

ecta RESPONSE

**TO THE PUBLIC CONSULTATION BY BEREC
ON THE**

**DRAFT BEREC GUIDELINES ON THE ACCESS
TO IN-BUILDING INFRASTRUCTURE
ACCORDING TO ARTICLE 11(6) OF THE
GIGABIT INFRASTRUCTURE ACT**

BoR (25) 84

11 July 2025

1. Introduction

1. ecta, the [european competitive telecommunications association](#),¹ welcomes the opportunity to provide short-form comments on the draft BEREC Guidelines on the access to in-building infrastructure according to Article 11(6) of the Gigabit Infrastructure Act (hereafter 'GIA') – BoR (25) 84.
2. ecta represents those alternative operators who, relying on the pro-competitive EU legal framework that has created a free market for electronic communications, have helped overcome national monopolies to give EU citizens, businesses and public administrations quality and choice at affordable prices. ecta represents at large those operators who are driving the development of an accessible Gigabit society, who represent significant investments in fixed, mobile and fixed wireless access networks that qualify as Very High Capacity Networks (hereafter 'VHCN') and who demonstrate unique innovation capabilities.

2. Key overarching comments

3. Document BoR (25) 84, as it stands, reads as a set of considerations and suggestions, rather than as a set of readily applicable guidelines. ecta urges BEREC to **ensure that the final guidelines are unambiguous, clearly structured, and concise**, and use a numbering system (e.g. '*Guideline X*' followed by '*Criterion X*'), or at least that specific titles and concluding text boxes are used to specifically make each item of formal guidance explicit. The format of the BEREC Wholesale Roaming Guidelines provides relevant framework for the drafting team.
4. ecta agrees that the **BEREC guidelines should focus on high level criteria** and leave the specific provisions to be set on a case-by-case basis (*para 16*).
5. With regard to the suggestion of complementing the BEREC guidelines, if necessary, by national or local guidelines (*para 16*), ecta expresses its strong preference for nation-wide guidelines, to avoid fragmentation within Member States, whilst recognizing that there are different types of residential and non-residential buildings, and special cases with potential differences among them (which nevertheless in most cases are apt for harmonisation).

3. Chapter 2: The terms and conditions of access to in-building physical infrastructure, including on the application of fair and reasonable terms and conditions

Identification of boundaries regarding the in-building infrastructure (Chapter 2.2) and Different case categories (Chapter 2.3)

6. ecta expresses its **broad agreement** with BEREC's proposals and emphasizes that the following must definitely be addressed **in unambiguous form** in the final BEREC guidelines (i.e. not using terms such as 'may', 'could', 'should', 'in principle',

¹ <https://www.ectaportal.com/about-ecta>

etc.) but formulated as a firm guideline that National Regulatory Authorities (NRAs)/Dispute Settlement Bodies (DSBs) can only deviate from if they provide clear justification. The bullet points below indicate key points, including proposals for **deletions**, and where relevant, indicating the necessity of **firming-up the wording**.

7. Whilst **ecta** recognises the positive intent of *para 17* as an introductory statement, **ecta requests its deletion, because it introduces ambiguities**. The text in *para 42-49* covers these subjects in a sharper and more detailed manner, which is more suitable for guidelines. Note: In case *para 17* is maintained, the words '*in principle*' must be deleted from *para 17*, bullet 1 to avoid introducing ambiguity that is not in the subsequent text. In case *para 17* is maintained, the last bullet of *para 17* must be deleted, on the grounds that the GIA requirement for fibre-ready in-building physical infrastructure is a matter of law (Art. 10 GIA), which cannot be diluted by BEREC Guidelines. It is not appropriate to consider access to the fibre itself rather than access to in-building physical infrastructure in the BEREC Guidelines, even if it may constitute a relevant and widely used solution.
8. Further elements which are important to address are as follows:
 - It is crucial that all access points are easily accessible by more than one operator, *without excessive effort (para 21)*. **ecta** asks BEREC not to allow any dilution of these principles.
 - Accessibility means that operators must be able to reach and access the access point as well as the passive in-building infrastructure (from that point up to the network termination point inside the end-user premises) and that the distribution facility *must have* enough space to allow access seekers to perform technical operations (*para 23*). **ecta** asks BEREC to confirm that **enough space** must be made available **to accommodate multiple operators**. This being stated, **ecta requests the deletion of the link made with Art 61(3) EECC in para 23**, as this may result in conflating the GIA – which is a legal instrument solely aimed at cost reduction - with EECC Art 61(3) which is aimed at addressing competition problems on an ex-ante basis.
 - With regard to **access outside buildings (para 24)**, which is known to be a practice in several Member States, network security and resilience requirements **justify explicit rights for operators**, e.g. those focused on business customers, **to construct their networks up to the building itself, and request and obtain access to in-building physical infrastructure**.
 - The expectation of changes in ownership of in-building physical infrastructure and wiring is speculative, and reference is made to a single Member State (*para 26*). Therefore, **ecta requests the deletion of this paragraph**.
 - The expectation of changes in ownership of in-building physical infrastructure and wiring is speculative, and reference is made to a single Member State (*para 26*). Therefore, **ecta requests the deletion of this paragraph**.

