

**Openreach's response to
Ofcom's Consultation:
"Promoting competition and
investment in fibre networks:
Telecoms Access Review"
Document 3**

12 June 2025

Table of Contents

Introduction.....	3
Copper Retirement and Exchange Exit Summary.....	5
Copper Retirement and Exchange Exit.....	7
Introduction.....	7
Responses to Questions	17
Copper retirement.....	17
Exclusions.....	29
Exchange Exit	41
Non-Pricing Remedies.....	50
Summary	50
General Remedies	52
PIA - Specific Remedies	73
WLA-specific remedies	89
LLA-specific remedies	93
IEC-specific remedies	100
Geographic discounts and other commercial terms.....	106

Introduction

This document forms part of Openreach's response to the TAR Consultation, and covers responses to TAR Volume 3.

The full structure of the Openreach response is:

Openreach TAR Response Document 1	Executive Summary and Overall view on Market Analysis and Remedies
Openreach TAR Response Document 2	Responses to questions in TAR Consultation Volume 2
Openreach TAR Response Document 3	Responses to questions in TAR Consultation Volume 3
Openreach TAR Response Document 4	Responses to questions in TAR Consultation Volume 4
Openreach TAR Response Document 5	Responses to questions in TAR Consultation Volume 5
Openreach TAR Response Document 6	Responses to questions in TAR Consultation Volume 6 and Annexes
Annex 1: NERA Report: Response to Ofcom's TAR	Supports points on Market Analysis and remedies in documents 1 to 4
Annex 2: Network Technology Report	Supports points on Market Analysis in documents 1 and 2
Annex 3: Criteria for Geographic Deregulation in Wholesale Broadband (Assembly Research report)	Supports points on Market Analysis in documents 1 and 2

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Issue: 1

Date: 12/06/2025

for the purpose of Openreach Telecoms Access Review 2026-31 and for no other purpose, unless otherwise agreed in writing by Openreach.

Openreach's response to Ofcom's Consultation: Promoting competition and investment in fibre networks: Telecoms Access Review: Document 3 – Non-Pricing Remedies

Copper Retirement and Exchange Exit Summary

Moving end customers to new services and closing legacy platforms supports better end customer experience, simpler end customer journeys, and more resilient and reliable connectivity for the whole of UK society. Network simplification and exchange closures could lead to more reliable service and lower costs for Openreach's ISPs and ultimately end customers.

We welcome Ofcom's support for the transition away from copper-based networks and for Openreach's plans to close exchanges during this review period. However, to turn this support into action Ofcom should be much bolder in approach and clearer about what this will mean in practice.

In respect of copper retirement:

- Ofcom's objectives should be to achieve timely migrations to new infrastructure whilst protecting end customers, especially those with vulnerabilities, and ensure that the migration process does not harm competition.
- However, Ofcom's analysis of these issues is flawed as it fails to take account of significant developments since the Wholesale Fixed Telecoms Market Review (WFTMR), resulting in the wrong policy approach that risks leaving the UK behind other countries.
- We propose a premises-level approach that would move end customers quickly to new infrastructure as it becomes available rather than back-ending migrations only once arbitrary thresholds are met.
- Ofcom must use its planned second consultation to update its entire approach to supporting copper retirement while protecting end customers and our ISP customers.

In respect of exchange exit:

- Significant cost savings can be realised for Openreach, which can be reinvested in our fibre networks for the benefit of the UK - and for industry - through closure of the priority 108 exchanges but only if these closures are achieved on time.
- We agree with Ofcom that a commercial approach is likely to drive the best outcomes and that Openreach and its ISP customers are well placed to agree terms. However, commercial negotiation alone might not always be enough to secure exchange exit in an efficient and timely manner.
- It is essential that Ofcom is clear on the form its support for exit will take and how it sees its role in setting the approach in supporting the final migrations away from copper.
- We propose working with Ofcom on a scale 'pathfinder' trial to identify and resolve the remaining issues on the route to exchange exit.
- Given the urgent need for a clear route to exchange exit, the trial process cannot wait for the conclusion of the TAR and should start as soon as possible.

Copper Retirement and Exchange Exit

Introduction

1. Moving end customers to new services and closing legacy platforms will support better end customer experience, simpler end customer journeys and more resilient and reliable connectivity for the whole of UK society. Network simplification and exchange closures could lead to more reliable services and lower costs for Openreach's ISP customers and ultimately end customers.
2. Ofcom says it supports the transition away from copper-based networks and Openreach's plans to close exchanges during this review period. It notes that exchange exit may lead to significant cost savings which could lead to lower prices for Openreach's ISPs and end customers. It notes the clear benefits for Openreach and other providers of consolidating infrastructure, reducing energy consumption and increasing efficiency and explains that, as Openreach builds its full-fibre network, it should not have to incur unnecessary costs in running two parallel networks.
3. Ofcom notes that both copper retirement and exchange exit involve ISP customers migrating away from copper-based services but explains that they are different issues and it considers them separately in the Consultation. We support this pragmatic approach.
4. On copper retirement, at a high level, the policy issues are clear: how to achieve timely migrations to new infrastructure whilst protecting end customers, especially those with vulnerabilities, and promoting competition during the migration. However, Ofcom's analysis of these issues is flawed as it fails to take account of significant developments since the WFTMR, resulting in the wrong policy approach that risks leaving the UK behind other countries and UK consumers realising the benefits of modernisation far later than is necessary. Other regulators are embracing the opportunity to retire legacy infrastructure quicker with Spain now having completed its copper switch off entirely and other countries, such as Sweden and Portugal, that are much closer to achieving this goal than the UK.
5. We propose a premises-level approach that would move end customers quickly to new infrastructure as it becomes available rather than back-ending migrations only once arbitrary thresholds are met. Given the size of the prize to the UK of getting this right, in the context of a sustained Government drive for economic growth, Ofcom should use its proposed second consultation to reconsider its approach from scratch.

Issued by: Openreach

Issue: 1

Date: 12/06/2025

Ofcom's objectives are clear

6. The need for copper retirement and the closure of exchanges is well understood. Openreach's investment in fibre will lead to lower costs for industry, sustainability benefits from lower energy consumption, and wider societal benefits from the deployment of full-fibre, ultimately to the benefit of UK citizens and end customers.
7. Ofcom has explained that the transition from copper to FTTP is likely to have a positive impact on all end customers. It acknowledges that end customers will benefit from being moved off ageing technology, which is at higher risk of faults, and expects that any savings made from Openreach decommissioning the copper-based network will flow down to end customers on its network.
8. Ofcom also explained that its decision to transition regulation from Openreach's copper-based services to its wholesale FTTP services was intended to support Openreach's business case for FTTP deployment and support the migration of customers away from Openreach's copper-based network, either to Openreach's FTTP network, or to rival networks. It has also said that its approach should facilitate the wider objectives of the review including the promotion of network competition and the protection of end customers.
9. Consistent with these objectives, Ofcom should therefore:
 - i. facilitate a smooth and timely transition from legacy networks and services;
 - ii. ensure that this migration does not limit or undermine competition; and
 - iii. ensure vulnerable end customers or critical national infrastructure services are not harmed during any migration but do not unnecessarily prevent closure of legacy networks and the wider consumer benefits that will follow.
10. In justifying its decision to retain the current approach based on three exchange-level coverage thresholds, Ofcom makes the case for continuity. In general, we recognise the benefits of stability and continuity, but this principle cannot sustain where: (i) no approach has even been completed and indeed Ofcom's intent is not to do so in this review period; (ii) the evidence does not support the concerns on which Ofcom originally justified the approach and the new justifications are unconvincing; and (iii) there exist approaches that better support Ofcom's objectives in any event. To continue in this way places a disproportionate burden on Openreach and does not take a sufficiently forward-looking view. It also risks slowing investment and innovation by reducing the pace at which end customers

migrate to superior full-fibre solutions and at which the legacy copper network can be retired.

11. When Ofcom considered how best to support copper retirement in 2021, fibre rollout was nascent and our plans for copper retirement were in their early stages. The regulatory support described in the WFTMR was necessarily a placeholder and was incomplete. Since then, we have seen significant investment by Openreach and other providers, and better than expected improvements in fibre coverage and choice for end customers. Ofcom must take this into account.
12. Ofcom's objectives for its copper retirement and exchange exit policy should not include the provision of additional incentives for fibre deployment. Ofcom's wider objectives for this review include the widespread availability of fibre, but this is now being met with the combination of network competition and public intervention. Ofcom was also concerned at the time of the WFTMR that Openreach might deter competitor investment by only partly covering an exchange, but events since then – including the extensive deployment of Openreach and competing networks – have shown that this concern is baseless in 2025. Ofcom's proposed approach must reflect these realities and be proportionate in that context.

The current approach does not support these objectives

13. Ofcom's three-threshold model unduly delays the start of the copper retirement process as it makes migrations of end customers with access to fibre contingent on the availability of fibre to other end customers in the same exchange area. Ofcom's approach also makes it harder for Openreach to implement a measured approach to copper retirement and exchange exit as all end customers are held up until the thresholds are achieved.
14. The current approach also risks encouraging inefficient competition or network deployment, by incentivising overbuild of Altnets' networks in order to hit exchange-level coverage targets, when Openreach could instead be providing fibre to unserved communities, entirely contrary to Ofcom's duty to encourage investment and innovation. Ofcom provides no compelling reason why on the one hand it intends to slow customer migrations to benefit Altnets – which we think is in itself unnecessary and inappropriate given the scale of their footprint build – whilst at the same time require Openreach to overbuild them.
15. Further, if, as it appears, Ofcom thinks there may be some advantage in delaying migration to increase the likelihood that the Altnets are ready to compete for end

customers, this is harmful to end customers and unnecessary, given network switching, and not supported by evidence to suggest it would make much difference to end customers' willingness to change provider.

16. International examples show how the UK is losing ground in the international race to adopt modern infrastructure. Other countries have shown much more appetite to effectively support transition, as illustrated below.

Table 3.1: Selected International examples of copper-withdrawal and exchange closure¹

Country	Announced	Completion	Threshold	Exchange notice
Estonia	2015	2017	No threshold - led by incumbent. Incumbent to provide regulated wholesale access at copper pricing.	6-months
Ireland	2021	2028	When exchange has "modern infrastructure" available. Access to regulated wholesale service of equal functionality and quality.	6-months stop-sell. Up to 18 months stop-service.
Norway	2019	2025	None (access seekers required to be involved in replacement decisions).	3 years, or 6-months if an equivalent replacement product available.
Spain	2016	2025	Only where exchange is no longer in use.	1-2 years.

A simpler approach to copper retirement would deliver better outcomes

17. Ofcom suggests that it is still too early to propose the point at which it considers copper regulation can be withdrawn. This is surprising, given the significant market developments since it reached the same conclusion in 2021, which Ofcom must take into account when setting its approach.
18. Setting the point at which requirements to provide copper services would fall away would provide important certainty and good incentives to ISP and end customers, to support the migration from copper to fibre. It would also negate any reason to

¹ Source: "Assembly Research (2024), 'Benchmarking UK regulation'; WIK-Consult (2020), 'Copper switch-off: European experience and practical considerations'; and Data Center Dynamics (2025), 'Telefónica completes switch off of copper network in Spain'".

link the phased removal of copper regulation to interim checkpoints based on unnecessary and unhelpful coverage-based thresholds.

19. A simpler transparent process based on access to fibre, adequate notice periods and protection for end customers could be introduced, along the following lines:
 - i. Openreach should be able to start the process of copper retirement for premises that have access to FTTP, starting with the introduction of stop-sell for copper to those premises;
 - ii. At some point later, after sufficient notice has been given, the copper charge control will cease to apply for premises with access to FTTP;
 - iii. After sufficient additional notice, the requirement to provide copper services be withdrawn for premises with access to FTTP; and
 - iv. Subject to appropriate protection and support for end customers, Openreach will be able to withdraw copper services for other premises, when it is ready to do so.
20. The details of this approach can be developed as part of the second consultation, but this approach will increase certainty for ISPs and facilitate the phased retirement of the copper network rather than delaying the cutover and doing it all at once. It therefore better meets Ofcom's objectives than the current approach. We explain why Ofcom has not adequately justified the current approach and why that approach needs to change in more detail in our response to Ofcom's question 3.1 below.
21. It also avoids many of the practical challenges associated with the implementation of the current approach which is not sufficiently forward-looking. We consider these in more detail in our response to Ofcom's question 3.2 below.
22. The current approach to copper retirement is out of date and no longer fit for purpose. It is essential that Ofcom uses its planned second consultation to seek views on how to update its entire approach to support copper retirement while protecting end customers and our ISP customers, encouraging investment and innovation in the process.

Supporting exchange exit

23. We support Ofcom's pragmatic approach of separating exchange exit from copper retirement given the urgency of closing exchange buildings in this review period.

Issued by: Openreach

Issue: 1

Date: 12/06/2025

24. Exiting the c. 4,500 non-enduring exchanges could save BT around [X] a year from exchange closure, and a further c.[X] every year from network simplification, giving a total of around [X] per year overall and could lead to more reliable service and lower costs for Openreach's customers and ultimately consumers.
25. These estimates include significant savings from the closure of the priority 108 exchanges. Openreach will also begin the process of closing further exchanges beyond the priority 108 during this review period. Given Ofcom is not proposing to complete its copper retirement framework in this review, it is untenable to hold up exchange exit until it does. What is now needed is greater clarity on specific points that we raise below and a process or approach that enables Openreach to progress exchange exits at pace to prove the model.
26. Closing exchanges is core to our strategy to drive deep and nationwide Openreach FTTP coverage, and drive rapid take-up so end customers benefit from the best possible service available to them and investors maintain confidence in our plan. We aim to retire legacy infrastructure quickly, so we minimise dual running costs and sustain investment – Ofcom has a duty to encourage such investment. Throughout this process we will protect end customers through the transition, minimising any disruption, particularly for vulnerable customers.
27. We plan to exit a small number of exchanges in the 2020s to learn, and unlock higher value sites; and then to ramp up quickly in the 2030s (with planning phases in this review period), moving from a handful of exchanges to hundreds each year. We will work collaboratively with industry to create a common plan to minimise disruption to customers and ensure we are able to meet demand and our QoS standards. We will ensure that the number of premises and end customers left without an Openreach FTTP or decent VDSL service at the point of exchange exit is kept to an absolute minimum, but anticipate that in a few cases, this might be unavoidable. Protecting end customers, particularly vulnerable customers, throughout this process will be at the heart of our approach and we will take all reasonable steps to secure a safe migration.
28. In December 2020, Openreach consulted with ISPs on a plan to reduce the number of exchanges to approximately 1,000 enduring exchanges over the long-term, enabled by the industry shift to full-fibre networks. Since then, Openreach has been working with ISPs and other stakeholders on how to deliver a first wave of 108 exchange exits (the "priority 108 exchanges"). We have made detailed proposals to ISPs to provide commercial and operational support for the required migration activity and to exit the priority 108 exchanges in four different phases.

29. Exiting the first 108 exchanges is increasingly time-critical if we are to fully realise the cost efficiencies and benefits for end customers. [X]. The financial implications of missing this deadline would therefore be significant for Openreach and for industry.
30. We agree with Ofcom that a commercial approach is likely to drive the best outcomes and that Openreach and its ISP customers are well placed to negotiate commercial agreements that allow for the benefits of exit to be realised and deliver good outcomes for competition and end customers. Openreach has now agreed commercial terms with most major CPs, and the majority of industry is well placed to start this process.
31. However, recent experience indicates that commercial negotiation alone will not always be enough to secure exchange exit soon enough to maximise the benefits of timely exit. There remains a risk that a single ISP may 'hold the entire industry to ransom', by choosing to withhold agreement in an attempt to secure better terms, and thereby jeopardise the benefits for all other ISPs. Alternatively, a tail of ISPs may not fully engage with exchange exit, and at some point it could become difficult to engage these remaining ISPs without threatening to cease their services. Even after deals have been signed, there remains plenty of scope for further delay; for example, there may be a tail of end customers who, for various reasons, might be unwilling to move away from copper.
32. Ofcom has a critical role to play in working with Openreach to develop an approach that ensures these final migrations will take place for the benefit of all.
33. We welcome Ofcom's words of support for exchange exit. But it is now essential that Ofcom is clear on the form this support could take and the criteria it will apply in determining when and how it will do so. Without that clarity there is a real risk that the opportunity to deliver the maximum benefits of a safe and timely exit will be lost.
34. We are keen to work with Ofcom to co-develop a revised approach to exit.

We propose working with Ofcom on a scale 'pathfinder' to iron out any remaining issues on the route to exchange exit

35. We consider that using [X] to trial this process will help Openreach, industry and Ofcom to identify best practice and map a route to safe migration for our ISP customers and successful exchange exit. Given the timescales involved, later phases will need to continue on their current trajectory but we would apply the

Issued by: Openreach

Issue: 1

Date: 12/06/2025

learning from the pathfinder where possible. With Ofcom's agreement, we hope to use this process to get clarity on what needs to happen for obligations to supply copper access services to be withdrawn, and what it would take for Ofcom to take a more active role in the exit process to deliver good outcomes for all parties.

36. The overarching principles underpinning our proposed build policy for the priority 108 exchanges are summarised below. We intend to proceed with the pathfinder on this basis and iron out the details of the approach during the pathfinder.
- i. We will invest as much as reasonably practicable to ensure continued service for as many end customers as possible. [X]. Where appropriate, we will provide early and clear communication to end customers about alternatives to Openreach.
 - ii. [X].
 - iii. [X].
 - iv. [X].
 - v. [X].
 - vi. We will protect vulnerable customers throughout, taking all reasonable steps to secure a safe migration (for example by using Prove Telecare to ensure migrations are conducted safely). We would expect, of course, to work very closely with Ofcom.
37. We have estimated the impact of these plans on platform availability as follows:
- i. There are currently around [X] end customers served by the 108 exchanges. Before taking into account the significant challenge in getting access to some MDUs, we expect our build policy to deliver [X] availability of FTTP/SOGEA to active end customers, [X].
 - ii. In practice, problems getting access to premises in MDUs will prevent some end customers from accessing our fibre, even where we have built to the curtilage of their building. We currently estimate that access challenges could reduce "ready for service" availability by around [X], [X].
38. With an aligned approach, these plans could support FTTP coverage and take-up. However, there will be challenges at each stage along the way to exit, as follows:

- i. Concluding the final commercial negotiations. We have secured commercial agreements with a wide range of ISPs but not all, and there is a long tail of ISPs that are not fully engaging with exchange exit.
 - ii. Implementing exit plans. Even after deals have been signed, there is plenty of scope for further delay. Our experience in supporting commercial migrations from pilots in Salisbury and Mildenhall shows this, as we were unable to complete all the planned migrations in these two pilot exchanges, despite extensive previous communications about our plans.
 - iii. Encouraging migration. We will need other providers to support their end customers' migration to fibre. Even where the ISP is fully engaged, there will be end customers who, for a variety of reasons, might be slow to migrate.
 - iv. Forcing migration. At some point the ability to exit an exchange might depend on a small number of end customers and it may be necessary to end their service.
 - v. Identifying and supporting vulnerable customers. Our experience with the first phase of exchange closures has highlighted the importance of contacting the tail of remaining end customers, many of whom might be vulnerable, and providing the appropriate information and support.
 - vi. Consent to withdraw service. Ofcom has explained that it will consider requests to waive the conditions requiring the provision of copper access services on a case-by-case basis. However, the process to be followed and the criteria that will be taken into account are not clear and therefore introduces the risk of delay.
39. The pathfinder trial should provide a better understanding of these challenges and the steps that can be taken to manage them. In some areas, we expect Ofcom is best placed to deliver the solution, and we are keen to understand Ofcom's readiness to do so. These include:
- i. Providing clarity on its own processes, and its pre-requisites for providing support;
 - ii. Supporting the case for legislative change to help end customers in MDUs get access to ultrafast broadband;

- iii. Playing a role in delivering clear communications to end customers to build clarity and confidence in the migration process, particularly for vulnerable customers;
 - iv. Providing data on premises and their access to alternative networks;
 - v. Providing a regulatory backstop to ensure the benefits of exit are not delayed by ISPs who might deliberately delay agreement to extract better commercial terms or do not take the steps required to migrate services and enable exchange closure.
40. The process of exiting the exchanges in the pathfinder will provide important insight into the challenges associated with exit and how they can be best resolved to deliver good outcomes for Openreach, for our ISP customers and for end customers. Lessons learned from exiting these exchanges will inform and improve the approach taken to the remaining planned closures. Therefore, the process provides the test case for the future approach to be taken by Openreach, by industry and by Ofcom.
41. Given the increasing urgency of the need for a clear route to exchange exit, this pathfinder process needs to commence as soon as possible and cannot wait for the conclusion of the TAR.

Responses to Questions

Copper retirement

Question 3.1: Do you agree with our proposed approach to supporting copper retirement? Please set out your reasons and supporting evidence for your response.

