li>• Repair target of 28 working hours (available Monday through Friday 0800 to 1700)</li> <li>• Compensation for failure to achieve target</li> </ul> <p>Enhanced Care:</p> <ul style="list-style-type: none"> <li>• Four clock hour response target</li> <li>• 24 clock hour repair target (available seven days per week, 24 hours per day), 'best endeavours' basis</li> <li>• No enhanced compensation</li> <li>• Limited to Stage 1 of repair process</li> <li>• Does not apply if end user is unavailable at all times</li> <li>• Activation five working days from handover (or one working day from acceptance)</li> </ul>	<p>Standard Care:</p> <ul style="list-style-type: none"> <li>• Repair target of 32 clock hours (available seven days per week, 24 hours per day with operational cover between 0700 and 2100)</li> <li>• Applies to Stage 1 and 2 of repair process</li> <li>• Clock stops if end user is unavailable at all times</li> <li>• Compensation for failure to achieve repair target</li> </ul> <p>Enhanced Care:</p> <ul style="list-style-type: none"> <li>• Three clock hour response target</li> <li>• 16 clock hour repair target (available seven days per week, 24 hours per day)</li> <li>• Compensation for failure to achieve repair target</li> <li>• Available at handover of circuit (no delay in activation)</li> <li>• Applies to Stage 1 and 2 of repair process</li> <li>• Clock stops if end user is unavailable at all times</li> </ul> <p>Enhanced Plus Care:</p>	<p>LLU Level 1:</p> <ul style="list-style-type: none"> <li>• Response target of one working day</li> <li>• Repair target of midnight of following working day (available Monday through Friday 0800 to 1700)</li> <li>• Applies to Stage 1 repair process</li> <li>• Clock stops if end user is unavailable at all times</li> <li>• Compensation for failure to achieve repair target</li> </ul> <p>LLU Level 2:</p> <ul style="list-style-type: none"> <li>• Response target of four working hours</li> <li>• Repair target of midnight of following working day (available Monday through Saturday 0800 to 1700)</li> <li>• Applies to Stage 1 repair process</li> <li>• Clock stops if end user is unavailable at all times</li> <li>• Compensation for failure to achieve repair target</li> </ul> <p>LLU Level 3:</p>

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	<ul style="list-style-type: none"><li>• One clock hour response target</li><li>• Four clock hour repair target (available seven days per week, 24 hours per day)</li><li>• Compensation for failure to achieve repair target</li><li>• Available at handover of circuit (no delay in activation)</li><li>• Applies to Stage 1 and 2 of repair process</li><li>• Clock stops if end user is unavailable at all times</li></ul>	<ul style="list-style-type: none"><li>• Response target of four clock hours</li><li>• Repair target of 24 clock hours (available seven days per week, 24 hours per day)</li><li>• Applies to Stage 1 repair process</li><li>• Clock stops if end user is unavailable at all times</li><li>• Compensation for failure to achieve repair target</li></ul> <p>LLU Level 4:</p> <ul style="list-style-type: none"><li>• Response target of four clock hours unless otherwise agreed</li><li>• Repair target of five clock hours (available seven days per week, 24 hours per day)</li><li>• Applies to Stage 1 repair process</li><li>• Clock stops if end user is unavailable at all times</li><li>• Compensation for failure to achieve repair target</li></ul>
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Table 2: Chronology of Dispute Negotiations prior to 26 March 2004