- **ecta** welcomes BEREC's important indication that the Art. 11(3) GIA obligations should be understood to cover both the owner of the in-building infrastructure or an entity to which the owner of the infrastructure has delegated control over it (*para 27*). This being stated, the wording 'should be understood' could usefully be replaced by a more binding formulation (e.g. 'shall'), and after 'entity', it would be advisable to add 'or person', given that physical persons may be the ones to which functions are delegated (e.g. members of the association of owners, a professional 'syndic' and equivalents).

Access to the in-building physical infrastructure (Chapter 2.4)

9. **ecta** expresses its **broad agreement** with BEREC's proposals and emphasizes that the following must definitely be addressed **in unambiguous form** in the final BEREC guidelines (i.e. not using terms such as 'may', 'could', 'should', 'in principle' etc.) but formulated as a firm guideline that NRAs/DSBs can only deviate from if they provide clear justification. The bullet points below indicate key points, including where relevant indicating the necessity of **firming-up the wording**. This section also contains proposals for **deletions**:
 - NRAs/DSBs must be receive clear guidance to the effect that they must provide (not 'may provide') a contract template to be used for the specification of terms and conditions as well as relevant SLAs and KPIs (*para 30*). **ecta** draws attention to the fact that, where buildings house business customers, it is essential that the SLAs are suitable to underpin the Service Level Guarantees (SLGs) that the operators provide to business customers.
 - With regard to **the last sentence of para 30**, **ecta's** view is that **the right to physical access (e.g. access to in-building cellars, technical rooms, racks, trays, risers, tubes and mini ducts) should always be guaranteed**, and that **the presence of in-building fibre should never prevent operators who wish to deploy their own fibre in the in-building infrastructure from doing so**. BEREC Guidelines should clearly state that **operators have the right** to deploy their own in-building fibre to be able to manage their connections end-to-end (i.e. from their networks to the customers' premises) and avoid delays in take-up of services. Already during the evaluation of the Broadband Cost Reduction Directive, **ecta** flagged cases where owners of buildings housing businesses deny access to in-building physical infrastructure and require the use of their in-building (or campus) fibre, in order to be able to charge fees to operators, which results in discussions, delays, disputes, and may prevent operators from fulfilling the SLGs they agreed with their customers. For these reasons, **ecta requests the deletion of the last sentence of para 30**.
 - Defining deadlines for ensuring access (*para 33*). **ecta requests the inclusion of explicit deadlines for each procedural milestone** referred to in para 33 (such deadlines are not put forward by BEREC). **ecta** disagrees that procedural deadlines will depend on the specific circumstances of countries, has concerns about unjustified lack of harmonisation, and therefore **requests the deletion of**

the last sentence of *para 33*.

- Building owners/managers must cooperate with the access seeker (*para 35*) and the conditions for use of in-building physical infrastructure must be defined through a contract (*para 38*). The words 'should' (35) and 'could' (38) must be replaced by binding wording, and **ecta requests that these points are made explicit BEREC guidelines**.

Price related terms and conditions for access to the in-building physical infrastructure (Chapter 2.5)

10. **ecta** expresses its **agreement** on BEREC's proposed high-level principles, **with nuances and crucial requests for amendment or deletion**, which are needed to avoid potentially disastrous regulatory uncertainty and payment demands addressed to operators, i.e.:

Scenario (1): Ownership by entity which is not an ECN operator

- Where the owner or holder of rights of the fibre-ready in-building physical infrastructure is not an ECN operator, BEREC considers that access to the infrastructure should be given to all access seekers **without any charges** (*para 42 and part of para 43*). **ecta fully supports this principle. It needs to be a crystal-clear item in the final BEREC guidelines. The wording 'should be given' must be firmed up to become unequivocal** (e.g. replacing it with 'shall').
- This being stated, the **suggested exceptions** (*in particular the last two sentences of para 43, and the 3 bullet points at the end of para 43, and extending to para 44, 45 and 46*) **must imperatively be deleted, because their inclusion would open the door to numerous (potentially millions of) attempts by building owners or their representatives to seek payment/monopoly rents**. Note: The wording '*in principle*' in *para 17, bullet 1* is inappropriate, and this is part of the reasons why **ecta** advocates the deletion of para 17. *Para 45* creates the opportunity for building owners or their representatives to come up with schemes to aim to justify payments to be made to them. This must unequivocally be ruled out by BEREC's guidelines.