42. As explained above, we do not agree with Ofcom's proposed approach; it does not support copper retirement.
43. In the WFTMR, Ofcom set out a regulatory transition of Wholesale Local Access (WLA) regulation from Openreach's wholesale copper-based services to its wholesale FTTP services, based on three thresholds being reached in sequence. In the TAR consultation, Ofcom proposes to continue with this approach.
44. There have been significant developments since the WFTMR, including massive investment in fibre rollout by Openreach and other network operators; Ofcom has not adapted its approach to reflect these developments. Ofcom should revise the copper retirement framework to ensure that regulation is necessary, proportionate and sufficiently forward-looking, taking into account all relevant considerations. To do otherwise would place a disproportionate burden on Openreach and put at risk investment and innovation that would otherwise be achievable. Ofcom must also provide sufficient transparency on its approach going forward to give all stakeholders sufficient regulatory certainty.

Summary of Ofcom's approach

45. In the WFTMR, Ofcom explained that its approach was intended to support Openreach's business case for FTTP deployment and to support the migration of end customers away from the copper-based networks, either to Openreach's FTTP network or to rival networks. At the same time, Ofcom said it wanted to ensure that there was appropriate wholesale regulation to protect end customers.
46. Along with notification requirements, the key points for each threshold were as follows:
 - i. The first threshold enables Openreach to stop selling new copper-based network access services to premises when Openreach makes ultrafast services available at 75% of premises in the exchange area, and those premises are passed with FTTP.

Issued by: Openreach

Issue: 1

Date: 12/06/2025

- ii. The second threshold would trigger the withdrawal of the charge control on copper-based network access services at premises when Openreach makes ultrafast services available at 100% of the premises in the exchange area (excluding any premises that Ofcom directs), and those premises are passed with Openreach FTTP.
 - iii. A third threshold would relate to the complete deregulation of copper-based network access and would enable existing copper-based services to be withdrawn. However, at the time of the WFTMR, Ofcom considered it was too early to define the conditions that should trigger it.
47. These notification requirements meant that it would be a minimum of three years from Openreach first announcing that it expected 75% ultrafast coverage to be met in an exchange area to meeting the requirements of the Second Threshold. While the Third Threshold was not defined, any additional notification period (a period of two years was discussed in an earlier consultation) would increase the total period further (potentially to at least five years).

Ofcom should follow a premises-based approach

48. In our pre-TAR submission, we proposed that Ofcom should revise its approach to copper retirement by supporting pathways to service withdrawal at the premises level, not at the exchange level. This would mean regulation would only apply where necessary, leading to a more proportionate approach.
49. We explained that this would better reflect the progress made across industry in driving availability of full-fibre broadband services which has far exceeded Ofcom's expectations.
50. The thresholds in exchange areas were set at a time when fibre rollout by both Openreach and our competitors was significantly lower than it is today. Now, the high levels of FTTP coverage by both Openreach and our competitors mean that end customers are getting the strong outcomes from full-fibre availability and competitive choice targeted by Ofcom, and the forward-looking concerns Ofcom had in 2021 about Openreach pursuing a more targeted build strategy with lower levels of exchange coverage no longer apply and have not been updated.
51. At 31 March 2025, more than [X] million premises were in exchange areas with more than 50% Openreach FTTP coverage, with the average coverage in those exchange areas around [X]%.

52. Given this progress to date and the need to migrate end customers away from copper (and limit the number of new copper lines), the stop-sell rules should apply at premises wherever FTTP is available, irrespective of exchange-level coverage.
53. To the extent that the exchange-level coverage requirement reflected a perceived balance between the need to support migration and the wish to create incentives to increase exchange-level coverage in 2021, current and forward-looking analyses would show that the appropriate balance has shifted; as explained above, there is no longer a need for additional incentives to encourage exchange-level rollout (to the extent there ever was) while the need to facilitate and encourage migration is at least as great as it was in 2021.

Implementing a premises-based approach

54. Ofcom's proposal to link the phased withdrawal of copper regulation to exchange-based coverage thresholds, together with its reluctance to define a Third Threshold means that the definition of Second Threshold becomes critical to the effectiveness of Ofcom's support for copper retirement.
55. As we explain below, Ofcom's proposed definition of the Second Threshold, and the practical challenges of applying it in the way Ofcom suggests, risk unnecessary delay and administrative overhead for no obvious benefit.
56. Rather, Ofcom should start from the outcome it is aiming for; that is, what needs to happen for Openreach to be able to retire copper services. By setting an appropriate target and working back, the objectives for the overall approach become clearer, and the challenges of defining and implementing Second Threshold can be avoided.
57. We propose that the key elements of a premises-based approach are availability of full-fibre at given premises and sufficient time to ensure that ISPs are able to provide full-fibre services and have sufficient opportunity to migrate, and adequate protection for end customers. The end-to-end timetable should also provide for copper stop sell to be implemented and regulation to be lifted.
58. In practice, this means a premises-based approach requiring availability of full-fibre and sufficient time to migrate would involve the following steps:
 - i. Openreach should be able to start the process of copper retirement for premises in an exchange area that have access to FTTP, starting with the introduction of stop-sell for copper to those premises.

- ii. At some point later, after sufficient notice has been given, the copper charge control will cease to apply for premises with access to FTTP.
 - iii. After sufficient additional notice, the requirement to provide copper services will be withdrawn for premises with access to FTTP.
 - iv. Subject to appropriate protection and support for end customers, Openreach will be able to withdraw copper services for other premises, when it is ready to do so.
59. We recognise that the partial withdrawal of regulation should be effected on a transparent and predictable basis with sufficient notice for ISPs to plan and end customers to react, but consider that this can be achieved with more certainty (and much less administration) by defining the implementation timetable, rather than by introducing unnecessary (and hard to prove) trigger points based on exchange-based coverage that are no longer supported by market developments since the WFTMR.
60. Under this approach, it would no longer be necessary to meet exchange-level coverage obligations before the introduction of copper stop-sell for premises that already have access to FTTP.
61. Similarly, the withdrawal of the copper charge control effectively becomes a premises-level test based on access to FTTP, similar to that proposed in our pre-TAR submission.
62. Full withdrawal of copper would still depend on overall availability of alternatives. But it would significantly simplify the process if it was possible withdraw copper from end customers who have fibre alternatives on a premises-by-premises basis. It would facilitate a staged approach to withdrawal of services which could facilitate more focussed support for vulnerable customers.

Ofcom has not made the case for retaining its three-threshold approach

63. As noted above, Ofcom's three-threshold approach means that it is likely to be at least five years from the point when Openreach first announces that it expects to reach 75% ultrafast coverage in an exchange area to the earliest point at which copper regulation could be withdrawn.
64. Ofcom's process could therefore unnecessarily delay copper retirement and Ofcom does not adequately justify why its proposed approach is the right one.

65. In justifying this approach in the WFTMR, Ofcom noted three aims for its copper retirement policy,² which were to:
- i. address a competition concern that Openreach could deter competitor investment by only partly covering an exchange;
 - ii. promote fibre investment by shifting the focus of regulation from copper to fibre, to support the migration of broadband services from copper to fibre connections; and
 - iii. incentivise Openreach to provide ultrafast services to all premises in an exchange area except in defined limited circumstances.
66. We explain below why Ofcom has not adequately justified or provided evidence to support these concerns.
67. In relation to Ofcom's competition concern, it explained in a footnote to a 2020 supplementary consultation on the WFTMR its view that Openreach could, *"selectively deploy fibre where there is a competing network in an area, or just provide enough 300 Mbit/s coverage to deter competitor investment. Openreach could also subsequently shift resources to another area and thus cumulatively deter competitor investment across a wider area. In those scenarios, Openreach would have little incentive to go back to deploy fibre services to remaining premises, to the detriment of customers who would be unable to access fibre services"*.³
68. It appears that this concern was a key driver behind Ofcom's justification for a three-threshold approach linked to requirements for high levels of exchange-level coverage.
69. However, this concern was only theoretical in 2020 and is entirely unjustified in 2025, as the competitive landscape has dramatically changed. As Ofcom acknowledges in the TAR: *"Plans submitted in 2024 indicate that 97% of premises could have access to gigabit-capable broadband by May 2027, with the increase*

² Consultation: Copper retirement – process for determining when copper regulation can be removed Supplementary consultation to the Wholesale Fixed Telecoms Market Review ("Copper consultation"), paragraphs 3.2 and 3.3.

³ Copper consultation, footnote 19.

driven mostly by FTTP build", and "FTTP coverage is expected to increase from 67% as of July 2024 to 96% across the UK by May 2027".⁴

70. We have stated our intention to keep building beyond our plan to deliver FTTP to 25 million homes and businesses by 2026, reaching as many as 30 million homes and businesses by the end of the decade assuming the conditions for investment are still supportive.
71. Therefore, the significant majority of end customers can already access full-fibre services. Openreach has not to date, and has no incentive in future, to roll out full-fibre in a way that would deter competitive investment:
 - i. we aim to be as transparent to ISPs, Ofcom and Government about our build programme as possible.
 - ii. we publish details of the locations where we intend to build and our intention is to upgrade the overwhelming majority of each exchange area.⁵
72. Given the clear benefits of making migration to full-fibre as straightforward as possible, the significant coverage already achieved, the further investment that is planned and the risk of unintended consequences (that we set out below), it is no longer necessary or proportionate to make support for migration to fibre contingent on exchange-based coverage targets at all.
73. In relation to [promotion of full-fibre investment](#), Ofcom noted in the WFTMR that providing additional clarity on those conditions enables Openreach to plan for copper retirement, provides more clarity to Openreach's ISP customers on the importance of engaging in migration, and strengthens Openreach's business case, supporting its commitment to deploy fibre to 20 million homes by the mid-2020s. This forward-looking transparency is crucial.
74. As explained below, some aspects of Ofcom's proposed approach in the TAR (such as the lack of a clear Third Threshold and prioritising the possibility of more time for Altnet build to 'catch-up' over certainty of timescales) reduce, rather than increase, the incentives for ISPs to innovate and invest in the migration process.

⁴ TAR Vol 2 para 2.29

⁵ [Our transparency approach | Openreach](#)

75. In relation to incentivising Openreach to provide ultrafast services to all premises in an exchange area, an exchange-based approach creates an incentive to prioritise building fibre where other operators are already present over providing fibre to unserved communities). Indeed, in responses to the WFTMR consultation⁶ and pre-TAR submissions,⁷ some Altnets argued that Ofcom's approach incentivised Openreach to overbuild Altnets in exchanges where alternative full-fibre networks are present.

Proposed changes if Ofcom retains the three-threshold approach

76. We have explained above that Ofcom has not adequately justified the three-threshold approach and why an alternative approach would be more effective.
77. However, if, despite these concerns, Ofcom decides to retain a regulatory approach based on these three thresholds, it must change the definitions of those thresholds. Specifically, Ofcom must ensure that the thresholds are achievable and measurable.

Definition of First Threshold

78. For reasons beyond Openreach's control, the level of hard-to-reach premises in some exchange areas could mean that Ofcom's 75% ultrafast target for the First Threshold are difficult to achieve. Of the [X] exchanges where we have completed the main part of the build, we have not been able to reach 75% coverage in [X] (around 1 in [X]) due to the high volumes of MDUs where we have not yet been able to get access, or the high cost of build.
79. While the 25% buffer allowed by a 75% target provides some scope for exceptions, it does not take account of the high concentration of MDUs in some areas. Therefore, if Ofcom intends to retain a coverage-based measure for the First Threshold, it should allow exceptions to account for hard-to-access premises in MDUs in each exchange area.
80. We believe the best way to address this without creating a disproportionate evidentiary requirement would be to include all MDUs where we have built to the curtilage within its measure of premises with access to ultrafast.

⁶ WFTMR Vol 3 para 2.27

⁷ Gigaclear pre TAR submission, para 20

81. Ofcom should also reconsider the proposed notification periods for the First Threshold. In the WFTMR, Ofcom introduced a notification regime for copper withdrawal, with 12 months' notice required for the First Threshold (stop-sell). It did this to *"help ISPs and end customers plan for the migration, and competitors plan for their own commercial activities"*.⁸
82. Openreach's experience in rolling out FTTP suggests that a reduction in the notification period to six months would enable Openreach to provide more accurate information to ISPs than the current 12 months. This is because the decision whether to cover any given premises is generally conditional on the outcome of a survey of the proposed build route to that premises, and surveys are generally conducted six months ahead of network build.
83. Further, we are now several years into the migration process and CPs are in a greater state of product portfolio readiness and have a better understanding of their customer bases than they had in 2021 and should no longer need 12 months' notice to prepare.
84. We therefore propose that (if Ofcom retains the current approach) the First Threshold notification period should be reduced, from 12 months to 6 months. This would enable Openreach to issue notifications shortly after surveying exchange areas, based on a clear view of which premises it will cover and when. This would provide a better basis for ISPs' plans than the current 12-month notification and would avoid unnecessary delays in activating stop sell.

Definition of Second Threshold

85. In making its case to link the introduction of pricing freedom to exchange-based coverage requirements, Ofcom appears to have qualified its aim to encourage migration with a new aim, that migration should happen quickly, but not too quickly.
86. Ofcom argues that: *"Where customers are not yet able to move to an Altnet then providing additional regulatory support for Openreach to drive customers to its FTTP network more quickly risks undermining the development of network competition"*.⁹

⁸ WFTMR Vol 3 para 2.103

⁹ TAR Vol 2 para 2.55

87. Based on this logic, it appears that in deciding whether the Second Threshold is necessary, and how it should be defined, Ofcom considers that it should choose a definition that is relatively difficult to achieve, as this might give the Altnets a bit more time.
88. Ofcom therefore appears to consider that one of the benefits of its proposed approach to defining the Second Threshold is that it introduces the possibility of delay into the process. It therefore rejects Openreach's proposed approaches to setting the Second Threshold on the basis that Openreach would be able to raise prices (and encourage migration) sooner than under Ofcom's preferred approach.
89. Ofcom does not explain why the notification periods it considered to be reasonable in the WFTMR are no longer adequate. In the WFTMR, Ofcom explained that it was satisfied that the minimum two-year transition period between stop sell and the lifting of the charge control struck an appropriate balance between facilitating migration and protecting end customers, noting that prior to this period, Openreach is required to give a one-year notification before the stop sell can take effect, meaning that ISPs will have at least three years notice before the lifting of the charge control.
90. Giving more time for the slowest network builder to catch up, rather than using the threat of competition to encourage rapid roll out of fibre, represents a significant change in Ofcom's approach to copper retirement and is at odds with its stated objectives. It is also unnecessary and disproportionate to Ofcom's aim.
91. Ofcom explains in its assessment of the market context that it expects the competitive rollout of full-fibre to be substantially complete in the near future. For example, Ofcom notes that¹⁰
- i. plans submitted in 2024 indicate that 97% of premises could have access to gigabit-capable broadband by May 2027, with the increase driven mostly by FTTP build;
 - ii. overall, FTTP coverage is expected to increase from 67% as of July 2024 to 96% across the UK by May 2027; and
 - iii. the rate of FTTP deployment is expected to slow down compared to recent years, given the significant build progress to date.

¹⁰ TAR Vol 2 paras 2.29-2.30

92. Ofcom's approach to supporting copper retirement should reflect the long-term nature of the process and long-term objectives (encouraging investment and innovation in the process), rather than short-term concerns.
93. Further, Ofcom's concern that competition could be harmed if a rival's network is not ready to accept new end customers on the day the charge control is removed is misplaced, and ISPs' suggestions,¹¹ that end customers who move from Openreach copper to Openreach fibre are somehow deterred from subsequently changing to a different fibre provider, are unfounded:
- i. First, Ofcom has already introduced regulation (notably the new one-touch switching requirements) that specifically addresses this concern by making switching provider as easy as possible.
 - ii. Second, it is clear that competitors are ready to compete for end customers. Providers have already on-boarded key ISPs, while Ofcom notes that, given the significant build progress to date, it expects the rate of FTTP deployment to slow down compared to recent years.¹²
94. The impact of competition is already clear, with line losses and falling market share being widely reported. [X].

Figure 3.1: Annualised rate of base churn for FTTP and VDSL

[X]

95. [X].
96. It is therefore not clear what Ofcom is waiting for.
97. Ofcom's arguments in respect of end customers' protection are similar to those for network competition and are similarly open to challenge.
98. Ofcom explains that the purpose of the Second Threshold is to enable Openreach to use higher prices for copper-based services to encourage migration away from its copper-based network. It notes that it must therefore exercise its judgment about the point at which the protection offered to end customers by charge controls on copper-based access should be removed.

¹¹ "Copper retirement and the Telecoms Access Review", submission by nexfibre

¹² TAR Vol 2, para 2.30

99. It asserts that retaining the current approach helps to ensure a more measured pace of migration away from Openreach's copper-based network. It does not explain why it considers this to be the case, but it appears to reflect a view that the possibility (but not the certainty) of the transition period taking slightly longer would be a good thing.
100. This is despite noting during the WFTMR consultation¹³ that a two-year transition period struck an appropriate balance between facilitating migration and protecting end customers, and noting that providers will typically contact all end customers within the maximum residential contract term of 24 months.

Definition of Third Threshold

101. In the TAR, Ofcom proposes not to define criteria for the Third Threshold, on the basis that it is still too early to do so.
102. It is important that industry is clear about Ofcom's aspirations for the copper retirement programme, if it is to work efficiently and effectively towards that goal. Clarity about the point at which regulation of copper services will be withdrawn is a big part of that story – sufficient transparency is required.
103. As explained above, we do not consider it necessary or helpful to link the withdrawal of copper regulation for premises that have fibre, to exchange-level coverage requirements.
104. However, if Ofcom continues with its three-threshold approach, it is now essential that the Third Threshold is defined and is achievable.
105. Being clear about the date at which copper services are likely to be withdrawn is an important part of creating the right incentives to support timely migration, as well as providing transparency and regulatory certainty for industry, and ensure that all parties work towards that end point. To do otherwise will dampen innovation and investment, placing a disproportionate burden on industry.
106. The concerns we have expressed about the definitions of the exclusions for the Second Threshold, and the implications for the reasonableness of the targets and the practicability and proportionality of the approach, equally apply to the Third Threshold.

¹³ WFTMR Vol 3 para 2.110

107. In the WFTMR, Ofcom briefly considered the possibility of a threshold based on take-up¹⁴, rather than coverage. We would have concerns about such an approach, if Ofcom was to reconsider it, for the reasons we gave in response to the WFTMR.¹⁵

Conclusion

108. The current approach to copper retirement is out of date, does not properly reflect developments since the WFTMR, and is no longer fit for purpose. If left unchanged it would unnecessarily delay the migration from copper to full-fibre, imposing costs on Openreach, industry and consumers that are not adequately considered by Ofcom.
109. It is therefore essential that Ofcom uses its planned second consultation to seek views on how best to update its entire approach to supporting copper retirement while protecting end customers and our ISP customers.

¹⁴ Copper consultation, para 3.26

¹⁵ Openreach response to the Copper consultation, dated 26 November 2020, paras 22-25

Exclusions

Question 3.2: What are your views in relation to our initial thinking on how we might identify excluded premises? Please set out your reasons and supporting evidence for your response.

110. Ofcom proposes maintaining the approach to the Second Threshold set out in the WFTMR, namely: an exchange-based approach that requires Openreach to make ultrafast services available at 100% of premises in the exchange area, excluding any premises that Ofcom directs.
111. Openreach has set out above why it disagrees with Ofcom's three-threshold approach.
112. We nevertheless welcome Ofcom's proposal to engage further on the definition of excluded premises as it has the potential to delay progress in achieving copper retirement if it does not reflect the reality of building fibre or is too difficult to implement.
113. In the TAR, Ofcom proposes that premises should be excluded when assessing the Second Threshold if those premises are unable to receive ultrafast services due to exceptional circumstances beyond Openreach's control.
114. Ofcom proposes that "*exceptional circumstances beyond Openreach's control*" should include premises where it would be too difficult or costly for Openreach to reasonably make ultrafast services available under its commercial programme.
115. Ofcom identifies two potential options for identifying excluded premises:
 - i. A "*Defined Exclusions*" approach, that would define the specific circumstances under which premises would be excluded when assessing whether the Second Threshold is met.
 - ii. Alternatively, under a "*Fixed Percentage*" approach, that would automatically exclude a fixed percentage of premises when assessing whether the Second Threshold is met. Ofcom envisages that this percentage would be the same in all exchange areas (or possibly all exchange areas sharing the same "*broad classification*") for simplicity.

The defined exclusions approach as described does not work – but can be improved

116. Ofcom explains that, in the WFTMR, it envisaged defining the specific circumstances under which premises would be excluded when assessing whether the Second Threshold is met¹⁶. This approach involves Ofcom specifying in a direction the specific circumstances in which premises would be excluded. Ofcom explains that it would be for Openreach to identify the individual premises that it considers satisfy the terms of the direction.
117. Ofcom also notes that the number of premises that are unable to receive ultrafast services will vary between exchange areas. In theory, the Defined Exclusions Approach should mean that the required level of ultrafast coverage in each exchange area would reflect these differences.
118. Ofcom explains that, if it did adopt this approach, it is minded to exclude the following categories of premises:
- i. premises that Openreach is unable to access;
 - ii. premises where the cost to Openreach of making ultrafast services available is high and that are served, or contracted to be served, with gigabit-capable broadband by non-Openreach providers using public funding; and
 - iii. other premises where the cost to Openreach of making ultrafast services available is very high and that are not expected to be supported by existing public funding.¹⁷

Premises that Openreach is unable to access

119. Ofcom notes in the Consultation that Openreach may be denied permission to access land or premises to provide ultrafast services, and access to MDUs can be particularly challenging as it must request and be granted access from landlords or property management firms. Ofcom explains that network providers can face access challenges when they are denied access or landlords fail to respond to requests for access. There are a variety of situations where network operators will face difficulties in gaining access - it is not limited to MDUs.