Date	Event	Document Number	Document	Document Date	Comments
30.04.03	Notification to BT by Bulldog of Twelve LLU Issues	1	Bulldog (Richard Greco) to BT (Stuart Horwood) email with schedule of issues	30.04.03	Bulldog identified twelve LLU issues that it had failed to progress
09.05.03	BT Bulldog Meeting	2	BT to Bulldog email with agenda	09.05.03	Bulldog had scheduled the meeting to discuss both LLU and SDSL but BT did not want to discuss LLU issues as the appropriate personnel were not available
		3	Bulldog to BT email with minutes	13.05.03	
		4	BT to Bulldog email with amended minutes	16.05.03	
12.05.2003 through 18.05.03	BT/Bulldog Letter Exchange Regarding Issues	5	BT (Fionnuala Furmston) to Bulldog (Richard Greco) email with letter and schedule of comments on issues	12.05.03	BT stated that it was not at liberty to amend regulated prices (connection and rental charges for MPFs and SMPFs)
		6	Bulldog (Richard Greco) to BT (Fionnuala Furmston) email with schedule of comments on comments on issues	18.05.03	Bulldog clarified that BT did have right to adjust prices lower
22.05.03	Bulldog OFTEL Meeting	7	Bulldog (David Rivington) to OFTEL (Jim Niblett) email with background document for meeting	21.05.03	
		8	Bulldog (Diane Mills) to OFTEL (Jim Niblett/Dave Clarkson) email with presentation	22.05.03	Bulldog presented issues to OFTEL with view to seeking informal guidance from OFTEL on issues
		9	Bulldog (Richard Greco?) to OFTEL (Jim Niblett) email with minutes	23.05.03?	
23.05.03	BT Bulldog Meeting	10	Bulldog (Diane Mills) to BT (Bruce Stanford/Fionnuala Furmston) email	15.05.03	Bulldog requested meeting details
		11	BT (Bruce Stanford) to Bulldog (Diane Mills) email	20.05.03	BT provided meeting participant list
		12	BT (Michelle Hodges) to Bulldog (Diane Mills) email with minutes	28.05.03	
		13	Bulldog (David Rivington) to BT (Greg Mook) email with Bulldog cost stack slides	25.05.03	As requested by BT at the meeting of 23.05.03, Bulldog provided its cost modelling assumptions
		14	Bulldog (Diane Mills) to BT (Michelle Hodges) email with parity schedule and amended minutes	29.05.03	As requested by BT at the meeting of 23.05.03, Bulldog provided its assertion of parity on each of the twelve issues; Bulldog also provided evidence from BT's website asserting incompatibility between BT Together and LLU
		15	Bulldog (Diane Mills) to BT (Michelle Hodges) email	04.06.03	As requested by BT at the meeting of 23.05.03, Bulldog provided details of an offer from BT Retail to install a PSTN line free of charge
		16	Bulldog (Diane Mills) to BT (Michelle Hodges) email	06.06.03	As requested by BT at the meeting of 23.05.03, Bulldog provided evidence from BT's website asserting that the £50 IPStream connection charge allowed BT to recover all of the costs associated with connecting an end user
		17	BT (Bruce Stanford) to Bulldog (Richard Greco) email with parity comments, price points and co-mingling cost analysis	10.06.03	BT summarised progress on issues

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10.06.03	BT Bulldog Meeting	18	BT (Michelle Hodges) to Bulldog (Diane Mills) email with minutes	20.06.03	Agreement reached to discuss issues with OFTEL
18.06.03	BT Bulldog Meeting				No documentation issued for meeting
24.06.03	BT Bulldog OFTEL Meeting	19	Bulldog (Richard Greco) to BT (Bruce Stanford) email with list of issues for referral to OFTEL	18.06.03	
		20	Bulldog (Diane Mills) to OFTEL (Jim Niblett) email with agenda	24.06.03	
		21	Bulldog (Diane Mills) to BT (Bruce Stanford) email with agenda	24.06.03	
		22	Bulldog presentation to BT and OFTEL	24.06.03	
		23	Bulldog (Richard Greco) to OFTEL (Jim Niblett) email with meeting notes	26.06.03	
		24	OFTEL (Jim Niblett) to Bulldog (Richard Greco) email	02.07.03	
		25	Bulldog (Richard Greco) to OFTEL (Jim Niblett) email	03.07.03	Bulldog confirmed to OFTEL BT's decision to reduce minimum term on shared MPFs
		26	OFTEL (Jim Niblett) to Bulldog (Richard Greco) email	03.07.03	
		27	Bulldog (Richard Greco) to OFTEL (Jim Niblett) email	03.07.03	
		28	Bulldog (Richard Greco) to BT (Bruce Stanford) email	03.07.03	
		29	BT (Bruce Stanford) to Bulldog (Richard Greco) email	03.07.03	
		30	BT (Michelle Hodges) to Bulldog (David Rivington?) email with minutes?	?	
		31	BT (Michelle Hodges) to LLUOs email	07.07.03	BT delivered notification of reduction of minimum term on shared MPFs to deliver "consistency with broadband portfolio"
		32	Bulldog (David Rivington) to BT (Michelle Hodges) email with amended minutes?	09.07.03?	
		33	BT (Bruce Stanford) to Bulldog (Richard Greco) email	23.07.03	
		34	Bulldog (Richard Greco) to BT (Bruce Stanford) email	23.07.03	
		35	BT (Bruce Stanford) to Bulldog (Richard Greco) letter	31.07.03	BT summarised progress on issues