Scenario (2): Ownership by ECN operator

- As a general remark, **ecta** presumes that the scenario where the in-building physical infrastructure was installed at the cost of an ECN operator and is owned by an ECN operator is likely to very rare. Attention is needed that the BEREC Guidelines are well understood by all stakeholders as applying strictly to the in-building physical infrastructure, and not to the in-building fibre.
- **ecta** agrees that when the in-building physical infrastructure was installed at the cost of an ECN operator and is owned by an ECN operator, the operator must be able to prove the costs incurred for building the infrastructure with appropriate documentation and level of detail, and a depreciation method needs to be applied (suggested 30-year period) (*para 47-49*). **ecta fully supports this practical evidence-based approach, and asks to add the reference 'based on invoices**

for instance' (taken from para 17, bullet 3 which ecta proposes to delete) ensuring simple and objective assessment.

Fibre access (Chapter 2.6)

11. Upon careful reflection, **ecta requests the deletion of this chapter. The GIA requirement for fibre-ready in-building physical infrastructure is a matter of law (Art. 10 GIA), which cannot be diluted by BEREC Guidelines.** Therefore, it is not appropriate (*para 51*) to first consider access to the fibre itself before turning to the physical infrastructure.

Other non-price related terms and conditions of access to physical in-building physical infrastructure (Chapter 2.7)

12. **ecta** expresses its **agreement** on BEREC's proposals, and particularly welcomes page 53, bullet 2, addressing the need for up-to-date technical documentation, and the last bullet on maintaining the physical in-building infrastructure.

Reasonableness (Chapter 2.8)

13. Upon careful reflection, **ecta** expresses its **serious reservations about the entirety of this chapter**, as - as a minimum - **requests the deletion of para 56 sub-point e. The GIA requirement for fibre-ready in-building physical infrastructure is a matter of law (Art. 10 GIA), which cannot be diluted by BEREC Guidelines.** The text entails risks of anticompetitive behaviour by (recognised in para 57) and encourages the making of a 'separate offer' (*para 56 e.*), which some may seek to construe as active access. A question concerning 'bitstream' precisely to that effect was posed during the Q&A session of the BEREC Debriefing of 11 June 2025. Footnote 14 suggests that access to wiring could be seen as equivalent to access to physical in-building infrastructure. **ecta** does not share the view that access to wiring is 'equivalent', and this should not be included in the BEREC Guidelines, even if it may constitute a relevant and widely used solution. Bitstream is most definitely not a substitute.

4. Chapter 3: The criteria that the dispute settlement bodies should follow when settling disputes falling within the scope of Article 11 of the GIA

14. **ecta welcomes the substance and proposals** made in this chapter, with the **nuances** provided hereafter.
15. It is well understood that the 1-month timeframe for dispute resolution contained in the GIA requires tight procedural framing and accompanying measures. This being stated, BEREC's final guidelines (*para 79-82*), need to ensure that any optional informal mechanism and mediation process does not end-up resulting in long delays which are not consistent with the stated aims of the GIA. **ecta** therefore suggests that (**para 84 under 'suspension or extension'**), **the text needs to be sharpened to prevent delaying tactics and regulatory gaming (e.g. failure to respond to additional information requests from the DSB). The DSB should indeed have the power to proceed to a provisional order, and parties should**

have the explicit right to move to actual time-bound dispute resolution at any time during any optional process.

2. The right to be heard, ensuring that the confidentiality requirement does not delay the process, as well participation rights, are rightly important for BEREC to underscore (*para 84*). [ecta](#) urges BEREC to resist other stakeholders' potential pushback on these points.

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In case of questions or requests for clarification regarding this contribution, BEREC and NRAs are welcome to contact Mr Luc Hindryckx, Director General of [ecta](#) or Ms Pinar Serdengeçti, [ecta](#) Regulation and Competition Affairs Director.