¹⁶ TAR Vol 3 para 2.66

¹⁷ TAR Vol 3 para 2.68

120. Ofcom explains that being unable to access some premises represents exceptional circumstances beyond Openreach's control and should not block further deregulation at other premises where Openreach FTTP is available. On this basis, it explains that it is minded to exclude premises that Openreach is unable to access when assessing whether the Second Threshold is met.
121. We welcome Ofcom's acknowledgement of the scale of the challenge we face in accessing certain properties, and that some attempts to get access are not successful for reasons beyond our control.
122. There are hundreds of thousands of premises that are being excluded from access to gigabit-capable broadband, given cost to access is too high. This risks creating a national digital divide, which will ultimately require Government (taxpayer) intervention as these premises will in effect become 'not-spots'.
123. Based on current data, there are [X] premises in around [X] buildings which are passed by our FTTP network, but which we are unable to access to connect end customers. Most of those buildings are managed by small landlords who do not operate with a dedicated management team. Of [X] premises that we cannot access, [X]% are in small buildings and [X]% are in buildings with fewer than ten units.
124. As it currently stands, digital infrastructure providers must apply to the building landlord to secure access to upgrade the digital infrastructure of the building. However, in many instances securing information on ownership can be challenging, or when approached for permissions the landlord is unresponsive. This means, when we are delivering our reliable, faster broadband to a new area, we are being forced to build to the curtilage only. The problem is so acute that we are diverting our people away from building our network, to tracking down landlords.
125. We agree that in areas where we are unable to get access this should not block further deregulation at other premises where Openreach FTTP is available. We therefore also agree that premises that Openreach is unable to access should be excluded when assessing whether any threshold is met.
126. Ofcom explains that it would need to define the premises to be excluded based on a clear and demonstrable point in the process of seeking access and would need to be satisfied that Openreach has taken reasonable steps to gain access before seeking to exclude these premises. However, it notes that it should balance this

against the risk that an overly burdensome requirement could make excluding these premises unworkable in practice.

127. In finding this balance, Ofcom should recognise that Openreach has little incentive to give up on attempting access before taking reasonable steps to do so. Our incentives are particularly strong where we have already built to the curtilage of the building. Openreach's commitment to accessing difficult premises is clear from our establishment of a dedicated team whose objective is to find ways to do so.
128. The risk to Ofcom that Openreach seeks to exclude premises without taking reasonable steps to gain access is therefore low. Conversely, the adverse consequences of an overly burdensome requirement are significant.
129. As Ofcom notes, an unsuccessful application for a court order would clearly demonstrate that Openreach had pursued all options for gaining access. However, the process of applying for a court order is expensive and time-consuming. Defining exclusions based on a court decision is simply not workable, even for small numbers of premises, and would make it too slow and costly for Openreach to meet the Second Threshold – to expect Openreach to take such an approach would be entirely disproportionate and unnecessary.
130. Any solution would need to work at scale, without imposing excessive burdens on Openreach, Ofcom or other stakeholders. We note, for example, that a process requiring just one hour of work for each of the [X] buildings that we are currently unable to access would require over [X] full-time equivalent employees for one year.¹⁸
131. We would like to work with Ofcom to explore a more practical and proportionate solution, possibly linked to evidence of written attempts to contact the landlord and time passed without response. Given that in many cases we will have already built to the curtilage, problems with access are most likely to be the key factor preventing connection.
132. We would also welcome Ofcom's support in taking steps to minimise the number of end customers that cannot get FTTP because of problems getting access to their premises.

¹⁸ [X]

133. As Openreach continues to build its FTTP network across the UK at pace, enabling access to MDUs would prevent a disparity in digital connectivity from forming in predominately large urban areas where MDUs are more common.
134. Existing legislation to make access to MDUs easier has not worked in practice, due variously to cost, time and landlord/owner inertia. Improving access to MDUs is essential to prevent a digital divide, maximise the growth potential and enable end customers to access public services. Without reforming access to MDUs there will be end customer detriment.

"High cost" and "very high cost" premises

135. Having established the general principle that there will be premises that are too costly for Openreach to reasonably make ultrafast services available, Ofcom proposes two categories of premises within this category: "high cost" premises that are served by non-Openreach providers using public funding; and other "very high cost" premises.
136. In respect of "very high" cost premises, it does not appear from Ofcom's rationale that the level of cost needed to qualify as an exclusion in the "very-high" cost category is necessarily higher than the level needed to count as an exclusion in the "high-cost" category.
137. Instead, it appears that for both high and very high cost categories, Ofcom's view appears to be that premises should be excluded if Openreach would be unlikely to recoup its costs, and that the presence of rival network will make that less likely.
138. For example, Ofcom explains its rationale for excluding the "high costs" premises is that: "Public funding is targeted at premises that are deemed to be commercially unattractive ... so deploying ultrafast broadband to these premises is likely to be high cost. As such, the presence of a rival network is likely to further reduce Openreach's commercial incentives to provide access to ultrafast broadband".¹⁹
139. In respect of the so-called "very high" cost premises, Ofcom notes that: "The point at which Openreach's costs of deploying ultrafast broadband become sufficiently high to exclude a group of premises is likely to be lower when another network is present at those premises. This is because the presence of that other network will

¹⁹TAR Vol 3 para 2.77

reduce the take-up that Openreach is likely to achieve, making it harder for Openreach to recoup its costs"²⁰.

140. Therefore, the main difference between the two categories appears to be one of practicality rather than principle, based not on the level of costs per se, but on Ofcom's view that the presence of a publicly-funded network is sufficient evidence that Openreach will not be able to recover its costs, but the presence of a single commercial operator is not.
141. We agree that Openreach's ability to recoup its costs is a sensible starting point for identifying premises to be excluded, on the grounds that it would be too costly for Openreach to reasonably make ultrafast services available.
142. However, we do not consider that the high evidential threshold proposed by Ofcom to exclude a so-called very high-cost premise is appropriate or necessary, and we remain of the view that premises that are not served by Openreach but are served by non-Openreach providers should be excluded (whether publicly funded or not).

High-cost premises served by non-Openreach providers using public funding

143. Ofcom concludes that the high cost of build, combined with the presence of a publicly funded rival network, represents exceptional circumstances beyond Openreach's control and should not block further²¹ deregulation at other premises where Openreach FTTP is available. As such, while describing these premises as "high cost", Ofcom does not require any further evidence to demonstrate what is meant by "high cost" or whether the expected costs exceed that.
144. We agree that this is a sensible and pragmatic way of excluding premises on the grounds of cost without the need for further evidence.

Other very high-cost premises

145. As explained above, it appears that Ofcom's rationale for excluding very high cost premises is similar to that for excluding high cost premises; Ofcom's concern in respect of "very high cost" premises appears to be Openreach's ability to recoup its costs.
146. We agree that Openreach should not be expected to build to premises where it would not expect to recover its costs. If this is what Ofcom means by "very high

²⁰TAR Annex 12 A12.

²¹TAR Vol 3 para 2.79

cost" premises, we agree with this exclusion. The question becomes how this is measured, and we return to this below.

147. We would be concerned if Ofcom's use of the term "very high cost" was meant to imply a different, higher cost threshold. This would risk an inconsistent approach in different areas and the possibility that some thresholds would be unachievable. Greater clarity is needed on the cost threshold.

Other premises served by non-Openreach providers

148. We explained in our pre-TAR submission that any premises served by other fixed networks should be excluded from the exchange-level coverage measure for the Second Threshold. We explained that, while Openreach may choose to build FTTP to these premises, it will only do so if it is commercially viable. Given the presence of an alternative fibre network for end customers, we do not believe our decision as to whether to cover such premises should affect our ability to change the prices of legacy services to encourage migration away from copper to full-fibre.
149. This would mean that the approach to identifying the very high cost premises is similar to that for the high cost premises. However, Ofcom has explained that it does not consider that it would be appropriate to include this category, suggesting that excluding "such a wide category" of premises represent a significant departure from the approach envisaged in the WFTMR.²² To support this assertion, it referred to data collected for its Connected Nations reporting, noting that around 22m premises covered by Openreach in the UK had access to gigabit-capable broadband from at least one network other than Openreach in July 2024.
150. However, this is not the relevant metric, as the only premises that would be included as an exception are those where Openreach has not built. The number of premises in this category is much less than the total number of premises served by other networks. In 2025, we estimate that there are around [X] premises served only by Altnets, and this number will reduce significantly as we increase our FTTP build to 25m premises and beyond, provided investment conditions are right.
151. Further, it is likely that many of these premises would already be included as an exception on the grounds of Ofcom's "very high cost" exclusion. Indeed, if there is no Openreach presence, it may be because:

²² TAR Annex 12 para A12.5

- i. Openreach has determined that it will not be able to recoup its costs (noting, as Ofcom does, that the presence of the other network will reduce the take-up that Openreach is likely to achieve, making it harder for Openreach to recover its costs); or
 - ii. Openreach has not built there yet but plans to do so.
- 152. In the event that Openreach has decided that it will not be able to recoup its costs, the premises would be included in Ofcom's definition of very high-cost premises (provided Ofcom has adopted an appropriate benchmark). As such their inclusion does not represent a significant departure from the approach envisaged in the WFTMR, and it is unclear why Ofcom would take an approach which encourages inefficient investment by Openreach. In the event that there were some premises that Openreach plans to connect but has not done yet, it is not clear why this should delay the migration to FTTP for the premises with access to it.
- 153. As such, Ofcom has not adequately explained why it would not be appropriate to exclude premises served only by other networks, particularly as this approach would resolve many of its concerns regarding the implementation of its preferred approach (by significantly simplifying and shortening the process to identify excluded premises).
- 154. Finally, it appears inconsistent that Ofcom does not consider the presence of other networks to be relevant to its assessment of fibre coverage while at the same time proposing that the Second Threshold should be set at a level that gives time for Altnets to build that presence.

Estimating very high costs

- 155. Ofcom explains that, for its proposal to exclude very high-cost premises to work, there would need to be:
 - i. a practical, reasonably accurate, and verifiable way to estimate the costs for Openreach of deploying ultrafast broadband to the remaining premises in an exchange area that takes into account the particular features of very high-cost premises; and
 - ii. clarity of the point at which those costs are too high, for example because they exceed some pre-specified level.

156. Ofcom suggests that a new model would need to be built for this purpose or adapted from an existing model produced for some other purpose. It states that the model would need to:
- i. estimate costs with sufficient accuracy for the purposes of the Defined Exclusions Approach; and
 - ii. include appropriate assumptions on the level of common cost allocation between existing build and additional build.
157. We disagree that a new model would be needed; a requirement to develop one would be unnecessary and disproportionate.
158. Openreach makes decisions as to whether it would be cost effective to build fibre to premises on a daily basis. These decisions are informed by estimates of the cost of deploying FTTP and the point at which those costs would be too high. As such, we already address both of Ofcom's questions.
159. To quantify the costs of deploying the network, Openreach uses a sophisticated model that provides a robust estimate of the costs of build in each area.
160. To determine whether those costs are too high, Openreach uses internal benchmarks to determine whether those costs are likely to be recovered from the revenues that might be earned. These benchmarks vary depending on whether there is competition in the area; the benchmark is lower in areas where there is competition as it is likely that take up is expected to be lower than in areas where there is no competition.
161. This process is considered robust enough to inform investment decisions worth billions of pounds across the UK. Ofcom does not explain why it does not consider this provides a good enough basis for determining when Openreach should be given more pricing freedom on copper services for premises that have access to fibre.
162. Using management information rather than analysis created for the regulator should reduce the administrative burden on Openreach and on Ofcom, and should also reduce the need for further verification.
163. In the event that Ofcom decides that it is necessary and proportionate to require Openreach to build a new model, we would be prepared to work with Ofcom to develop a suitable approach. However, we consider it is premature to get into the approach, practicalities or costs of building such a model in this response.

164. Given Ofcom's pragmatic approach to excluding high-cost premises (where it accepted that, if Openreach is not present, it is probably because it would not have made economic sense to have built there), it is not clear why it is considering such a high evidentiary threshold for the very high cost premises.
165. It may be that Ofcom's position reflects its concern that, without the incentives of high targets, Openreach will delay or strategically build FTTP. However, as explained above, Openreach's fibre build to date and its planned and proposed FTTP investment shows this concern is unfounded. Again, when faced with a choice between supporting copper retirement and caution, Ofcom has chosen to be unnecessarily cautious.
166. To determine the point at which those costs are too high, Ofcom suggests that this could be on a pre-specified level.
167. Setting a pre-specified level is not without challenges; as noted by Ofcom in the Consultation, the level of costs that Openreach might expect to recover will depend on several location-specific factors, such as the number of competing networks. Nevertheless, as explained above, if Ofcom does intend to set a pre-specified level, its starting point should be Openreach's benchmarks.

The fixed percentage approach will delay copper retirement without any upside in return

168. Defining exceptions based on a fixed percentage of premises would be relatively easy to implement (at least once the significant challenge of calculating the appropriate percentage has been answered), but risks imposing unachievable pre-conditions for the withdrawal of copper regulation in some areas and being ineffectual in others.
169. Ofcom states that the impact of the Second Threshold on Openreach's future investment is heavily dependent on the level at which the threshold is set. It notes, for example, a high threshold that is too difficult or too costly for Openreach to achieve would not incentivise Openreach to build to additional premises within an exchange, nor would a lower threshold, as Openreach would surpass it anyway.
170. Ofcom also acknowledges that the number of premises that are unable to receive ultrafast services due to exceptional circumstances beyond Openreach's control will vary between exchange areas. The fixed percentage approach makes no attempt to recognise these variations and sets the same level for all exchanges (or

potentially for all exchanges that share certain characteristics, if it was to adopt the broad classification approach).

171. If the percentage was set to represent an average proportion of hard or expensive to reach premises, the thresholds would be unachievable in exchange areas with more than the average number of hard or expensive to reach premises and would unnecessarily delay migration to fibre.
172. To avoid this, it would be necessary to set the fixed percentage of excluded premises at significantly above the national or "broad-classification" average, (potentially at the level appropriate for the area with the highest proportion of hard-to-reach premises). This will result in coverage targets in some areas that are lower than would otherwise be considered necessary by Ofcom. Commercial incentives would be expected to drive further coverage beyond that level, but this again raises the question of what Ofcom is trying to achieve with a coverage target for the Second Threshold.
173. Indeed, if Ofcom considers this broadbrush approach might provide a good enough basis for setting exchange-level targets, it is not clear how it can justify ignoring Openreach's own assessment of the commercial case for rollout, or the significant amount work it suggests might be necessary to fine-tune and test the estimates under its proposed Defined Exclusions approach.
174. Whatever concerns Ofcom might have about relying on Openreach's own assessment of the commercial level of rollout in an exchange area, such an approach will provide a better measure of the premises that are too expensive to reach in a given area than one based on a national average.

Conclusion

175. We explained in response to question 3.1 why we do not consider it necessary to link the withdrawal of the copper charge control to an exchange-based coverage metric.
176. However, if Ofcom continues with this approach, it would be appropriate to exclude premises that are too hard or too expensive to reach. We explain above why the exceptions should be extended to include those premises with access to non-Openreach full-fibre.
177. If Ofcom chooses not to simplify the process in this way, it needs a practicable way of identifying the exceptions. In the Consultation, Ofcom presents a choice between a Defined Exclusions approach, that it encumbers with disproportionate

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evidentiary requirements, and a fixed percentage approach, that could result in unrealistic and unachievable targets in many exchange areas.

178. If Ofcom still considers taking one of these approaches, we would like to work with Ofcom, alongside the further consultation it has planned, to ensure that its final approach is proportionate, necessary and practicable, and does not create unintended consequences that would hinder copper retirement and discourage investment and innovation.

Exchange Exit

Question 3.3: Do you agree with our proposed approach to exchange exit? Please set out your reasons and supporting evidence for your response.

179. Openreach's investment in FTTP will lead to lower costs for industry, sustainability benefits from lower energy consumption, and wider societal benefits from the deployment of full-fibre, ultimately to the benefit of UK citizens and end customers.
180. Ofcom recognises that the transition from copper to FTTP is likely to have "*a positive impact on all consumers, including those in equality groups. Consumers will ultimately benefit from being moved off ageing technology which is at higher risk of faults. More generally, in the longer term we expect that any savings made from Openreach decommissioning the copper-based network will flow down to consumers on its network*".²³
181. Many of these benefits, such as the savings that will flow down to end customers, can only be fully realised by closing exchanges.
182. We explain below that:
- i. exchange exit needs to be delivered in a way that protects end customers and is fair to our ISP customers;
 - ii. we agree with Ofcom that commercial negotiation provides the best approach to achieving these objectives;
 - iii. the commercial negotiations relating to the priority 108 exchanges are progressing, but there remains significant scope for delay, for the 108 and beyond;
 - iv. delay will reduce the benefits of exit, with the potential for significant additional costs to arise if timeframes are not met;
 - v. regulatory support will be necessary to resolve some of those delays and safeguard the benefits;
 - vi. Ofcom's proposals do not provide the necessary certainty;

²³ TAR Annex 21 para 21.57

- vii. a process that enables Openreach to progress exchange exits at pace is now essential; an at scale 'pathfinder' approach may be the way forward which would enable Openreach, ISPs and Ofcom to quickly identify and resolve issues.

183. Specifically, we are asking Ofcom to provide regulatory clarity that the regulatory obligations to provide network access set out in SMP Conditions 1 and 2 do not apply in exchanges which are to be exited, where specified criteria apply.

Exit must be delivered in a way that protects end customers and is fair to our ISP customers

184. Ofcom explains that it is supportive of Openreach exiting exchanges to move to a more efficient network, provided this is done in a way that mitigates potential harm to end customers or competition.

185. The timely closure of exchanges that are no longer required will lead to:

- i. lower costs of long-term supply, resulting from savings in exchange building costs;
- ii. lower long-term costs to ISPs, as they no longer require space and power within exchanges, and avoid the need to face higher costs if remaining in under-utilised exchanges for an extended period;
- iii. simpler and more reliable access networks, requiring less maintenance effort;
- iv. a simpler Openreach product portfolio, supporting an improved ISP and end customer experience and streamlined processes;
- v. a more sustainable network, with significantly lower energy requirements;
- vi. improved reliability and security, since maintenance spend can be spread across a more manageable number of exchanges, ensuring that these are fit for purpose in the 2030s and beyond; and
- vii. freeing up of brownfield land for development, including in many prime locations.

186. Our priority exchange closure programme is taking place over a ten-year period²⁴, enabling us to work with industry and test our processes ahead of more widespread closures.

We agree with Ofcom that a commercial approach is likely to drive the best outcomes

187. Ofcom considers that Openreach and ISPs are best placed to negotiate a commercial agreement on the terms and practicalities of the exchange exit process.
188. Ofcom also states that *"there are enough incentives on all sides to reach a commercial agreement on the terms of exchange exit, which allows the benefits of exchange exit to be realised while also delivering good outcomes for competition and consumers."*²⁵ We do not agree with this statement, for the reasons set out below.
189. We agree with Ofcom that a commercial approach is likely to drive the best outcomes and that Openreach and its ISP customers are well placed to negotiate commercial agreements that allow for the benefits of exit to be realised and deliver good outcomes for competition and end customers. Openreach has now agreed commercial terms with most key ISPs, and the industry is well placed to start this process.
190. However, recent experience indicates that commercial agreements alone might not always be enough to secure exchange exit soon enough to maximise the benefits of timely exit.

Commercial negotiations are making progress

191. BT first set out the long-term direction of its network back in 2004, when it announced that its 21CN (21st Century Network) would consolidate to around 1,000 Tier 1 Multi-Service Access Nodes across the UK. That long term vision crystallised with Openreach's rollout of FTTC to around 1,000 Openreach Handover Points (OHPs).

²⁴ The programme was effectively initiated by our December 2020 consultation document, and needs to conclude by December 2030

²⁵ TAR Vol 3 para 3.27

192. BT did this so that BT and ISPs could plan to align their long-term network topology with the Openreach network. These plans were well known to industry and Ofcom, with references to them in Ofcom statements.²⁶ All but seven of the 959 enduring exchanges were included in the c. 1,000 FTTC OHPs.
193. In December 2020, Openreach consulted with ISPs on a plan to reduce the number of exchanges to the c. 1,000 "enduring exchanges" over the long-term, enabled by the industry shift to full-fibre networks, and to exit c. 100 exchanges by December 2030.
194. In February 2021, Openreach provided ISPs with a list of enduring exchanges.
195. More recently, Openreach has been working with ISPs and other stakeholders on how to deliver a first wave of 108 exchange exits (the "priority 108 exchanges")
196. We have made detailed proposals to ISPs to provide commercial and operational support for the required migration activity and to exit the priority 108 exchanges in four different phases by 2031.
197. As of 12 June 2025, we have agreed commercial terms with ISPs representing over [X]% of our Ethernet base in the relevant exchanges, and are in ongoing discussions with additional ISPs.