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30.07.03	BT Bulldog Conference Call				
12.08.03	BT Bulldog Letter Exchange	36	Bulldog (Richard Greco) to BT (Bruce Stanford) letter	12.08.03	Bulldog accepted BT's offer to waive partitioning charges; Bulldog further requested BT to review shared line charges given delay in LLU Market Review
		37	BT (Bruce Stanford) to Bulldog letter	22.08.03	
03.09.03	BT Bulldog OFTEL Meeting	38	OFTEL (Jim Niblett) to Bulldog (David Rivington) email	02.09.03	BT confirmed certain terms and conditions of SDSL trial
		39	BT (Michelle Hodges) to Bulldog (Diane Mills) email with minutes	04.09.03	OFTEL requested agenda items
		40	Bulldog (David Rivington) to BT (Michelle Hodges) email with amended minutes	05.09.03	
05.09.03	BT Bulldog Letter Exchange	41	Bulldog (Richard Greco) to BT (Bruce Stanford) letter	05.09.03	Bulldog requested migration IPStream to LLU migration scheme, equivalent to that in place for IPStream to IPStream and decision to file complaint with OFTEL if BT failed to provide process
		42	BT (Bruce Stanford) to Bulldog (Richard Greco) email	05.09.03	
		43	BT (Bruce Stanford) to Bulldog (Richard Greco) email with parity comments on migration	11.09.03	
		44	Bulldog (Richard Greco) to BT (Bruce Stanford) email	12.09.03	
		45	BT (Bruce Stanford) to Bulldog (Richard Greco) email	15.09.03	BT agreed to provide IPStream to LLU migration process at standard connection charges but such charges were under review
		46	Bulldog (Richard Greco) to BT (Bruce Stanford) email	15.09.03	Bulldog accepted BT's offer on migration process
22.10.03	BT Bulldog Meeting	47	Bulldog (Diane Mills) to BT (Bruce Stanford) email	03.10.03	Bulldog requested meeting to discuss progress on LLU issues
		48	BT (Bruce Stanford) to Bulldog (Diane Mills) email	03.10.03	BT agreed to meeting
		49	Bulldog (David Rivington) to BT (Bruce Stanford) email	07.10.03	Bulldog requested inclusion of DataStream VP issue in meeting
		50	Bulldog (Shaun Dale) to Bulldog (Diane Mills) email with minutes	19.11.03	
13.02.04	Bulldog Decision to Refer Dispute to OFCOM	51	Bulldog (Richard Greco) to BT (Bruce Stanford) email with issue status	13.02.04	Bulldog notified BT of decision to refer dispute to OFCOM
		52	BT (Bruce Stanford) to BT (Richard Greco) email	19.02.04	

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Table 3: Chronology of Dispute Negotiations from 26 March 2004