There is a risk of delay

198. Despite the progress made to date, recent experience indicates that commercial negotiation alone might not be enough to secure exchange exit soon enough to make the most of the benefits of timely exit.
199. We have secured commercial agreements with a wide range of ISPs, but there is a long tail of ISPs that are not fully engaging with exchange exit.²⁷ End customers and ISPs will be better served if those ISPs take action sooner, but there is a risk that, at

²⁶ E.g. Ofcom's 2010 WLA Statement: "BT currently has c.5,600 local serving exchanges in its CGA network but plans to reduce the number of local serving exchanges to around 800 - 1000 in its NGA network"; BT's 2017/18 Annual Results. See also Openreach's December 2020 consultation and publication of enduring exchanges in February 2021.

²⁷ We have secured commercial agreements with ISPs for most of our customer base. However, there is a long tail of ISPs who are yet to agree. Across the priority 108 exchanges we have agreed terms with 14 of our 50 EAD CP customers, representing over 75% of the customer base. Of the remaining 36 customers, 21 have a combined EAD volume of 60 lines (an average of only 3 lines each) with no CP having more than 8 lines.

some point it will be difficult to engage these remaining ISPs without an ability to cease their services.

200. Further, even after agreements have been signed, there is plenty of scope for further delay. As Ofcom explains in the Consultation, exchange exit is a complex operational process that requires significant co-ordination between Openreach and ISPs. Our experience in supporting commercial migrations from trials in Salisbury and Mildenhall shows this.
201. Possible causes of delay include situations where the ISP is engaged but the end customer will not migrate and the ISP refuses to cease, or where the ISP has signed but does not meet the last end customer off date.

Delay will reduce the benefits of exit, to the detriment of end customers

202. The target date of December 2031 for handing back the priority 108 exchanges to BT's landlord is of critical importance.
203. Most exchange buildings are leased by BT Group from a company called Telereal. [X].
204. [X]. The ongoing costs of running these exchanges beyond 2031, such as energy and rates, are also significant, at around [X] p.a. Much of this cost would be passed on to ISPs and ultimately borne by end customers.

Regulatory support will be necessary to resolve some of the delays to maximise the benefits of exit

205. As explained above, we agree that Openreach and our ISP customers are well placed to agree the terms and practicalities of the exchange exit process and that, in most cases this will be enough to reach a commercial agreement which allows the benefits of exchange exit to be realised while delivering good outcomes for competition and end customers.
206. However, as explained in our pre-TAR submission, non-engaged ISPs and end customers could effectively hold up the rest of industry and other end customers by not taking the steps required to migrate services and enable exchange closure, and this could prevent Openreach, ISPs and, ultimately, citizens and end customers receiving the benefits of exchange closure.
207. It is clear that a regulatory backstop will be necessary to prevent unnecessary delay. As explained in more detail in the introduction to this section, these might include:

Issued by: Openreach

Issue: 1

Date: 12/06/2025

- i. Concluding the final commercial negotiations.
 - ii. Implementing exit plans.
 - iii. Encouraging migration.
 - iv. Forcing migration.
 - v. Identifying and supporting vulnerable customers.
 - vi. Consent to withdraw service.
208. We would like to better understand how Ofcom envisages providing consent to withdraw service – this transparency is vital. Any process should be easy to implement and administratively light, going no further than is necessary to achieve Ofcom’s objective. For example, Ofcom could include an express carve-out for exchange exit in the legal instrument, or it could provide guidance on our existing obligation to provide services on ‘reasonable request’ and set out the circumstances where a request would not be considered reasonable.

Ofcom’s proposals for regulatory support do not provide the necessary clarity

209. A process for providing regulatory support needs to be predictable and practicable, for the 108 priority exchanges and beyond. Without that clarity, there is a risk of excessive administration for industry and for Ofcom (potentially including regular consultations) and missed opportunities to invest efficiently to address any Ofcom’s concerns may have. Put simply, a lack of clarity will discourage innovation and investment.
210. In our pre-TAR submission, we proposed that Ofcom could address some of these concerns by changing the supply rules within exchanges that have been notified for exit.
211. We also asked Ofcom to clarify the circumstances under which ongoing requests for certain forms of network access under SMP Condition 1 and SMP Condition 2 would not be considered reasonable, and specifically whether, in principle, requests should not be considered reasonable where ISPs have acceptable alternative access services available from Openreach and Openreach has proposed reasonable commercial terms and timeframes to migrate to those services.

212. Ofcom appears to recognise our concern that exit might be delayed for reasons beyond our control, and it acknowledges the risk that a tail of MPF or Inter Exchange Connectivity (IEC) customers could block the exit of an exchange.
213. However, it has stopped short of providing the support or the clarity we requested in our pre-TAR submission.²⁸
214. Ofcom does not address Openreach's request for clarity about the circumstances under which requests for network access would not be considered reasonable.
215. It also rejects our request for the removal of the current supply requirements to allow for the withdrawal services at specified dates, expressing concern that this could reduce some telecoms providers' bargaining power in negotiations, with the risk that this could lead to worse outcomes overall. This places a disproportionate burden on Openreach.
216. Instead, Ofcom notes that the access requirements in SMP Conditions 1.1 and 2.1 may be disapplied in circumstances where it provides consent. Specifically, Ofcom explains it would consider any request for consent by Openreach on a case-by-case basis, taking into account the circumstances at the relevant time, in accordance with its duties.
217. Ofcom gives additional information about the way it would decide whether to give consent to disapply the SMP conditions.
218. For example, Ofcom explains that it would likely take into account the number of end customers remaining on MPF and any protections that have been put in place for those end customers and the behaviour of relevant providers (e.g. if a particular provider is obstructing an exchange closure from proceeding). It expresses a similar view for IEC services.
219. We welcome Ofcom's partial clarification on this point. However, this still leaves significant uncertainty around the process and timelines, and the criteria Ofcom will use in reaching its decision – the partial clarification lacks the required transparency and risks stifling investment.

²⁸ Ofcom acknowledges our request for regulatory support for MPF stop sell, removal of the charge control and withdrawal of the product at the P108 exchanges, to be triggered at relevant points in the upcoming review period, then states that Openreach has offered to "continue to make SOTAP for Analogue available to support ongoing provision of services at those exchanges to CNI, landline only (noting the fixed telephony USO) and vulnerable customers". This is not quite right – Openreach is considering using copper re-arrangement to provide SOTAP for Analogue from *nearby* exchanges to serve end customers in exchange areas whose exchange is being exited. This is one option for ensuring exchanges can be exited while ensuring suitable safeguards are in place for end customers.

220. We understand that Ofcom is keen not to reduce ISPs' bargaining power in these negotiations. However, we expect the current negotiations to conclude by March 2026.
221. We also recognise that Ofcom must preserve its ability to exercise its judgement on a case-by-case basis. However, transparently setting out in advance the process by which it will reach those decisions, and the factors it will take into account, will ensure that all interested parties understand how matters will be assessed and what to expect from the decision-making process and how long it might take, and minimise the scope for any misunderstanding.
222. Further, given that agreement has now been reached with most of the larger ISPs, Ofcom's concern appears to be out of date and is not sufficiently forward-looking. In any event, we do not consider it would undermine the ongoing commercial negotiations if all parties had a better understanding of the process for asking for the conditions requiring the provision of copper access to be disapplied if commercial agreement could not be reached, or if the implementation of that agreement runs into difficulties.
223. Indeed, a clear resolution process would normally be part of any commercial agreement. In the case of exchange exit, the resolution process would be provided by Ofcom, but Ofcom has so far not explained how it will work. It would be in all parties' interests to have a better understanding of how and when Openreach would get involved, the factors it would take into account, the evidence it would expect to see, the time it will take and the scope for other providers to inform the decision.
224. It is also not clear how Ofcom envisages its case-by-case approach to disapplying the conditions will work in practice. Any process that relies on up to 108 separate requests and industry consultations seems likely to be unworkable, and would create a disproportionate burden on Openreach, its ISP customers, and Ofcom, that will ultimately become a significant bottleneck in the progress towards exit.
225. It is therefore essential that Ofcom considers how it will reach any decision on whether to disapply the obligations and consider how the process can be streamlined. We are keen to have further discussions with Ofcom on this issue and explore how best to put our plans for the early phases of our exchange exit plans into practice in a way that brings certainty to Openreach, to industry and end customers, and to Ofcom.

226. Similarly, Ofcom does not explain whether it would apply similar criteria as those it would use to decide whether to disapply the SMP conditions if it was instead asked to opine on an assessment by Openreach that a request for access was not "*reasonable*".²⁹ Again, it would be necessary for Openreach and its ISP customers to know, at least in broad terms, sooner rather than later.
227. As noted in the introduction to this section, we propose working with Ofcom on a scale 'pathfinder' to identify and resolve any remaining issues on the route to exchange exit and propose [X] of the priority 108 exchanges to trial this process will help Openreach, industry and Ofcom to identify best practice and map a route to safe migration for our ISP customers and successful exchange exit.

Conclusion

228. We welcome Ofcom's in principle support for exchange exit. However, the route to providing that support is not clear and the process suggested by Ofcom risks being unworkable.
229. Ofcom has a duty to be transparent and provide greater clarity on how and when it might step in to help secure the benefits of exit, and the factors it will take into account when deciding whether to do so.
230. The process of exiting the priority exchanges will provide important insight into the challenges associated with exit and how they can be best resolved to deliver good outcomes for Openreach, for our ISP customers and for end customers. Lessons learned from exiting the priority 108 exchanges will inform and improve the approach taken to the remaining planned closures.
231. Ofcom should work with Openreach to use one or more of the phases of our exit programme as a test case for the future approach to be taken by Openreach, by industry and by Ofcom. This needs to commence as soon as possible and cannot wait for the conclusion of the TAR.

²⁹ For example, we do not consider that a request for ongoing supply of MPF in a closing exchange area is reasonable, in circumstances where we have given 4 years' notice, and a majority of ISPs (by volume of lines) have agreed to our offer of commercial support to exit

Non-Pricing Remedies

Summary

232. In the main, Openreach is broadly supportive of the general remedies that Ofcom proposes. However, there are a number of exceptions where Ofcom is proposing remedies that are unnecessary and disproportionate, and the remedies should only apply where competitive conditions justify them and they are targeted. We have discussed our position on market definition, SMP assessment and remedies overall in the Openreach TAR response document 1, and in responses to the questions in Volume 2 of the Consultation.
233. In the areas where Ofcom has correctly found Openreach to have SMP, we support the general remedies proposed by Ofcom, where they are a continuation of existing regulation. However, there are circumstances in which we consider these remedies should not apply – and we would appreciate the opportunity to explore with Ofcom when a request for continued copper network access might not be considered reasonable where full-fibre is available and can be provided sooner and at lower cost.
234. We broadly support the proposed PIA remedies, but Ofcom should reconsider requirements relating to the use of Network Adjustments (**NAs**) to ensure that efficient use is incentivised.
235. We generally agree with the WLA-specific non-pricing remedies, although there are points which would benefit from changes or greater clarity. Most importantly, anchor price controls are not necessary or proportionate where commercially agreed commitments have been made – and we disagree with the structure of the anchor controls.
236. We generally agree with the LLA-specific non-pricing remedies, where they are a continuation of existing remedies. However, we have concerns about proposals to expand the scope of the remedies, about remedies that are unworkable and about the need for further clarity on the limitations of our obligations:
237. Our concerns about the expansion of the Dark Fibre Access (**DFA**) remedy relate directly to our disagreement with Ofcom's market definitions.
238. Ofcom's proposal for parity between DFA and Ethernet Access Direct (**EAD**) 2.0 is misguided.

239. Clarifications are needed in relation to our ability to compete in bids, on Cablelink services and the obligation to supply leased lines.
240. We disagree with the expansion of the dark fibre remedy in the IEC market. By expanding the remedy to cover all regulated exchanges, it ignores prospects for PIA build, and risks ISPs making inefficient investments and network designs that will require rearrangement when Openreach exits exchanges in the 2030s.
241. We have substantive areas of disagreement with Ofcom's proposals for pricing restrictions that would apply in the WLA and LLA Area 2 markets. In particular:
- i. Ofcom fails to take into account the level of competition in the market today, and the trend to greater competitive conditions. Stepping back, it is undeniable that competition is more intense now than it was when Ofcom set WFTMR. On that basis, it would make sense for regulatory constraints to be loosened, and it is clearly counter-intuitive and inconsistent with regulatory best practice for constraints to be tightened. The proposed restrictions limit the prospects of end customers benefitting from this competition.
 - ii. Geographic pricing restrictions serve no purpose beyond the restriction to price at a fair and reasonable level (above the cost of a Reasonably Efficient Operator in the first assessment) and should be removed. Ofcom fails to take into account the limited value of this remedy given that Virgin Media O2 (VMO2) - which is not similarly constrained - could impact Altnets by reducing prices. This is a direct result of Ofcom's incorrect approach of imposing SMP on Openreach nationally, even in areas of strong competition such as within the VMO2 footprint.
 - iii. The assessment of conditional offers should not make such offers subject to hurdles that are higher than competition law requirements. The concern expressed by Ofcom in relation to accelerated FTTP migrations is contrary to Ofcom's and Government's aims for growth powered by FTTP adoption, and not a substantive issue that requires a restriction to address.

General Remedies

Question 3.4: Do you agree with our proposed general remedies? Please set out your reasons and supporting evidence for your response.

242. Openreach is in the main supportive of the general remedies proposed by Ofcom, subject to the following specific points:
- i. ATI Regulations: PIA obligations are not symmetric and disadvantage Openreach specifically (and potentially other Altnets which may need or choose to use non-Openreach physical infrastructure). Ofcom should take this into account when setting PIA remedies.
 - ii. Exemptions to the obligation to supply copper-based services on reasonable request: Ofcom should provide guidance on when copper-based premises can be repaired with full-fibre instead.
 - iii. No Undue Discrimination (NUD): Openreach agrees that Ofcom does not need to go further and introduce Equivalence of Inputs (EOI) consumption.

Requirement to provide network access on reasonable request (SMP Conditions 1 and 2)

243. Openreach is required to offer network access in the relevant markets in response to reasonable requests from third parties on fair and reasonable terms and conditions.
244. In the WLA market, we consider that the requirement for requests to be 'reasonable' should in principle be capable of considering the applicable market conditions at the time, especially as we move to increased full-fibre rollout across the UK. In this context, we continue to support the disapplication of the general network access obligation in relation to supporting copper retirement. However, further guidance from Ofcom on what is meant by 'reasonable' would be welcome for both exchange closure and with regard to specific forms of network access in other situations where there is an important operational, economic, safety or policy justification. We discuss this further in the section titled "Exceptions to reasonable requests to continue to supply copper services" below.

245. We agree that this is a reasonable remedy to apply to Openreach's physical infrastructure. However, we consider that its application is inconsistent with Ofcom's approach to, and our experience of, the ATI Regulations (below). We also have more specific observations on changes that are needed to remedies relating to the use of poles and pricing in response to Questions 3.5 and 4.5 below.
246. We agree that this is a reasonable remedy to apply to Openreach's LLA services, but have some specific comments on the limitations of this remedy, which we cover in response to Question 3.7.
247. Further, in relation to network access requests and the application of fair and reasonable charges, please refer to our comments on market definition in Openreach TAR response document 2 and pricing remedies in Openreach TAR response document 4 respectively.

ATI Regulations

248. The ATI Regulations already allow Altnets to access Openreach's physical infrastructure on fair and reasonable terms. They also impose obligations on Altnets and other infrastructure providers, which could enable viable access to their physical infrastructure subject to fair and reasonable terms and charges.
249. As we set out in our previous responses to market reviews (e.g. the WFTMR and the PIMR), we consider that Ofcom has given insufficient weight to the relevance of the ATI Regulations in the past and continues to do so in the TAR consultation. Ofcom takes the approach that the ATI Regulations will not address its competition concerns, and hence Ofcom does not address or try to resolve any usability issues. Further Ofcom does not explore in any depth how the dispute resolution process enshrined in the ATI Regulations – which is under Ofcom's control – might be used to make the ATI Regulations more effective. This is a missed opportunity.
250. As we noted in the PIA Market Assessment section, the ATI Regulations recognise that communications networks can utilise a wide variety of civil infrastructures (i.e. mix and match) to build full-fibre networks and that Openreach is not the sole supplier of suitable infrastructure (for example, electricity distribution network companies (DNOs) own and operate large-scale national pole infrastructures). Also, many companies with large civil engineering infrastructures, such as SSE, have to date based communications market entry on utility infrastructure. In short, Openreach's infrastructure is not the only option for Altnets.

251. Therefore, Ofcom's TAR proposals by failing to take into account the impact of the ATI Regulations in the PIA market definition risk continuing the distortion of the market for access to physical infrastructure. Ofcom's proposals and very favourable rules on NA cost recovery for PIA customers mean Openreach is very likely to be chosen as the preferred physical infrastructure access provider, and other owners of ducts and poles may be foreclosed from the provision of access to physical infrastructure.
252. Consequently, the continued emphasis on PIA could also result in an unnecessary duplication of assets, and increase Openreach's costs, as PIA access seekers are most likely to require Openreach to provide capacity relief or adjust its existing infrastructure, knowing that Openreach will be mandated to fund the cost, rather than seeking to use any spare capacity available in ducts or on poles of other utility/communications providers. This essentially deprives the ATI Regulations of any concrete application, effectively confining them to the statute books.³⁰
253. The PIA remedy should not 'crowd out' the use of such infrastructures and require the unnecessary duplication of physical networks – this increases full-fibre deployment costs, and end customers will ultimately need to pay for these. There is also the potential consequence that unrestricted PIA on attractive terms will effectively preclude use of other infrastructure, and that this will be wrongly interpreted in future reviews as providing evidence of no substitutability between physical networks. Overall, such an approach would discourage efficient investment and innovation.
254. The ATI Regulations clearly show the potential use of 'mix and match' deployment options, which added to a degree of self-build of network segments could lead to product differentiation such as physical resilient point-to-point (PTP) connectivity services to large businesses, as highlighted by CityFibre.³¹ It is wrong to argue, as Ofcom does in effect, that because supply side substitution can involve some extra cost then all such options should be "per se" disregarded. Ofcom has too readily dismissed the potential for its policy objectives to be supported, at least in part, by the ATI Regulations.

³⁰ We are aware of incidents in the KCOM footprint where the lack of usable ATI solutions has led to duplication of Altnet PI and end customer dissatisfaction.

³¹ Analysys Mason Report page 23

255. Finally, Ofcom's PIA proposals provide no explicit safeguards for Openreach in the way that the ATI Regulations do.³² Moreover, because other network providers will be able to refuse access to Openreach by relying on the safeguards enshrined in the ATI Regulations when the same safeguards are not enshrined in the PIA proposals, Ofcom's proposals create a material risk of distorting competition and may already be doing so.³³ Ofcom Therefore we request that Ofcom considers how best its PIA proposals could reflect the safeguards enshrined in the ATI Regulations.

Exceptions to reasonable requests to continue to supply copper services

256. We consider that the widespread rollout of full-fibre that has occurred in the period since the regulations under the WFTMR were put in place means that there are now situations where it would not be reasonable to continue to supply a copper service. This would be the case where an end customer can safely be moved to full-fibre. We are requesting an exemption from the obligation to provide network access on reasonable request where stringent conditions are met. As set out below, this approach would lead to efficient investment, avoid inefficient costs and ultimately be to the benefit of end customers.

Unreasonable requests to continue to supply copper

257. In our response to question 3.3 on exchange exit, we discuss the situations where we consider a request for us to provide copper services would not be reasonable, in order to facilitate the closure of an exchange and unlock efficiency benefits. Although there are specific reasons why this principle should apply in relation to exchange exit, we also consider there are good reasons for this principle to apply in other circumstances.

258. Within our general operations, we encounter situations where exceptional copper repairs can be particularly expensive (or give rise to, for example, too large health, safety or environment risks) and take an extended time to restore service.

³² For example, Regulation 4(5) and 6(3)) when it comes to accepting or rejecting a request for access to information and a request for network access. With respect to Section 6(3) of the ATI Regulations, an access provider can refuse access where inter alia, the provision of access raises safety or public health concerns; could compromise the security or integrity of the network; may cause technical difficulties because the proposed access does not comply with recognised standards; or may interfere with existing technologies.

³³ For example, we have made little progress to date in agreeing physical infrastructure access with VMO2/others using the ATI Regs as they are currently implemented - although we have now tried several times over recent years.

Examples include cable theft, where multiple end customers may be affected or an especially complex repair for a single end customer. Where FTTP is available and can be connected more quickly and at lower cost than the copper can be repaired, we consider it would be more efficient for us to install FTTP.

259. We set out below some case studies where an FTTP installation was or would have been more efficient than copper repair:

- i. A copper cable to rural premises faulted. As it was served by direct in ground armoured cable which could not be accessed (as there was no duct), the repair would have needed new infrastructure. The only possible copper repair solution was to install new copper infrastructure using poles, which would have cost [X] and taken a substantial time to restore service. Alternatively, the premises could be connected to FTTP at a cost of less than [X]. In this case, after voluntary discussion between Openreach and the ISP (and then presumably between the ISP and end customer), an order for FTTP was placed so the end customer could be connected sooner, and Openreach was able to avoid the copper repair costs.
- ii. All service from a cabinet was completely lost, when heavy rain caused the ground around it to collapse, following excavations for building work nearby. FTTP had recently been built, available to 100% of impacted end customers, and a number had already migrated across. FTTP service was impacted but quickly restored. 150 copper end customers were out of service and faced a longer delay to fix. We started a labour-intensive effort to speak with local residents, and advised that FTTP service was available immediately and despite individual contact, only c. 40 end customers migrated to FTTP. In order to fix the copper network an Alterations Project Engineer designed new civils infrastructure in a safe location. Given the safety implications and the complexity of the civils, cabling and jointing works, the fix took two weeks to complete.

Figure 3.2: FTTC Cabinet for repair following landslip



260. In the first example, a significant cost was avoided (meaning financial and operational resources could be put to supporting other end customers) and the end customer got a better product. However, this was only possible because the end customer voluntarily placed an order for FTTP and the ISP closed its copper fault.
261. In the second example, despite FTTP being available to all end customers and a significant manual effort to advise of its availability, the cabinet still had to be repaired. [X] of costs were incurred to repair the cabinet, which could have been avoided if all end customers had migrated to full-fibre. The majority of end customers did not move to an improved product and had two weeks without service. This is clearly not a proportionate or efficient outcome.
262. We also see situations where individual end customers have an intermittently faulty line that causes expensive repeat visits and a poor end customer experience – such end customers would have a better outcome by moving to FTTP. Copper cable thefts see end customers with outages of up to two weeks, and in some area the same cables are stolen repeatedly, creating a poor end customer experience. FTTP would be a better product for the end customer and not be at risk of outage from theft.

263. As with exchange closure we find some end customers are resistant to engagement, or perhaps to change. Our request to Ofcom is to allow us to move copper faults to full-fibre without explicit end customer agreement on an exceptional basis where the following conditions are met:

- i. FTTP is available to all impacted end customers (i.e. premises are Ready for Service of RFS).
- ii. The cost of connecting end customers to FTTP is less than the cost of repairing the copper network, or there is a health, safety or environmental reason to replace copper with FTTP that outweighs the cost of FTTP installation (such as with the petrol leak at Bramley).
- iii. There would be no negative impact on the end customer or ISP:
 - a. Service can be restored on FTTP sooner than it could with copper.
 - b. The current ISP is able to offer an equivalent service (e.g. it is able to offer IP voice).
 - c. Prove Telecare is offered for free if relevant.
 - d. the FTTP connection charge would be free, as the repair would have been.
 - e. Standard SLGs are paid for FTTP late delivery, with the clock stopped on copper repair SLGs.

264. We believe this would be comparable with Ofcom's approach to considering where network adjustments are needed to the physical network for PIA (Annex A11.6), which considers whether the repair work is: (i) necessary (ii) feasible and (iii) efficient. Applied to copper repair to FTTP we believe that repairs to copper are not necessary or efficient and sometimes are not feasible within a reasonable time or cost, as set out in the table below.

Table 3.2: Where copper repair is not required

Repair is not:	Criteria
Necessary	FTTP (a superior service) is available to all premises with the fault and can be connected within the timeframes of copper repair.
Feasible	May be unable to achieve the repair (examples include cabinets sited in flood plains).
Efficient	Cost to repair copper-based network higher than cost to install the FTTP service. WLR lines will migrate to an alternative service by 2027, so we are pulling forward the FTTP connection and avoiding repair costs.

Requirement to publish and operate a process for requests for new forms of network access (SMP Condition 3)

265. Openreach agrees that, due to the effectiveness of the Statement of Requirements (SoR) mechanism, the process and guidelines should continue to be the mechanism for ISPs to request new forms of network access.
266. The SoR process and associated guidelines (SOR Process) provide an important mechanism through which Openreach engages with its end customers to manage enhancements and new developments within its product portfolio.
267. All ISPs are able to raise SoRs on an equivalent basis, following the process for discussion at the relevant industry forum. Openreach continues to provide high levels of transparency in the management of SoRs and we have continued to see a healthy number of SoRs raised by industry.
268. We proactively share a dashboard of SoR Key Performance Indicators (KPIs) at industry fora on a monthly basis, which provide evidence on the effective management of SoRs and reflects the overall trends. For example, of the 17 SoRs in the pipeline during 2024/25, 100% have received timely, high quality updates (with clear updates provided to ISPs on status and progress). Similarly, the

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Issue: 1

Date: 12/06/2025

Openreach SoR dashboard shows that of the 13 delivered SoRs in 2024/25, one was delivered early, 11 were delivered on time and one was subject to delay.

269. The process is reviewed on a continuous basis, with recent improvements being implemented. For example, we launched the new SoR tool in September 2024 and it has received positive feedback from industry, including that it is more user friendly as compared to the previous tool. The new SoR tool was developed collaboratively with industry and the OTA2. This included allowing ISPs to take part in pre-launch testing, and there were numerous opportunities to provide feedback via 'show and tell' sessions. The new tool is accessed via single sign-on via the Openreach 'CP Portal', reducing the time and effort needed to add users and reset passwords compared to the previous tool. The tool provides quality updates monthly, following the Concept to Market (C2M) process.

Requirements for equivalence of inputs (EOI) (SMP Condition 4) and no undue discrimination (NUD) (SMP Condition 5)

Equivalence of Inputs (EOI)

270. Openreach currently provides its products and services in the WLA, LLA, and IEC markets on an EOI basis, with only a few exceptions.³⁴ The EOI principle is deeply embedded within the Openreach organisation, and we maintain strict compliance with its requirements - whether through system and process improvements or the management of information sharing.

No Undue Discrimination (NUD)

271. The principle of NUD is longstanding and Openreach supports this. We set out below our support for the application of NUD rather than EOI to the internal consumption of PIA. We start by setting out when we believe discrimination may be allowed to reflect demand side differences, where we would welcome Ofcom confirmation and clarity.

WLA and LLA

272. The regulatory obligation not to engage in undue discrimination is applicable within a market rather than between markets. This means that discrimination is possible

³⁴ TAR Vol 3 para 4.43

between the WLA market and the LLA market (and between the different geographic markets), although traditionally these markets have been served with distinct products. However, with shared networks providing services to both markets, lines between markets are increasingly blurred and the products serving each market are becoming more similar. In short, increasingly a service provided on the full-fibre network can serve leased lines demand. We have discussed this point in our discussion of the LLA market definition in our response to question 2.9. Equally, a leased line could serve a business broadband end customer in the WLA market, and this may be more efficient, if the site is not near Openreach's FTTP network.

273. Services sold to businesses generally have different requirements in terms of bandwidth, symmetry and service levels, even if using the same full-fibre network as residential services. This is driven by end customer requirements.
274. However, even if the same product or service is sold to both business and end residential customers, we believe that it would be permissible, and not inconsistent with NUD, to differentiate pricing to reflect the end customer willingness to pay. Charging different user groups different prices can be economically efficient. Where higher prices are charged to users with higher willingness to pay (more inelastic demand), and lower prices to users with lower willingness to pay (more elastic demand), more end customers overall are able to access the service they value (as opposed to a single uniform price set between the two levels of willingness to pay). This is sometimes known as 'Ramsey pricing' and can increase total output and customer welfare. It is consistent with Ofcom's approach to charge control basket design, where Ofcom acknowledges that setting broad baskets gives better flexibility to recover costs in an efficient way through higher pricing on more inelastic services.³⁵
275. Further, in practice the approach of differentiated pricing between residential and business customers is already common throughout the industry. Many providers sell products with limited differentiation at vastly different prices depending on the end customer type. Table 3.3 sets out numerous examples based on publicly available retail pricing, including Hyperoptic, who sell a 1Gb product to residential customers for £36 per month (plus £19 activation) and a 1Gb business product with limited differentiation for £300 per month ex VAT (prices quoted are after initial discount). The ubiquity of this differentiated pricing is because of the

³⁵ TAR Vol 4 para 6.46.

economic rationale – investors in full-fibre should maximise the return on their investment by targeting multiple user groups and optimising pricing across the market. Openreach considers it is necessary to be able to match these pricing structures in order to compete fairly with industry.

Table 3.3: Residential and Business pricing by Altnets with sources

Altnet	ISP	Premises Type	Post code	Link	Instructions
CityFibre	Zen Internet	Residential	NE28 8UA	Top Rated Home & Business Broadband Providers Zen Internet	Submit postcode into availability checker to view products and prices
CityFibre	Zen Internet	Non Residential	NE28 8UA	Connect better, smarter and safer with Zen business solutions	Submit postcode into availability checker to view products and prices
CityFibre	Vodafone	Residential	NE28 8UA	Vodafone UK Broadband	Submit postcode into availability checker to view products and prices
CityFibre	Vodafone	Non Residential	NE28 8UA	Vodafone UK Broadband	Submit postcode into availability checker to view products and prices
Community Fibre	Community Fibre	Residential	N/A	Full Fibre Broadband & WiFi Provider TV & Phone Deals Community Fibre	Available at link
Community Fibre	Community Fibre	Non Residential	N/A	Business Fibre Broadband Business Broadband Deals Community Fibre	Available at link
Gigaclear	Various	Residential	N/A	Gigaclear Wholesale Pricelist November 2024 24540c09af.xlsx	Available at link
Gigaclear	Various	Non Residential	N/A	Gigaclear Wholesale Pricelist November 2024 24540c09af.xlsx	Available at link
Netomnia	Brsk	Residential	N/A	Brsk High Speed Fibre Broadband Provider UK	Available at link
Netomnia	Brsk	Non Residential	N/A	Business Full Fibre Broadband Provider UK Deals 2024 brsk	Available at link
YouFibre	YouFibre	Residential	N/A	YouFibre Ultrafast Full Fibre broadband Up to 8000 Mbps	Available at link
YouFibre	YouFibre	Non Residential	N/A	Business Broadband - Full Fibre Business Broadband - YouFibre	Available at link
VMO2	Virgin	Residential	N/A	Virgin Media Cable Deals - See What You Can Do	Available at link

Issued by: Openreach

Issue: 1

Date: 12/06/2025

VMO2	Virgin	Non Residential	N/A	Fibre Business Broadband & Phone Deals for 2025 Virgin Media Business	Available at link
Hyperoptic	Hyperoptic	Residential	N7 7FJ	Hyperoptic Full Fibre Optic Broadband Provider	Submit postcode into availability checker to view products and prices
Hyperoptic	Hyperoptic	Non Residential		Small Business Broadband Full Fibre Hyperoptic	Submit postcode into availability checker to view products and prices

Physical Infrastructure Access (PIA)

276. We agree with Ofcom's conclusion and reasoning that Openreach should not be required to consume the PIA product on an EOI basis. Those stakeholders seeking EOI have not been able to point to any evidence that the current NUD obligation is insufficient, i.e. that it is holding back Altnet build and service provision. The fact that build has occurred at a faster rate than Ofcom originally envisaged also supports this view. To go beyond this pragmatic approach, as Ofcom notes,³⁶ would increase costs and generate operational inefficiencies through additional internal hand-offs within Openreach and would likely require costly new systems and processes to be developed. As Ofcom acknowledges, such an obligation could adversely affect both existing services and Openreach's future fibre investment. Therefore, the NUD obligation is wholly sufficient and there is no basis on which to argue that EOI is either necessary or proportionate.
277. Diverting scarce and skilled Openreach resources (e.g. designers and developers) to re-engineer existing legacy processes and systems would directly impact our ability to deliver on the PIA systems development workstack and the priorities of PIA customers, in addition to impeding our ability to deliver the benefits of fibre technology and innovation to the UK and would potentially impact service quality across the board. The risks of increased costs, increased complexity, and loss of efficiency in delivering new investment to the UK are multifarious and would not support Ofcom's strategic focus.

³⁶ TAR Vol 3 paras 4.60 to 4.63

278. We also recognise and support Ofcom's views³⁷ on the difficulties of introducing a second form of 'functional separation' within Openreach. This would be an unnecessary and disproportionate action and introduce an extremely challenging layer of additional regulation given the already significant changes which took place to support Openreach's legal and structural separation from BT Group.
279. Ofcom's pragmatic approach has worked well. Openreach has been able to work proactively with its PIA customers and the OTA and openly share its thinking and progress with Ofcom³⁸ to develop systems for its PIA customers tailored to access the key physical infrastructure data and functions they require (e.g. for plan and build, in-life and end customer connections). All while increasing transparency and embedding strict NUD processes and controls throughout Openreach.
280. The operational reality is that Openreach is not in the same position as an infrastructure investor making a discretionary investment in a new full-fibre or multi-functional network. Openreach needs to rely on its physical infrastructure to meet all its existing obligations as well as being able to compete commercially with operators that have their own networks and delivery platforms (e.g. TV, cable and wireless).
281. Therefore, as Ofcom has acknowledged,³⁹ Openreach's requirements of its own physical infrastructure are necessarily different and more demanding than those of a typical PIA customer, which can freely select where it chooses to use (or not use) Openreach physical infrastructure.
282. We also believe the approach to NUD adopted by Ofcom has been, and will continue to be, beneficial for PIA customers, as many of them have different priorities to Openreach:
- i. For example, Openreach is able to develop and implement specifically tailored systems for PIA product users (i.e. different to our internal legacy inventory system, PIPeR) to proactively enhance the PIA product and enable PIA customers to undertake more efficient consumption of PIA. This means PIA customers are able to plan and record network deployments in a comparable manner to Openreach but using a much more flexible and adaptable system.

³⁷ TAR Vol 3 para 4.61

³⁸ Including at the CEO level meetings chaired by Ofcom – for example at the most recent meeting of 3 April 2025.

³⁹ TAR Vol 3 para 4.60

- ii. If this flexibility was not inherent in the NUD obligation, then there would often be no possibility of Openreach proceeding with PIA user requirements for new processes and systems. It means PIA systems and processes can have independent development cycles and budgets driven by PIA users, the OTA and Ofcom requirements (because of the NUD framework) and also avoid any need to be subject to the more onerous requirements that Openreach's internal legacy systems often impose (e.g. recording of cable layer data, something that Altnets pushed back on in the original PIA Reference Offer (RO) discussions).
 - iii. Also, the flexible NUD approach makes it far less likely that there will be a need for specific and complex regulatory SLAs for the various types of NAs. Most underground NAs are now carried out by Altnets (c. 99%), the proportion having rapidly increased over recent years, and therefore there is no material benefit to be gained from an SLA. Further overhead NAs, which are largely carried out by Openreach, can be monitored and governed with reference to the NUD obligation.
283. In addition, there are already a significant number of other developments underway which are being progressed with PIA customers and the OTA through the Passives Industry Working Group (PIWG), and these PIA systems developments can only be this agile and reactive to PIA customers' needs because they do not impact Openreach's legacy systems such as PIPeR. Further we are now looking to reflect PIA customers' emerging requirements for 'in-life' use, by the development of new processes and functions (TOD, UG POC, APIs etc), all of which have to comply with the NUD obligation. These systems developments are an excellent example of the flexibility (and proportionate nature) of the NUD approach compared to an inflexible EOI obligation.
284. We note Ofcom's views and the clarifications set out in Volume 3 paragraphs 4.64 to 4.71. However, at this time it is not easy to identify which new platforms or processes (for Openreach or Altnets) are likely to be designed and implemented from the outset on an EOI basis (paragraphs 4.66 to 4.68):⁴⁰
- i. This is the case for even relatively recent developments with a relatively mature PIA product, where the requirements and priorities of PIA customers

⁴⁰ However, we are already considering important and identifiable long-term developments in this way, including for example the replacement system for PIPeR, our core inventory system.

are often quite different and more focussed than those of Openreach,⁴¹ as are the needs of different sized Altnets (small vs. large) which may also be justifiably different on a forward-looking basis.

- ii. However, in line with Ofcom's guidance, we will continue to review all future platform and process developments as they occur and ensure, where appropriate, that NUD and/or EOI is built in as required.

285. More broadly, Openreach faces significant and increasing commercial and technological pressures from competing networks and platforms (namely Altnet, cable, mobile and satellite) and we must be able to respond quickly, effectively and legitimately to such changes in technology and the market. Therefore, as Ofcom acknowledges, there is an important line to be drawn between (i) access to the physical infrastructure layer of Openreach's network and (ii) Openreach's own innovation in active network plan and build techniques.⁴²

- i. Openreach needs to be able to maintain the incentives to innovate and differentiate in the plan and build of active networks, without having to make these available to PIA customers. [3<].⁴³
- ii. However, our approach to PIA customers is also to be permissive (in line with Ofcom's ambition). That is, when it comes to new ideas from Altnets and where they are viable, we look to allow them to use our PI network to build in innovative ways. Should PIA users come up with new ideas and share them with us, we have processes for assessing them (e.g. for safety, engineering viability etc) and where possible we look to update our PIA contract and associated Engineering Principles to enable them to be deployed.

286. We also strongly support Ofcom's approach to compliance.⁴⁴ As Ofcom is aware, we are committed to working openly with Ofcom on all aspects of compliance including NUD KPIs and other performance metrics requested by Ofcom and our PIA customers. Openreach and industry have already agreed a wide-ranging set of

⁴¹ As an SMP provider of a full range of telecoms services throughout the UK, Openreach requires significantly more detailed and national scale inventory information available for all technologies and at all layers of the network architecture (both physical and active), whereas a PIA customer is looking for specific physical layer information often in a specific geographic area to link into its own infrastructure inventory.

⁴² TAR Vol 3 para 4.67

⁴³ [3<].

⁴⁴ TAR Vol 3 paras 4.72 to 4.75 and Annex 11 paras A11.33 to A11.36

KPIs which are voluntarily reported to all parties (including Ofcom) on a monthly/quarterly basis as required. The two categories of KPIs are:

- i. Operational (also referred to as service performance) KPIs, which measure various aspects of the PIA product's performance, and each Altnet's use of PIA;
- ii. NUD KPIs, which compare PIA metrics to Openreach's own-use of PI.

287. An example of the most recent level of performance is shown in Table 3.4 below. The current (and historic) KPI data and past performance trends show no indication of any systemic discrimination.

Table 3.4: Q4 2024/25 (Jan-25 to Mar-25) - NUD KPI Summary Report

Network Adjustment NUD KPI	PIA	Openreach Comparator
Volume Completed *	2,101	13,670
Mean Time to Provide *	59.1	81.4
Performance vs CCD % *	76.4%	50.4%
Time to Verify (working days)	1.4	8.5
Overhead Verified in SLA %	99.7%	59.8%
Invalid %	8.8%	6.9%

*This data is based on Openreach completed NAs only (not SPOs)

288. Openreach has worked extensively with stakeholders to produce the current set of KPIs, and we are committed to continuing to work with stakeholders to improve and enhance these reports. To date, PIA performance has been at a very high level both for operational and NUD KPIs, and therefore there is no obvious need for any intervention. Openreach's continued commitment to openness and transparency will enable Ofcom and industry to continue to monitor Openreach's performance via the NUD KPIs, along with the PIA Internal Reference Offer (IRO) referenced below. The IRO was also extensively revised with input from Ofcom and industry as part of the implementation of the regulation set under the WFTMR.

289. Openreach remains committed to transparency and accountability and as noted above, we consistently publish data demonstrating our adherence to NUD obligations and our performance for the PIA market. A summary list of reports is shown in Table 3.5 below:

Table 3.5 Summary reports published by Openreach

Report Name	Frequency	Audience	Notes
PIA Openreach Comparator Report	Quarterly	CPs, Ofcom	Shared via the Openreach Portal.
PIA Service Performance Report (March 2024)	Monthly	Ofcom	Regular monthly performance update.
PIA Service Performance Report (Q4 2024/25)	Quarterly	CPs, Ofcom	Shared via the Openreach Portal. From April, CP-specific views are sent via Service Managers.
PIA Usage Report (Q4 2024/25)	Quarterly	Ofcom	Includes new 'Unique Count' tab as requested by Ofcom. Timing may align with Connected Nations reporting.
PIA NUD KPI Summary (Q4 2024/25)	Quarterly	Ofcom	Summary of Non-Undue Discrimination KPIs.

290. Our organisation is underpinned by a comprehensive set of NUD compliance controls, which are embedded across all levels. These are reinforced through rigorous monitoring, assurance processes, and ongoing training—ensuring that compliance is not just maintained but continuously strengthened.
291. In summary, our view is that calls for the imposition of an EOI approach rather than the more flexible and responsive NUD/transparency framework used by Ofcom would be disproportionate, unnecessary, and fundamentally fail to recognise what it would mean for both Openreach and for Altnets. It would significantly impact the Openreach systems development workstack across the board and the degree of retrofitting of PIA functionality that would be required in Openreach systems - but also in PIA users' systems - would come at great cost and complexity. This would delay both Openreach and Altnet build and would not serve the best interests of end customers throughout the UK to achieve Ofcom's and Government's goals for full-fibre and gigabit coverage (in essence, innovation and investment would be stifled). The reality is clear:
- i. PIA is a major success and many Altnets (large and small) have already proven the effectiveness and usability of the existing PIA product to date,

without it being provided on an EOI basis. Therefore, unsubstantiated claims that EOI urgently needs to be implemented are very weak.