Date	Document Number	Event	Issue	Outcome
11.02.04	53	LLU Industry Group Meeting	LLUOs questioned the parity with PSTN TotalCare	BT clarified that MPF/SMPF TotalCare covered the copper, the jumper and the NTE. BT was reviewing the time period before TotalCare became effective (as at present, there was a five day window).
12.05.04	54	LLU Industry Group Meeting	BT to clarify the parity between PSTN TotalCare and LLU MPF/SMPF TotalCare, including the five day lag period before TotalCare is effective for LLU purposes and the limitation to Stage 1 faults	BT reported that it was scheduled to hold a workshop on 13 May 2004 but that if the MPF was accepted before 1300 hours, TotalCare would become effective that evening, otherwise the following morning but that an acceptance CRF was required which was not normally delivered and thus the default lead time for TotalCare was five days. This lag was considered unacceptable by LLUOs. BT did not clarify the restriction to Stage 2.
09.06.04	55	LLU Industry Group Meeting	BT to clarify the parity between PSTN TotalCare and LLU MPF/SMPF TotalCare, including the five day lag period before TotalCare is effective for LLU purposes and the limitation to Stage 1 faults	BT reported that it was intending to align the LLU care packages with other wholesale products: shared MPF with EUA of IPStream/DataStream ADSL and fully unbundled MPF with PSTN/WLR. The Stage 2 exclusion was still under review.
14.07.04	56	LLU Industry Group Meeting	BT to clarify the parity between PSTN TotalCare and LLU MPF/SMPF TotalCare, including the five day lag period before TotalCare is effective for LLU purposes and the limitation to Stage 1 faults	BT reported that it was still evaluating the impact of changes on processes and systems but that BT expected to circulate a proposal by the end of August 2004.

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08.09.04	57	LLU Industry Group Meeting	BT to clarify the parity between PSTN TotalCare and LLU MPF/SMPF TotalCare, including the five day lag period before TotalCare is effective for LLU purposes and the limitation to Stage 1 faults	BT reported that it was still evaluating the impact of changes on processes and systems.
20.09.04	58	LLUO SOR Submission to BT		LLUOs requested parity with ADSL and SDSL IPStream/DataStream and PPCs (all terms and conditions).
13.10.04	59	LLU Industry Group Meeting	BT to clarify the parity between PSTN TotalCare and LLU MPF/SMPF TotalCare, including the five day lag period before TotalCare is effective for LLU purposes and the limitation to Stage 1	BT reported that it was still evaluating the impact of changes on processes and systems.
03.11.04	60	LLU Industry Group Meeting	BT to clarify the parity between PSTN TotalCare and LLU MPF/SMPF TotalCare	Parties agreed to postpone pending Adjudicator discussions.
04.11.04	61	BT SOR Response to LLUOs		BT offered parity with WLR for standard and enhanced levels (in target times) and with PPCs for enhanced plus levels (in target times); full terms and conditions not provided.
24.11.04		Meeting Between LLUOs and BT (facilitated by OTA)	LLUOs and BT to discuss comments to BT's response to SOR	
27.11.04	62	OTA Response to BT	LLUO consolidated comments to be forwarded to BT	
06.12.04		Meeting Between LLUOs and BT (facilitated by OTA)	LLUOs and BT to discuss comments to BT's response to SOR	
08.12.04	63	LLU Industry Group Meeting	BT to clarify the parity between PSTN TotalCare and LLU MPF/SMPF TotalCare	Parties agreed to postpone pending Adjudicator discussions.

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09.12.04	64	Repair Issues Summary	OTA summarised LLU repair issues	
12.01.05	65	LLU Industry Group Meeting	BT to clarify the parity between PSTN TotalCare and LLU MPF/SMPF TotalCare	Parties agreed to postpone pending Adjudicator discussions.
10.02.05	66	BT Press Release	BT announced launch of retail level eight hour SLG on ADSL broadband product	
21.02.05	67	BT Presentation on LLU Fault Repair	BT provided update of care issues	