- ii. There is no evidence that PIA users are facing discrimination.
 - iii. There is no evidence of any benefit to PIA users of implementing EOI.
 - iv. All enhancements and developments to the PIA product have been carried out in full consultation with PIA users and the OTA2 for the benefit of PIA users.
 - v. The technical and operational difficulties that would accompany EOI implementation would make it a complex, expensive and a wasteful use of scarce resources. Openreach's capital expenditure, development expertise, process and product improvements would become introspective and concentrated on ensuring Openreach conforms to EOI rather than meeting PIA users' needs. This would not help PIA users to build full-fibre networks efficiently at scale and at the most optimal cost.
292. We have extensive experience of the approach taken by Ofcom to monitor and enforce its regulation and, taken with the NUD and transparency requirements, Ofcom already has powerful levers to enforce Openreach compliance should it ever need to do so. Hence the imposition of EOI would be a highly disproportionate and unnecessary intervention.

Requirement to publish Reference Offer (RO) (SMP Condition 7)

293. Openreach understands the importance of publishing a RO in relation to the provision of network access in each relevant fixed telecoms market. This provides transparency for Openreach's ISP customers in the way that we offer products through our contracts, terms and conditions and associated ancillary documents.
294. We comment on a specific concern about LLA ROs in response to question 3.7. In short, as also mentioned above, the publication requirement has negative effects in bids run by ISPs in the leased lines markets. We would therefore request that Ofcom excludes from the scope of the publication requirements terms and conditions offered in the context of bids in the LLA markets.

Internal Reference Offer (PIA) – SMP Condition 7.10

295. We support the TAR proposal for Openreach to continue the publication of an IRO when supplying services to itself on a non-EOI basis.⁴⁵
296. In particular, we support Ofcom’s proposal for Openreach to produce an IRO for PIA. The Consultation again proposes (as with previous market reviews) that Openreach should not be required to purchase its own PIA product on an EOI basis, as this could increase costs and require new systems and processes to be implemented within Openreach, as well as potentially impacting Openreach’s ability to invest in new full-fibre networks.
297. Instead, Ofcom proposes a NUD obligation for PIA. We understand the need to support such regulation by maintaining transparency of Openreach’s internal operations and enabling comparison with the terms and conditions of our PIA product via the publication of a PIA IRO.
298. As in the existing framework, the IRO will be subject to further development and refinement on an ongoing basis, and regular updates produced, as and when changes occur to the PIA product or Openreach’s internal use of physical infrastructure.
299. We will continue the proactive and close working relationship we have established with Ofcom and other stakeholders in developing the PIA IRO over several years in the WFTMR period. This will help us to continue to prioritise the operational activities and technologies that have the greatest relevance to Ofcom and our ISP customers going forward into the next review period.⁴⁶

SLAs and SLGs

300. Openreach provides a comprehensive suite of Service Level Agreements (SLAs) and Service Level Guarantees (SLGs), as outlined in its contractual and supporting documentation. These go beyond the SLAs and SLGs listed in Condition 7 of the draft SMP conditions, encompassing additional commitments such as those for

⁴⁵ This currently applies to PIA and Dark Fibre products

⁴⁶ Please refer to Section 8 of our July 2024 TAR submission to Ofcom “Openreach submission to TAR26_Final_260724.pdf” where we set out in detail the close working between Openreach, Ofcom and stakeholders in developing and enhancing the PIA IRO to meet their requirements.

Repeat Fault Reports⁴⁷ and KCI2 Meaningful Messages⁴⁸. These SLAs and SLGs were developed through a collaborative, OTA2-facilitated process and have been successfully in place for several years. The framework is effective, but any proposal for a new SLG must begin with a clear justification—particularly in light of the extensive set of SLGs already established. Introducing additional SLGs inevitably increases the product cost stack, yet such costs are unlikely to be recoverable under the current, industry-agreed pricing structure.

301. In relation to services in the WLA markets, these payments should be considered holistically, covering both the standard SLG regime and the Automatic Compensation scheme. When combined, the compensation levels are more than reasonable. For instance, if an engineer misses an appointment at an end customer's premises, Openreach pays the ISP a standard SLG of £56, plus an automatic compensation payment of £19.91—totalling £75.91. In contrast, under the Voluntary Code of Practice (VCoP), the ISP is only required to pay the end customer £31.19. In the LLA markets, our SLGs are also generous, for example, for every day late in provisioning a service we offer one month's rental for EAD services.

Requirement to notify changes to charges, terms and conditions (SMP Condition 8)

302. Openreach has established a robust process for notifying industry of changes to charges, terms and conditions. This ensures all parties receive information about relevant changes in a timely fashion. We comment specifically on the proposed change to SMP Condition 8.6, increasing the notification period from 90 days to 120 days and adjusting the factors to be taken into account by Ofcom during this process, in our response to question 3.9 below.

Requirement to notify technical information (SMP Condition 9)

303. Openreach agrees that it is important to provide technical information available to ISPs to enable them to utilise new functionality to benefit end customers and wider industry. The current practice of publishing Supplier Information Notes which detail, for example, characteristics and standards works well, and the notes are

⁴⁷ An SLG where a fault resolution fails within the SLA at the same location and requires Openreach to carry out a repeat fix.

⁴⁸ An SLG where Openreach must agree within the SLA either an order delivery date or provide a defined status update on any delay in providing such a date.

updated as appropriate. We also notify any upgrades or changes as required – in particular Openreach operates its External Information Points (EIP) process which is our ten-stage process for tracking new products and product development milestones.

304. EIP applies to all functional releases – so that is major releases, interim releases and maintenance releases.

Requirement for Quality of Service (QoS) (SMP Condition 10)

305. Please refer to our responses to questions 5.1 to 5.4 on QoS in document 5.

Regulatory financial reporting (SMP Condition 11)

306. Please refer to our response to Questions 6.1 to 6.5 in document 6.

PIA - Specific Remedies

Question 3.5: Do you agree with our proposed specific remedies in the PIA market? Please set out your reasons and supporting evidence for your response.

307. While we have concerns about some aspects of the TAR regulatory framework, we recognise that PIA is an essential element that underpins it. In that light, we are able to support the majority of Ofcom's PIA proposals and the range of specific remedies proposed by Ofcom. However, we do have concerns which remain relevant to the scope and longer-term position of the PIA remedy depending on demand, PIA customer behaviour and future patterns of usage. These points are covered below.

Specific access obligation to provide PIA including network adjustments

308. Please see our response on market definition and the assessment of SMP in response to questions 2.1 to 2.4 in Openreach TAR response document 2. We accept the underlying logic of Ofcom's TAR PIA product proposals, and the regulatory function of a PIA remedy, but we still have significant concerns as to whether the market and SMP analysis presented provides sufficient and robust evidence to underpin such a geographically wide and unrestricted remedy.
309. Therefore, although we recognise that future applications are uncertain, further regulatory clarity is required to prevent possible PIA customer confusion and conflict. We request that Ofcom makes clear in its final TAR statement that:
- i. The scope of the PIA remedy does not include pole access for equipment being used to build a mobile network, and therefore that 'PIA Pole Adjustment Services' do not apply to any adjustments required to make space on a pole for mobile equipment.
 - ii. Additionally, that the mandated PIA remedy does not apply to other types of mobile/wireless equipment such as traffic monitoring, pollution monitoring and other similar devices, as these are not fixed-telecoms services which require regulated access to a fixed telecoms pole. In many, if not all cases, such use cases constitute a private network and not a public electronic communications network (PECN) or public electronic communications service (PECS).

310. For these types of applications, we are not prejudging whether it might be possible for Openreach and service providers to reach suitable access arrangements outside the scope of the mandated PIA product, but it would be helpful for Ofcom to reiterate the primary purpose of the PIA regulatory obligation and clarify its policy objective.
311. More broadly, it is our view that providing unrestricted access to physical infrastructure (and any related activities such as NAs) is only justified (and in fact required) to address market power in downstream wholesale fixed access markets (and associated retail markets) and that would be consistent with the economic underpinning for Ofcom's intervention and its policy objective of encouraging UK-wide full-fibre network build. Therefore, we have again proposed an amendment (marked in bold below) to Ofcom's draft legal definition of 'Physical Infrastructure Access' to make this clear: *"Physical Infrastructure Access" means network access comprising predominantly of the provision of space, anchorage, attachment facilities and/or such other facilities as may be reasonably necessary to permit a Third Party to occupy parts of the Dominant Provider's Physical Infrastructure sufficient to facilitate the establishment, installation, operation and maintenance of [solely a fixed telecommunications] electronic communications network of a Third Party at that location;*⁴⁹

Network Adjustments (NA)

312. We have set out our position in detail on NAs in previous responses⁵⁰ and in our submission to Ofcom in July 2024.⁵¹ Openreach should only be required to bear the upfront costs of NAs where there are clear and demonstrable benefits to the Openreach infrastructure and its PIA customers and that such NAs should be subject to appropriate approval processes and strict financial controls.

⁴⁹ Definition (fff) on page 16 of TAR Vol 7

⁵⁰ See Ofcom's WLA and PI market reviews.

Ofcom WLA consultation published 6 December 2016:

https://www.ofcom.org.uk/data/assets/pdf_file/0029/98246/Openreach.pdf

Ofcom WLA consultation published 20 April 2017:

https://www.ofcom.org.uk/data/assets/pdf_file/0017/104714/Openreach.pdf

Ofcom WLA consultation published 1 August 2017:

https://www.ofcom.org.uk/data/assets/pdf_file/0023/107195/Openreach.pdf

⁵¹ Please refer to Section 8 of our July 2024 TAR submission to Ofcom "Openreach submission to TAR26_Final_260724.pdf" where we set out our views on NAs.

313. We recognise that Ofcom has taken onboard many of our concerns and placed a number of limitations on the obligations in order to reduce the risks to Openreach and its non-PIA customers, and that these are now embedded in the proposed TAR framework. We strongly support Ofcom's approach and agree that:
- i. A valid 'PIA Adjustment Service' order would need to be necessary, feasible and efficient (paragraph A11.6).
 - ii. It would also need to be within Openreach's existing physical infrastructure footprint, and a permanent adjustment (paragraph A11.11 and A11.13).
 - iii. Such adjustments should not be expected to '*resemble the construction of new parallel infrastructure*' (paragraph A11.12).
 - iv. The important distinction between Altnet network build/installation activities and physical infrastructure NAs is also maintained (A11.13).⁵²
 - v. Openreach should decide the most efficient way of undertaking NAs (paragraphs A11.28 to A11.30).
 - vi. The obligations to undertake pole adjustments remain limited to those which are defective and unusable or at maximum dropwire capacity.⁵³
 - vii. Financial limits continue to apply.
314. Given that the TAR proposals incorporate these NA principles we are able to support the TAR NA remedy in broad terms.
315. However, many of the operational and financial concerns we have raised previously still remain. Although we have now established highly efficient controls which are performing well for PIA⁵⁴ our experience of how some Altnets approach the NA process have not yet fully allayed our concerns. The majority of PIA customers fully understand our need to maintain appropriate controls and work with us to implement and operate them, but some do not, and attempt to undermine

⁵² Cable installation tasks being classified as temporary adjustments and therefore the responsibility of the PIA customer in terms of operations and costs.

⁵³ As we state in responses to Question 4.6 below Ofcom could helpfully clarify in the final statement that any new additional poles required to support PIA customer deployments, which result from Openreach poles being at full capacity and/or which are not replacements for unusable poles hosting drop wires, are to be classified as 'new infrastructure' and hence are not 'PIA pole adjustments' as defined by Ofcom and therefore are not to be funded by Openreach.

⁵⁴ Please see the comparative NUD KPIs shown in Table 3.4 in response to Question 3.4.

reasonable controls that they themselves would be legally obligated to apply in their own businesses.

316. For example, it is very disappointing as we have learned recently that a significant number of PIA customers have been using and continue to use our physical infrastructure unlawfully (unauthorised use) on a large-scale basis without paying appropriate rental charges. This is to the detriment of Openreach but also of PIA customers that are compliant. We have been in numerous lengthy discussions with the industry with a view to finding a solution that is workable to Openreach but also PIA customers but those discussions have been difficult and challenging. This is surprising as PIA customers should know and understand that Openreach has a legitimate commercial interest to ensure that its physical infrastructure is being used correctly and that charges are paid appropriately. The issue of unauthorised use is also important given that we have General Conditions obligations regarding network security and resilience (we must ensure that those obligations are not compromised by PIA customers acting unlawfully). This issue has also shone a light on the fact that a large number of PIA customers do not have robust business processes in place to maintain accurate usage records. This is not acceptable as it is simply a standard and sound business practice (i.e. maintaining accurate accounting records and paying suppliers). Given this situation we reserve the right to implement stricter controls in due course should we not see evidence of significant improvement.
317. Leaving aside the major issue of UU, the general situation with regard to NA controls has moved on considerably, but key concerns still remain:
- i. *PIA customers need to have incentives to build efficiently* – A key concern for Openreach is that the NA obligation and existing high level of the financial limit means that PIA customers are not subject to the same incentives as Openreach when it comes to minimising civil engineering costs.⁵⁵ PIA customers should proactively drive down the incidence of unnecessary civils/skilled engineering jobs that Openreach has to pay for on their behalf in the same way that Openreach does for its own programmes.
 - ii. *The Network Adjustment validation process is key* – PIA customers need to take their share of the responsibility to minimise NA requests, and the extent

⁵⁵ Hence there is still significant time and cost expended in dealing with 'fringe cases' where Altnets are incentivised to try and characterise jobs as network adjustments rather than capacity related - because they are unwilling to incur any costs.

of validation that we need to do. On our part, our processes need to be efficient/timely in approving valid adjustments, but also strict enough to prevent invalid or fraudulent orders. We believe our current NUD KPIs are indicative of our commitment to do that (please see Table 3.4 above). We are also keen to continue working with PIA customers and the OTA to further streamline the NA validation process by moving the NA underground proof of concept (UGPOC) to 'business as usual' and streamlining the Self Provide Order (SPO) NA process.⁵⁶

- iii. *Accurate and detailed forecasting is essential* – We will not be able to resource for large PIA customer projects by geography unless PIA customers commit and provide reasonable forecasts with sufficient lead-times and report accurately and completely on what they have actually built to allow us to compare and update our records. We do this ourselves when carrying out similar scale or regionally focussed projects.
- iv. *Potential effect on the availability of civil/skilled engineering resource* – Linked to the forecasting point above if PIA customers provide inaccurate forecasts in total and by geography that will mean inaccurate and potentially wasted resource provision in total and by geography by Openreach and its civils partners. Needless to say, the civils and skilled engineering resource available to Openreach will also depend on the overall demand for, and supply of civils/skilled resource in the UK. It is therefore vital that there is an element of openness and transparency from Altnets to ensure orders are placed in such a way as to avoid and limit unnecessary and inefficient costs.
- v. *The capacity of Openreach's physical infrastructure* – Openreach ducts, poles and chambers were not designed or built to house multiple Altnets' full-fibre networks. Beyond a certain level of demand the existing physical infrastructure will not be able to be adjusted to accommodate further Altnet equipment, and it is likely that new parallel infrastructure will be required. Altnet investors and stakeholders need to recognise and budget for this in their investment plans.; and conflicts over space availability are already occurring and Openreach will need Ofcom's support to prioritise usage based on the key policy aims of PIA (e.g. FTTP vs other unspecified applications), other factors such as order priority (e.g. first come, first served)

⁵⁶ With appropriate levels of monitoring for quality of work, necessity of NA etc.

and/or whether equipment is actively being used to serve end customers rather than as a 'land grab' of a scarce resource.

- vi. *Efficient overhead final drop processes* - There is still significant work to do as an industry on determining best practice to enable multiple Altnet overhead drops. For example, it is still not clear whether complete removal of copper connectivity on fully loaded poles is the most efficient way forward, and what this could mean for copper regulation or the Universal Service Obligation (USO), and how it would impact Altnets and end customers (e.g. new copper connections would be more costly if Openreach copper is removed by a fibre provider); and there are also new and innovative solutions which are offering Altnets and Openreach more efficient options for utilisation of space (such as 'back-to-back' pole brackets) which could be adopted. We look to Ofcom to support Openreach in agreeing pragmatic processes which do not generate disproportionate costs for Openreach or adversely impact our ability to meet our existing obligations and invest in new networks.

318. We consider that the more civil engineering tasks (including NA-type activities) that Altnets are able to carry out and pay for themselves, and are incentivised to carry out, the better the outcome for both Openreach and Altnets. We note that Ofcom also considered this as potentially the most effective means of deployment in previous market reviews⁵⁷ and that it was particularly relevant where civil engineering tasks were time critical.

319. Such an operational model would not require an NA order (for a Self-Provide or Openreach-provided adjustment), and would also remove the need for an Openreach validation because Altnets would be funding the work themselves, and therefore Altnets could carry out the work to their own schedule.⁵⁸ Recent experience suggests that Altnets do have both the operational capability and cash flow to work like this, should they choose to do so.

A longer-term view of Network Adjustments

320. We are progressing a series of developments to transform the PIA product for the 'in-life' phase of the product life cycle (also referred to as 'Living Together',

⁵⁷ For example, see Ofcom's comments in paragraphs 6.134 to 6.138 of its 'WLA Market Review – Consultation on Duct and Pole Access remedies' published 20 April 2017

⁵⁸ Such work would need to meet Openreach's quality standards and hence would be subject to appropriate levels of checking and audit.

including innovations to streamline the NA process, and we see this as taking us seamlessly into the next review period and meeting one of the PIA users' key requirements for the in-life product.

321. Further, overall NA demand appears to be levelling out as PIA users focus on refining and completing their build programmes, and in addition, are also carrying out large proportions of NAs themselves as Self-Provide Orders (SPOs), particularly in the underground network.
322. Our position on NAs has always been that Openreach should only be required to bear the upfront costs of NAs where there are clear and demonstrable benefits to the Openreach infrastructure and its wider Altnet and ISP base. We acknowledge that Ofcom took on board many of our concerns and reflected these in the PIA regulatory framework in order to reduce the financial and operational risks to Openreach, Altnets and its wider non-PIA ISPs. Additionally, the situation has moved on considerably, as we have now established highly efficient controls which are performing well for Openreach and PIA users⁵⁹ and we have further NA innovations planned for the next review period.
323. However, our key concern remains that the NA obligation as it stands still means that PIA users are not subject to the same incentives as Openreach to minimise NA costs.⁶⁰ Rather than PIA users being incentivised to drive down the cost and incidence of unnecessary adjustments as Openreach does for its own programmes, they are able to claim back costs from Openreach when carrying out SPOs and/or request Openreach to carry out and fully fund, often more complex and costly NAs on their behalf.
324. We consider that the more NAs that Altnets are able to carry out and fund for themselves, the better they are incentivised to optimise deployment costs, and potentially the better long-term outcome for end customers and Altnets. Ofcom also considered this as potentially the most effective means of deployment in the WLA market review⁶¹ and that it was particularly relevant where civil engineering tasks were time critical.

⁵⁹ Please see the comparative NUD KPIs shown in Table 3.4 above.

⁶⁰ Hence there is still significant time and cost expended in dealing with use cases where Altnets are incentivised to try and characterise jobs as NAs to receive payment and are still prone to providing poor quality evidence or justification etc.

⁶¹ For example, see Ofcom's comments in paragraphs 6.134 to 6.138 of its 'WLA Market Review – Consultation on Duct and Pole Access remedies' published 20 April 2017.

325. Such an operational model would not require an NA order for an SPO or Openreach-provided adjustment,⁶² and would also remove the need for the Openreach pre-validation process because Altnets would be funding the work themselves to their own schedule.⁶³ The significant difference from the last market review is that Altnets now have both the operational capability and cash flow to work like this, should they choose to do so. This operational capability is evidenced by the vast majority of NAs in the underground network now being carried out as SPOs (c.99%).
326. These are all relevant considerations, as are Altnets' changing patterns of consumption and use of PIA. Given the Altnets' clear engineering capability to deliver NAs, we now consider that, looking to the longer term, it is the right time to question whether the principle that Openreach should fund all NAs *ad infinitum* should still apply. It is unnecessary and disproportionate that it should.
327. Delving further into the detail, it is necessary to draw out some important distinctions. For example, the situation is likely to be different for D-pole replacement NAs compared to other NAs. Openreach already has a significant asset assurance programme in place for D-poles, and hence it is hard to argue that Altnets should pay for NAs associated with such replacements. Although, it should be noted that we may be replacing such D-poles earlier and potentially at a higher cost if replacement is triggered by an NA. However, the Tour of Duty (TOD) innovation is already reducing the demand for transactional NAs for D-poles, and if Altnets can improve their forecasting and subsequent usage of replaced poles,⁶⁴ then there is no reason to change this part of the NA regime.
328. However, that cannot be said of pole top space NAs or underground NAs. In the longer term these are much more likely to only benefit a single Altnet, making it harder to argue that this fits with the reasonable, necessary, efficient, and mutual benefit criteria that underpin the argument in support of Openreach funding NAs. Therefore, in the long-run, Openreach should not be expected to pay for those NAs that we believe are not efficient and/or not providing enhancement to common parts of the network that Openreach and/or other Altnets might be likely to use.

⁶² Referred to as Network Adjustment Service Orders (NASOs).

⁶³ However, there will still be a requirement to meet Openreach quality standards and there is a quality audit process which applies to all civil and engineering works carried out by Openreach or PIA users.

⁶⁴ Currently, subsequent Altnet usage of their nominated TOD poles is very poor compared to our delivery.

329. This is more akin to an evolution of the NA concept than its removal. Now that multiple Altnets have already occupied the commonly accessible parts of the physical infrastructure network (or are likely to do so over the earlier part of the next control period) this makes NAs more likely to benefit only one PIA user (e.g. an Altnet making a specific end customer connection). Hence, we are looking to Ofcom to consider how the NA obligation might be amended so that we are able to protect Openreach operationally and financially and support the best interests of all our wholesale customers and end customers in the longer term.

Breaking in and out of Openreach's Physical Infrastructure

330. We fully agree with Ofcom's conclusions on this point,⁶⁵ PIA customers are likely to deploy hybrid networks (i.e. Openreach plus one or more other infrastructures) using a mixture of Openreach's physical infrastructure and their own infrastructure. Therefore, to make effective use of Openreach's infrastructure, they will need to be able to break in and out of our infrastructure to connect with their own. In addition, the ability of PIA customers to overcome unusable sections of physical infrastructure depends on the ability to do this at appropriate points.
331. This industry requirement is provided for by the proposed obligation on Openreach to provide necessary ancillary services, but it is not a NA. By definition, it is outside Openreach's physical infrastructure footprint and is not required for the purpose of making Openreach's existing infrastructure ready for use, but rather to enable a PIA customer to deploy network into a hybrid physical infrastructure.

Specific requirement to provide PIA ancillary services

332. We support Ofcom's proposal for Openreach to provide the PIA ancillary services listed in the draft legal instrument. However, we may need Ofcom support to continue to push back against Altnets attempting to overly extend the scope of Openreach's obligations to provide ancillary services – for example by claiming that access to legal agreements such as wayleaves⁶⁶ should be construed as constituting a PIA Ancillary Service.

⁶⁵ TAR Annex 11 paras A11.31 and A11.32

⁶⁶ A 'wayleave' is a private contract between a landowner and the holder of the wayleave which grants a right of way to the holder for a specific purpose, generally in return for a fee. Wayleaves are primarily governed by contract, privacy and property law to give due consideration to the rights of landowners. Therefore, we understand the subject to be outside the scope of SMP regulation and TAR access obligations. We are already providing certain specific information to PIA customers related to wayleaves obtained after December 2017 and would be pleased to continue to provide such information where we have the landowner's consent and in line with the applicable law and privacy regulations.

PIA implementation and compliance

333. We welcome Ofcom's continued and methodical approach to PIA implementation and compliance monitoring as set out in paragraphs 5.50 to 5.52 of Volume 3 of the Consultation. We have worked very closely with Ofcom, the OTA and our PIA customers throughout the current control period, as evidenced by the success and take-up of the product and the continuous and ongoing industry-led development of the product.
334. We have found the various mechanisms employed by Ofcom to be demanding (e.g. PIA CEO roundtables, Openreach Monitoring Unit (OMU), NUD KPIs and the IRO), but ultimately they have proved useful in maintaining transparent and effective communications and have increased understanding between Openreach, Ofcom and industry. We support their continued operation.
335. Ofcom highlighted five aspects of the PIA product for further consideration.⁶⁷ These were:
- PIA developments and NUD.
 - Contract lengths for use of Openreach's physical infrastructure.
 - SoR timelines.
 - Network build to new housing developments.
 - Market consolidation and PIA.
336. We address each of these in more detail below.

PIA developments and NUD.

337. We acknowledge Ofcom's view as expressed in the Consultation.⁶⁸ The NUD regulation and associated transparency of Openreach's internal operations are important aspects for Ofcom and Altnets to maintain confidence in the PIA product

We also note for the record that some PIA users do not seem to recognise the importance of dealing with landowners in an appropriate way, and that they are required to seek the landowner's permission before they enter and work on private land and that in some way PIA entitles them to access private land. In some more extreme cases Altnets have also falsely claimed that Openreach granted them permission to enter third party property - which we are not entitled to do.

⁶⁷ TAR Vol 3 paras 5.50 to 5.67

⁶⁸ TAR Vol 3 paras 5.55 to 5.58

and in Openreach's ongoing commitment to continuous development and delivery of a high-quality NUD service.

338. This transparency is made available via the IRO and supported by Ofcom's regular monitoring and subject-specific 'deep dive' sessions held with Openreach.
339. We are committed to maintaining this open relationship with Ofcom [3<].
340. Please also see our comments related to this subject in response to question 3.4 above.

Contract lengths for use of Openreach's physical infrastructure.

341. We have discussed this subject many times with stakeholders. All network build placed in a Notice of Intent (NOI) order has a 60-month minimum period. However, the licence may continue so long as the PIA user complies with the terms of the licence, hence there is no limit to the length of the licence.
342. The principle also applies to any end customer lead-ins which are connected and included in an end customer connection report, although these have a shorter minimum term of 12 months (as requested by PIA users) as they may be more liable to churn.
343. However, we do recognise the points that Ofcom make.⁶⁹ In this respect Ofcom's guidance is also helpful in that it is flexible enough to enable Openreach and its PIA customers who are interested in longer term contracts to find a suitable way forward without any complexities being introduced by different prices.
344. Broadly, we see a potential offer as being based on the following principles:
- i. It would continue to be a personal licence agreement – substantially the same terms as the current five-year term. It would be for spine and pole usage (cf. end customer lead in / connections remain on 12 months).
 - ii. There would be no price discount for a longer-term option – the five-year and longer-term offerings would be set at the same price as determined in the Ofcom charge control. Hence price changes would also be the same for all

⁶⁹ TAR Vol 3 paras 5.59 and 5.60

options i.e. the prevailing charge controls in a control period would apply to both options at the same time.

- iii. There would be an option to migrate existing five-year term assets onto the new longer-term option.
- iv. Both a five-year and a longer-term option would co-exist.
- v. Early Termination Charges (ETCs) would apply if the Altnet wanted to terminate within the longer-term contract. These need to be looked at in more detail but could be broadly consistent with the rules and/or levels for the five-year minimum term ETCs. It would require significant systems development to offer different minimum terms (e.g. five-year, twenty-year etc) and rules would need to be determined on whether NOIs within a project would all need to be on the same option.
- vi. We will reserve our rights to withdraw the service and terminate any existing licences (within the contract term) should PIA regulation fall away and would maintain any other reserved rights we currently have in terms of network management/adjustment and/or maintenance/safety. There would in any case be an option for Altnets to seek to extend or maintain their access to Openreach physical infrastructure via application of the ATI Regulations.
- vii. We would continue to reserve the same rights to issue and act on breach notices for all options.
- viii. All breach terms would remain the same.
- ix. Launch would occur only after all of the required systems and process changes e.g. billing, were implemented.
- x. We would want industry to have agreed an acceptable way forward on UU, including back rental, interest and compensation, and if required, fully corrected errors and omissions in their PIA record keeping.
- xi. The product development would go through the standard process.
- xii. We will reserve our rights to withdraw the service and terminate any existing licences (within the contract term) in respect of particular items of our infrastructure should we no longer require that infrastructure for our own network, i.e. obsolescent infrastructure. This is important for Openreach in

respect of our obligations under the Electronic Communications Code 2003 (public land) and under any applicable wayleave (private land).⁷⁰

345. Although we are willing to discuss and consider possible longer-term options with industry, we do need to be clear that this is not a trivial product development. There will be significant costs to implement, maintain and launch and it is also likely to cause a clash for development resources with other industry and potentially higher priority requirements.

SoR timelines

346. We recognise the importance of SoRs and their development timelines to Ofcom and our PIA customers. We have no objection to Ofcom monitoring our performance in this area and would be pleased to update Ofcom further in relation to any particular SoR and/or our aggregated delivery performance.⁷¹
- i. As Ofcom notes, there have been instances of long delivery timelines, but our view is that this is the exception rather than the rule. For example, in the case of one SoR that did take a long time to deliver (and has been discussed previously between Ofcom and Openreach) the reality behind the extended timeline was very different to the external perception:
 - ii. The time taken to deliver the SoR was mainly attributable to circumstances other than Openreach's performance.
 - iii. Much of the delay was introduced by the lead PIA user in the time it took to respond to the reports of our testing cycles - of which there were three main phases.
 - iv. There were problems with the poor quality of certain prototype samples supplied by the lead PIA user (e.g. some were 3D printed, rather than functional equipment). Following this the PIA user took a significant period of time to produce a robust industrialised version.
 - v. Finally, when we updated our Engineering Standards to permit the use of the equipment, even though the lead PIA user was in attendance on the industry

⁷⁰ [3<]

⁷¹ We did provide a PIA SOR performance update at Ofcom's PIA CEO meeting on 3 April 2025. Some of that data has also been included in this response for convenience.

call where we updated PIA customers, it did not realise that the standards had been changed to enable its usage.⁷²

347. In fact, PIA is a particularly active product with regard to SoRs. Our summary statistics are in Table 3.6 below.

Table 3.6: Volume of PIA SORs

Financial Year 2018-2024

Delivered	Closed (Not delivered)	Cancelled/Withdrawn	Total
13	8	6	27

Financial Year 2024-25

Delivered	In Progress	Pending Closure /Withdrawal	Total
7	6	4	17

CP Proof of Concepts (POC)/Trials – since 2018

Delivered (Moved to BAU)	In Progress	Not moved to BAU	Total
4	2	5	11

348. We always try to meet PIA customers' needs in the most efficient way possible. In situations where we encounter difficulties, we take learnings and aim to improve performance and delivery going forward. The reality is that we do deliver customer requirements efficiently and continuously, but that Altnets often take much longer to consume them, if at all, despite having escalated such developments.

Network build to new housing developments.

349. We recognise the importance of PIA working well for PIA customers in all scenarios including for new housing developments. We have no objection to Ofcom monitoring our performance in this area and would be pleased to update Ofcom further in relation to any particular processes and systems related to this area.⁷³

⁷² [3<]

⁷³ [3<]

350. In relation to the specific points made by Ofcom,⁷⁴ we are not aware of any specific instances regarding undue delays to physical infrastructure records being updated after network build and after formal handover of physical infrastructure has taken place from the developer to Openreach. Nevertheless, we would be willing to look at whether there are ways we can improve the processes and timeliness should it be required.
351. However, as Ofcom sets out in its document, there are some clear legal and operational processes which govern transactions on new sites. Primarily, Ofcom's current and proposed requirements for PIA relate to the provision of access to Openreach's existing physical infrastructure. This means that, unless and until Openreach chooses to build new physical infrastructure to/at the new development, other network operators would not be able to use the PIA product to supply downstream services to these new housing developments.
352. Further, PIA users can only make use of new infrastructure at a new housing development once it is 'live' on the Openreach PIA system, which does not happen immediately once the new infrastructure build has completed.
353. We should also be clear that there is no regulatory or legal obligation to build a new network using ducts, poles and chambers. Ultimately the most cost-effective and efficient solution for the specific site should be considered, and this could encompass a number of different solutions including direct in ground (DIG) deployment in some cases.
354. Please also see our comments in answer to question 2.3 where we raise concerns in relation to Ofcom's lack of consideration of the contestability of new sites physical infrastructure, and also in response to question 4.5 where we discuss our observations of some PIA customers 'gaming' the PIA pricing structure and appearing to only target the network elements which have a zero-tariff set by Ofcom.
355. We are also aware of some Altnets having used our physical infrastructure on new build sites and not registered their use. This is a part of a much bigger UU problem discussed briefly in this document (see above).

⁷⁴ TAR Vol 3 paras 5.63 to 5.66

Market consolidation and PIA

356. We recognise the importance of PIA processes and contractual requirements working well for PIA customers as likely industry consolidation takes place over the coming control period.
357. Our view is that we have good novation processes which are live and in place. We recognise that we did have some issues with older manual records and that there are some live issues that have been raised with us by an Altnet. However, our view is that these are not large issues and are being worked through.
358. The biggest hurdle to successful and efficient novations is often the individual records of the Altnets involved, i.e. no novation will be straightforward if the novating Altnets records are inaccurate or incomplete or they have not followed the required contract process to carry out Build Complete at the appropriate time. There is nothing that Openreach can do to support Altnets that neglect their accounting and record keeping functions, and neither should we bear the cost or liability for such scenarios.
359. The backdrop for novations is that Altnets often novate between different legal entities whilst completing M&A activities with complex business structures, therefore there will always be significant administrative challenges for them which are separate to and not driven by their interaction with Openreach.
360. However, we are confident that our new developments in the pipeline will help to streamline the process. For example, in response to an industry SOR we are looking to evolve the novations solution/process to enable Altnets to novate open orders (NOIs and associated NAs) between Altnets and to support the scenario where the Altnet is in distress and an administrator is appointed.
361. We do note for the record that the recent issues associated with UU by Altnets have significantly eroded trust between the parties, and there is no doubt that some Altnets will need to step up and maintain accurate and up to date records to ensure all business processes, including novations, can operate smoothly in the future.

WLA-specific remedies

Question 3.6: Do you agree with our proposed specific remedies in the WLA markets? Please set out your reasons and supporting evidence for your response.

362. We generally agree with the proposed specific remedies in WLA markets with the following exceptions, which we discuss further below:
- i. disapplication of network access obligations to support copper retirement;
 - ii. the application of the anchor requirement;
 - iii. requirement to supply FTTC rather than SOGEA;
 - iv. requirement to provide SLU; and
 - v. clarification on low bandwidth services.

Disapplication of obligations and charge controls to support copper retirement

363. We agree with Ofcom that it is appropriate and proportionate to disapply network access obligations as support for copper retirement. This support for copper retirement is necessary and will encourage the development of efficient network architecture. We also agree that it is necessary to disapply copper charge controls to support copper retirement. In our responses to question 3.1 and 3.2 above on copper retirement we set out thoughts on the approach for the disapplication.
364. Ofcom proposes that the fair and reasonable pricing obligation should not focus on retail margin squeeze (which we agree with, as this could be avoided through migration to an alternative product), but rather should take into account the needs of vulnerable end customers. We consider that there are more effective ways of ensuring that vulnerable customers are protected than by restricting prices. In particular, it should be noted that although a price increase at the wholesale level impacts an ISP, it does not necessarily impact an end customer. Rather, a price increase can be a valuable means to incentivise an ISP to migrate end customers, particularly where the ISP may have been reluctant to engage with migration previously.
365. We do not consider that the proposed legal instrument as drafted matches Ofcom's intent as described in the Consultation in relation to the disapplication of

the relevant obligations. We discuss this and propose an alternative in our response to question 4.8, where our general comments on the legal instrument drafting are covered.

Application of the anchor requirement

366. We explain in our response to question 4.6 below why Ofcom's proposed 80Mb FTTP anchor pricing remedy is unnecessary and disproportionate.
367. Further, an obligation to supply an anchor product should only apply where WLA services are provided. Where a service that would meet the definition of a product in the leased lines market is provided over XGS-PON, we would not expect the requirement to offer an anchor service to apply. Openreach is moving ahead with a trial of XGS-PON, and a wider rollout would require significant investment compared to GPON. In the event of launch, we should be able to limit supply over XGS-PON to non-residential premises and premium bandwidths and not be required to offer an anchor 80Mb product.

Requirement to supply FTTC rather than SOGEA

368. FTTC rollout started in 2008, and while it provides cost-effective bandwidths that suit many end customers, it is rightly considered a legacy service. Openreach's strategic WLA products are FTTP, and SOGEA where FTTP is not available.⁷⁵ SOGEA is a digital product that has the advantage of being more efficient than FTTC (as a single order product), moving end customers to an All-IP solution.
369. Ofcom generally signals that it supports the move to these strategic products, as seen through the disapplication of charge controls and the supply obligation in some circumstances as part of copper retirement. However, Ofcom places the obligation to supply on legacy FTTC rather than our strategic SOGEA product (Ofcom states that SOGEA can be offered as well as FTTC).⁷⁶
370. Given that all major ISPs are now consuming SOGEA (and most ISPs are well underway to migrate their existing bases from FTTC plus copper voice to SOGEA), we consider that placing the obligation to supply on the legacy FTTC service is

⁷⁵ Other products may be required to achieve coverage where FTTP and SOGEA are not available, such as SOTAP.

⁷⁶ TAR Vol 3 para 6.37

inconsistent and risks leading to inefficient outcomes. As at the end of FY25, [X]. Given the current trends, there [X] this document is submitted to Ofcom.⁷⁷

371. We believe Ofcom should move the supply obligation from FTTC to SOGEA, which would serve to offer ISPs more protection as it will be on the strategic product of choice. This will not have a negative impact on competition but rather will further support copper retirement and increased efficiency. Maintaining the supply obligation on FTTC is unnecessary.

Minimum contract period for VULA

372. All VULA products have a minimum contract period of one month, as required by the Direction at Volume 7, Part B of the draft legal instrument. This is consistent with the WFTMR.
373. We reiterate the position that we have put forward previously: the significant outlay to connect an end customer to FTTP that is not fully recovered through connection charges creates a considerable risk that Openreach will not recover the cost if the ISP terminates in the first year. This is an asymmetric obligation, as retail Altnets will tie in an end customer for two years (generally), derisking their investment in an end customer.
374. Ofcom should allow the minimum contract period for FTTP to be one year to balance the commercial risk to Openreach with flexibility within the market, noting that ISPs will generally be contracting end customers for a longer period so this will have limited impact on customer switching.

SLU SMPF

375. Ofcom should specify that the obligation to supply Sub Loop Unbundling (SLU) applies only to SLU MPF. SLU SMPF is a separate product provided as an overlay alongside a narrowband circuit (WLR) and already under stop sell, with withdrawal planned⁷⁸ during the TAR.

Low bandwidth fibre products for narrowband services

376. We agree that *ex ante* regulation is not necessary or proportionate for any of the services in the WFAEL market, which are impacted by WLR withdrawal. We

⁷⁷ While there are some smaller ISPs who do not consume SOGEA, this has been a conscious business decision to not develop their own IP voice capability and instead buy from a wholesaler such as Vodafone or PXC.

⁷⁸ WLR Withdrawal

understand that this includes services that were historically provided in that market, including WLR3 analogue, but also ISDN2, ISDN30, SLU SMPF, LLU SMPF, Narrowband line share and Classic, as well as new services in that market that are designed to enable WLR withdrawal (such as SOTAP for Analogue).

377. The WFAEL market was de-regulated in 2021. SOTAP for Analogue is a product that was developed to serve as a replacement for WLR lines, and given the same voice-only use case it should form part of the same product market. Although it is available to all ISPs, we expect that in practice this solution will only be adopted by BT Business, which will use a Media Gateway solution to build WLR emulation products.
378. SOTAP for Analogue is a short-term solution to bridge the gap between the closure of PSTN and adoption of All-IP products at these locations. Openreach will need to use pricing as a signal to encourage migration to All-IP products over time, as with WLR. Given [X], we believe the rationale that applied to de-regulating WLR also applies to SOTAP for Analogue.
379. Given the likelihood that it will only be for internal use, Ofcom should not have any concerns in terms of a retail margin squeeze. End customers will also be protected by BT's voluntary commitment on Solus Voice lines.

LLA-specific remedies

Question 3.7: Do you agree with our proposed specific remedies in the LLA markets? Please set out your reasons and supporting evidence for your response.

380. We generally agree with Ofcom's proposals for specific remedies in the LLA markets, with the following exceptions and requested clarifications which we discuss further below:
381. Requirement to provide active leased lines – we support this obligation but believe Ofcom should be clearer as to its limitations.
382. Requirement to publish a RO – we support this obligation in most situations but believe a requirement to publish a RO dampens competition in bidding markets. It has a particular adverse impact when these bidding markets necessitate geographic pricing, on which we respond further in response to Question 3.9.
383. Requirement to offer DFA – we support this obligation but not its application over a wider LLA Area 3. We also consider the DFA and EAD2 parity requirements misguided and unworkable.
384. Cablelink Service Connect - we would welcome clarity on the regulatory treatment of Cablelink Service Connect.

Requirement to offer active leased lines

385. We support the proposals to require Openreach to offer active leased lines in LLA Area 2, LLA Area 3 and HNR, although as set out in our response to question 2.5, we do not agree with where Ofcom proposes to set the boundaries between these different geographic markets. We fulfil these obligations through provision of our ethernet and optical (WDM) portfolio and we pride ourselves on being able to provide these services to deliver these high-quality products with high quality service to our ISP customers.
386. While we support this specific access remedy, we also think it is important for Ofcom to be clear about the boundaries where this regulatory access remedy does not apply. We comment on two of these situations below.

FTTP aggregation

387. We welcome Ofcom's re-confirmation that Openreach is not required to provide active leased lines, nor DFA, for the purpose of FTTP aggregation.⁷⁹ We agree with Ofcom's reasoning that doing so would risk undermining network competition. As we have set out previously,⁸⁰ we do not believe we should be required to build others' fibre access networks, and therefore circuits for the purposes of FTTP aggregation should remain outside our regulatory obligations and only provided on commercial terms. We currently offer EAD and Optical services for the purpose of FTTP aggregation on a commercial basis, subject to commercial terms.

Network extensions

388. We have set out in our comments on PIA-specific remedies, that we are broadly supportive of Ofcom's approach to NAs, subject to appropriate treatment of upfront costs. However, further acknowledgement that we are not required to build network extensions is needed to ensure the access remedy remains proportionate. We have made a number of previous submissions setting out how our obligations are bounded.

389. The potential for inefficient outcomes is now exacerbated by the remedies Ofcom proposes within LLA Area 3. A cost-based charge control will risk substantial increases in the demand for these circuits. The costs incurred in providing these circuits are higher than average costs and with a lower price in Area 3 and higher demand for such extensions, we risk under-recovering cost on all such circuits.⁸¹ We also note that Ofcom's proposed use of a 50m dig distance in its NRM model implies that it is only economic to connect new end customers over the distance (albeit we disagree with this assumption (see our response to Question 2.10)). Such an assumption is inconsistent with any expectation that we might be required to undertake network extensions over much greater distances than this (sometimes by orders of magnitude).

390. Openreach has an extensive network across the UK. The provision of new leased line services can require new network deployment such as fibre cabling or duct

⁷⁹ TAR, Vol 3, para 7.126.

⁸⁰ Openreach, [Telecoms Access Review Submission](#), July 2024, P56.

⁸¹ While some engineering costs will be recovered via ECCs, this does not cover the additional desk cost arising from the high complexity circuits to deliver, e.g. due to more customer contact and more complex planning.

build. In a minority of cases ([X]% of orders) the extent of the new build is significant, and we consider it constitutes a network extension.

391. Our provision of leased line services is subject to the network access obligations under SMP Conditions 1 and 2 and Openreach is required to make NAs. However, these obligations are not unlimited. They are intended to facilitate access to our existing network and do not require Openreach to extend its network through the construction of new physical or fibre infrastructure.⁸²
392. Notwithstanding the above, Openreach has historically honoured requests for network extensions and done so on equivalent terms for other orders that are captured by SMP regulation. However, we believe that such orders fall outside the scope of regulation, and that in future we could offer them on commercial terms. Once the network has been built, we accept that it is common network and would fall under the scope of our existing regulatory obligations.
393. [X].
394. [X].⁸³
395. [X].⁸⁴
396. We would welcome a statement from Ofcom confirming in a public document (such as the TAR Statement) that Openreach can determine which requests constitute a network extension, providing it uses objective and reasonable criteria, such as those set out above. This would provide greater certainty to industry and give us greater reassurance to implement our commercial policy which is already compatible with the existing regulations and subject to our voluntary Commitments, including the principle of Equal Treatment.
397. [X],⁸⁵ [X].⁸⁶

⁸² As acknowledged by Ofcom in the WFTMR, see for instance Volume 3, paragraph 6.73: "Openreach is not required to construct new physical or fibre infrastructure for competing telecoms providers outside its network footprint. This would amount to an extension of the network rather than making use of existing assets".

⁸³ Ofcom's IEC market analysis WFTMR Statement Vol. 3, paragraph 6.1 "[...] continue to impose a requirement on Openreach to provide access to dark fibre in IEC market from BT Only exchanges with no competing networks close by" defined as "with no competing networks within 100m".

⁸⁴ Ofcom (2021), [WFTMR, Vol 2](#), paragraph 6.170.

⁸⁵ We would be happy to supply this correspondence if needed and to have further discussions with Ofcom on this topic.

⁸⁶ See, Letter from Dave Clarkson to Mark Shurmer, entitled, 'RE: Wholesale Fixed Telecoms Market Review Statement: Proposed approach to identifying "network extensions" for DFA and active leased lines' dated 6 May 2021.

Requirement to publish a reference offer (RO)

398. Ofcom proposes a continuation of the requirement that Openreach must publish a RO. While we recognise the purpose of this requirement, we consider that there are certain situations – namely bidding markets – where the requirement has an unintended consequence of dampening competition.
399. In the context of bidding markets, the requirement that Openreach publish a RO means that in areas that are tending to competition, our competitors know our exact terms of supply, including pricing. This issue confers a particular advantage on our competitors for contracts that involve bidding, where they can price just below our list prices. In turn, this removes Openreach (and ISPs using only Openreach) as a credible bidder thus reducing the number of credible bidders end customers can choose from. This reduction in choice is likely to result in higher prices compared with the counterfactual where all bidders' bids are sealed. In short, in a bid context, price transparency actually leads to higher prices due to the creation of a focal point and the lack of uncertainty among bidders.
400. We request that Ofcom considers exempting services that will be used to support bids from this requirement. For bidding markets, removing the requirement entirely would best eliminate the competitive harm, although any significant removal by area could be helpful in reducing that harm.
401. To the extent that Ofcom has any concerns that removing requirements to publish a RO increases the risk of undue discrimination between CPs, Openreach considers that this risk is manageable through our engagement with industry and strong internal controls. We would be clear to all CPs that bid-specific pricing is available on request, and that such pricing is then offered following any such request. Openreach has in place stringent internal controls to ensure that the information we provide to customers is shared equally. We would be open to discuss this with Ofcom.
402. This restriction on Openreach's ability to compete in bidding markets has been present for several market reviews despite Openreach repeatedly raising this as a concern. This is an unfortunate example of regulation becoming ossified and is exactly the type of concern that Ofcom should be cautious of in relation to the restrictions on Openreach's commercial freedoms that it has imposed in the WLA market. In the WLA market the restrictions on geographic and conditional pricing

places a similar constraint on address specific ISP and end customer needs and is discussed further in our response to Question 3.9 below.

Classification of circuits that cross boundaries between LLA markets

403. We have commented on Ofcom's proposals for the classification of circuits that cross boundaries between LLA geographic markets in Document 2 of our response, paras 186-194. This is an issue that sits across market definition and remedies. It is a material issue and we strongly disagree with the proposal that all circuits should be classified on the basis of the location of both ends of the circuits. We consider that access circuits connecting an end-user site to a network node (e.g. exchange) should be classified on the basis of the end-user site only. And given the proposed active price reduction remedy could lead to a situation where it is cheaper to create a longer circuit serving terminating a competitive end customer site in a further away exchange that sits in Area 3 to unlock a lower price point.

Requirement to offer Dark Fibre Access

404. Since its introduction as a regulatory remedy, Openreach has established its DFA product and processes and made it available to all ISPs. While take-up to date has been low, a number of ISPs are using the product and we continue to receive enquiries in relation to new usage.
405. Openreach does not object to the continued imposition of the DFA remedy within Area 3 but does not agree with the extent of the LLA Area 3 where DFA would become available.⁸⁷ This broad expansion of the remedy will dampen incentives for Openreach to innovate in active products.
406. We consider that the significant expansion in the availability of DFA is out of line with an expectation of infrastructure competition developing. For example, we note Ofcom's own comment that requiring Openreach to offer DFA in areas where WLA competition is expected would make it more difficult for those operators to become stronger competitors in the WLA market.⁸⁸ A logical consequence of this is that

⁸⁷ See our response to question 2.10.

⁸⁸ TAR, Vol 3, para 7.39.

even on Ofcom's own assessment, it should not expand the DFA remedy into areas which are WLA Area 2, regardless of the definition of LLA Area 2 / Area 3.

407. Ofcom acknowledges that it expects the DFA remedy to be used primarily for very high bandwidth purposes. In effect, this is likely to correspond closely with mobile backhaul use cases. As an alternative to retaining a DFA remedy in Area 3, we would be open to exploring with Ofcom a remedy that was suitable for the mobile backhaul market.
408. The above comments relate to the presence of the DFA obligation itself. We do have further specific concerns about the cost-based nature of the remedy (in conjunction with two other cost-based remedies) and the detail of the proposed charge control which we do not consider that it has been appropriately set (see our response to question 4.3 below).

Parity of DFA and EAD2.0

409. Openreach's current DFA product is delivered under the principle of parity with active EAD products. The DFA product itself is a passive fibre which is equivalent to the fibre that is used in EAD. DFA has its own specific order journey, which follows the same principles as EAD.
410. EAD2.0 will be a new product, which is architected in a different way to EAD. Ofcom has stated that parity between DFA and EAD2.0 will be required alongside parity with EAD. This appears to be based on a misunderstanding of EAD2.0 and would generate inefficient cost and discourage innovation and is simply not technically possible for the reasons given below.
411. EAD2.0 allows an ISP to connect an end-user site into an Openreach OHP head end-cluster. The ISP can then connect its own Point of Presence (POP) facility into the head-end cluster. This is fundamentally different to both DFA and EAD where connectivity goes from an end customer site to an ISP's rack. This different architecture creates several differences between EAD2.0 and both EAD and DFA. For example, with EAD2.0 we can inject a test head so we can monitor the service because we do not have active devices on both ends of the circuits. For EAD we conduct monitoring via an associated copper line, whereas for DFA it can monitor the services itself via its active devices.
412. Accordingly, there are no changes we can make to the underlying DFA product that will give it any different or closer parity to EAD2.0.

Issued by: Openreach

Issue: 1

Date: 12/06/2025

413. In relation to the process aspects of delivering a service; the only new feature that EAD2.0 might offer that would otherwise be applicable to our existing EAD and DFA might be 'locate and quote'. This will be a new feature which will allow us to provide a quote to an end customer before they place an order (i.e. without the need for planning/survey). [X].
414. It is clearly unreasonable to impose a requirement for parity between DFA and EAD2.0, given that DFA is clearly the same as EAD without the electronic equipment but does not have the same architecture as EAD2.0. We also note that EAD2.0 is still in development and is not yet consumed, which reinforces the difficulties with the proposal.
415. It is therefore not possible for DFA to have parity with both EAD and EAD2.0.
416. EAD and DFA will continue to be available (in eligible areas) throughout the TAR period. Openreach proposes that Ofcom reconsider the need for parity (and if it is needed, what parity might look like) in 2031, when EAD2.0 has had time to be developed and mature in the market. We note that EAD2.0 has recently been delayed, with the current expected launch now set for December 2026.

DFA should continue to be excluded from FTTP aggregation

417. We welcome Ofcom's re-confirmation that Openreach is not required to provide DFA circuits for the purpose of FTTP aggregation.⁸⁹ We agree with Ofcom's reasoning, that doing so would risk undermining network competition.

Cablelink Service Connect

418. Cablelink Service Connect is a new product being developed to support Openreach's EAD2.0 product. It is a high-density fibre cable that would connect straight from an ISP's rack to the Openreach Area in an exchange. The ISP customer can use pairs of fibres in their cable to connect to any Openreach service.
419. The product is not a direct replacement for existing Ethernet Cablelink. However, to the extent that the product is ancillary to EAD2.0 (in a similar manner to Ethernet

⁸⁹ TAR, Vol 3, para 7.126.

Cablelink being ancillary to EAD) we assume that the service is captured under the existing access obligations and regulatory framework.

420. We would welcome clarity as to:

- i. Where it is captured within the charge control (we assume it will form part of the Cablelink basket).
- ii. Whether it is captured within the ethernet QoS measures (We assume it will fall under the definition of 'Relevant Ethernet Services').
- iii. We would be happy to discuss this product further with Ofcom.

IEC-specific remedies

Question 3.8: Do you agree with our proposed specific remedies in the IEC markets? Please set out your reasons and supporting evidence for your response.

421. We do not agree with the expansion of the DFX remedy to cover all regulated exchanges. Ofcom find "*the market for IEC has been broadly stable since WFTMR 21*"⁹⁰ yet plans to significantly increase the level of regulatory intervention by regulating 35% more exchanges⁹¹ without sufficient evidence that the competition or policy concerns are greater now than in 2021. This outcome appears inconsistent with Ofcom's findings and is disproportionate to the potential competitive harm identified. It is important to note the number of circuits affected by the new remedy will increase by significantly more than increase in exchange numbers, because adding additional exchanges increase the number of eligible routes non-linearly. The NERA report also identifies a number of risks arising from Ofcom's proposed expansion of the DFX remedy.⁹²

⁹⁰ TAR Vol 2 para 6.8.

⁹¹ 4,947 in TAR compared to 3,652 in WFTMR.

⁹² Annex 1, NERA Report, Appendix 5.

422. Ofcom must take a forward-looking approach to the IEC market. It should therefore consider trends in IEC, such as the expected consolidation of services, greater use of PIA and the role of exchange exit.
423. While Ofcom notes some developments will not happen in this review period, it is the decisions that will be taken now and in the TAR period which will determine whether the negative consequences materialise in the 2030s.
424. We explain each of our areas of disagreement in more detail below.

Fibre availability

425. Both the remedy expansion and price reductions will increase demand for DFX services, including at small, child exchanges with limited fibre capacity between them. As such, there is a strong risk of ISPs racing to compete for a limited amount of fibre capacity for DFX services.
426. Given Openreach does not face obligations to invest in IEC capacity, this will exacerbate the exhaustion of fibre capacity in fibre-scarce areas while the pricing restrictions undermine Openreach's investment case for additional fibre.
427. Further, where DFX takes up remaining fibres it will remove the ability of ISPs to take active IEC services. This will reduce competition at the retail level compared to today, and reduce overall capacity in these fibre-scarce areas as individual ISPs completely control each fibre as opposed to sharing them as is the case with active services. This is clearly an economically inefficient outcome and one that it is not clear Ofcom has considered.
428. Relatedly, Ofcom should also note that Openreach's extensive fibre build has been conducted with the fibre provided directly from a serving Openreach Handover Point (OHP) exchange and generally does not route through other exchanges. It would be helpful if Ofcom could clarify that Openreach is under no obligation to build new fibre capacity in the IEC market.

Encouragement of investment at non-enduring exchanges

429. The expansion of the DFX remedy would lead to inefficient investment, as it would encourage alternative network builders to align their networks with a larger number of BT exchanges. This is inefficient because our next generation of products such

as FTTP and EAD2.0 are provided from OHPs and Openreach has a stated ambition to exit thousands of these exchanges in the 2030s. In effect, any take up of the DFX remedy at non-enduring exchanges will increase the potential future disruption faced by those builders.

430. Ofcom rightly states that Openreach will not have obligations to provide services when exchanges are exited.⁹³ The proposed expanded remedy would therefore encourage ISPs to make investments in non-enduring exchanges that may become stranded in the 2030s.
431. Ofcom should be clear and state that if ISPs take DFX, it is at their own risk and they should be aware of the potential for future network disruption and in particular Openreach's plans for exchange exit.

IEC longer term contraction and sustainability

432. It is clear that there are a number of plans and trends that will lead to a significant contraction of use of these interexchange links by Openreach and / or a significant reduction in the recovery of interexchange link costs.
433. ISPs are migrating from copper-based products to FTTC / FTTP. The demand for backhaul links between serving exchanges for this will fall away.
434. EAD2.0 plans to parent EAD circuits at a single handover exchange (as with FTTC / FTTP). This will progressively remove the mainlink services revenue from EAD access services. Currently 8% of inter-exchange costs are associated with the mainlink elements of access services (EAD, optical, dark fibre access services).⁹⁴
435. As Openreach exit the planned 4,500 exchanges many of these child exchanges and their IEC connections will no longer exist.
436. One of Ofcom's key justifications for expanding the market boundary is the level of reported returns today. But the inevitable trends outlined above will significantly depress returns in the longer term. Indeed, we would argue that a more complete consideration of longer-term cost recovery, even in the absence of increased

⁹³ TAR Vol 3 paras 3.53-3.54.

⁹⁴ Based on the 2023/24 RFS. Estimated as EAD, optical, Dark Fibre, other mainlink HCA costs as a percentage of all IEC (BT only, BT+1 and BT+2) HCA costs.

competition, would suggest that undermine short terms returns being a valid justification for a radical departure from WFTMR market boundaries.

437. These inevitable usage trends offer strong justification for Ofcom to give lower weight to its concerns regarding current high reported returns in assessing whether it is proportionate to expand the market boundary. But even then, there are significant further competitive trends that should provide Ofcom more comfort that a radical departure for WFTMR market boundaries is unwarranted.

Ofcom clarification on compliant use of DFX

438. Ofcom should recognise its expansion of the DFX remedy will make it more difficult for Openreach to ensure it is ordered by ISPs in compliance with regulation – specifically whether it is being used to bypass competitive backhaul routes. Bypassing of competitive backhaul routes undermines the competition on those routes, harming both the Openreach’s own active backhaul and the active backhaul of other IEC providers.
439. The increase in the number of DFX eligible exchanges significantly increases the potential routes and routes on which DFX could be ordered. This makes it much more challenging to identify the purpose of a DFX circuit and to understand its usage. There is much greater scope for ISPs to construct routes that bypass competitive routes.
440. We therefore ask Ofcom to reinforce its previous statements by clarifying that DFX can only be consumed to provide backhaul from a BT dark fibre exchange back to a nominated and agreed exchange within reach in the ISP’s chosen direction. This would allow us to increase the likelihood of fibre availability and avoid gaming. Without this rule DFX usage can be abused to undermine competitive backhaul routes from Openreach and others’ alternative networks.

DFX’s ability to compete at infrastructure level

441. Ofcom has not carried out a sufficient forward-looking assessment of the consequences of its proposal to expand the DFX remedy to all BT+1 exchanges. We consider it likely that the proposal will result in unintended harm to competition, with potential effects on investment and innovation.
442. DFX can not only act as a substitute for Openreach active backhaul but can also be used to create wholesale backhaul competition with other network providers.

Issued by: Openreach

Issue: 1

Date: 12/06/2025

443. A pair of dark fibres (one for sending and one for receiving) are capable of 32 channels of traffic and WDM equipment exists that can enable 800Gb and beyond on each of these channels with progressively lower incremental cost.
444. Therefore, a purchaser of DFX can use the product to directly compete for end customers that may have bought either DFX or active services from Openreach. We are concerned Ofcom has not assessed this impact of an expanded remedy alongside active price controls, and the significant effect it could have on Openreach's ability to recover its legitimately incurred costs as well as the material detriment it will have on other infrastructure providers seeking to compete in this space.
445. As noted in our response to question 2.16, were Ofcom to examine the locations of BT exchanges and the potential routes between them, it would find that the network has extensive reach across the UK and overlaps materially with the trunk connections of other providers. By proposing to find SMP at virtually all BT exchanges, and then in turn to impose a DFX there is significant potential for the remedy to undermine currently competitive backhaul network routes of other network operators.

Impact on exchange exit

446. Most BT+1 exchanges are directly connected back to a BT+2 exchange where competitive backhaul is present.
447. It would be reasonable for Openreach to limit primary⁹⁵ connections back to these sites. Openreach's stated intent is to progressively exit non-enduring exchanges. Presently 959 exchanges are designated as enduring, of which 412 are BT+2 exchanges. Therefore, limiting primary connections from BT+1 exchanges back to BT+2 exchanges where competitive backhaul is present allows Openreach to minimise the risk of complications to exchange exit and stranded equipment.

⁹⁵ i.e. excluding resilient DFX circuits

Geographic discounts and other commercial terms

Question 3.9: Do you agree with our proposed approach to geographic discounts and other commercial terms? Please set out your reasons and supporting evidence for your response.

448. We respond to this question for Ofcom's proposals in each of the WLA and LLA markets in turn. We also refer Ofcom to Section 4 of the NERA report, which sets out detailed views on Ofcom's approach.

WLA

449. We disagree with Ofcom's proposals on geographic discounts and "other commercial terms" – specifically conditional pricing – as set out in Volume 3, Section 9 of the Consultation.

450. Counter-intuitively, even though competition has increased significantly since 2021 – as evidenced by Ofcom throughout the Consultation, and as we set out in Document 1 – Ofcom proposes to extend the geographic and conditional pricing constraints on Openreach: for instance, consent for geographic pricing is now needed for connection charges and retail inducements as well as rental pricing. The proposed remedies – read in the context of the proposed guidance on how they would be applied – would impose extremely tight restrictions on Openreach's commercial options across the five-year period of the TAR: a period where changes in the structure and/or strategies of current network operators and industry refinancing and/or consolidation could radically shift market dynamics and the economics driving commercial decisions.

451. Specifically, Ofcom's proposals would mean that in the face of increased competition from VMO2 and Altnets over the next five years, Openreach would face the choice of reducing prices everywhere or nowhere and face significant barriers to introducing any form of price with conditionality attached to accelerate the pace of adoption of FTTP.

452. We are therefore concerned that Ofcom's proposals are disproportionate, unnecessary, insufficiently forward-looking, and would essentially prevent Openreach from competing on the merits. This in turn would lead to higher prices overall for ISPs and for end customers, stifling innovation and investment.

453. Ofcom positions its overall proposals in Volume 3, Section 9 as addressing concerns that Openreach has *"incentives to undermine new entrants in ways that harm competition in the long term"*, noting that *"Openreach faces the threat of an erosion of its market share and stronger future competition in areas where new networks are present"*.⁹⁶
454. This leads to Ofcom proposing a framework that would not grant consent to geographic discounts targeted at any Altnet area ahead of 2031 regardless of the level of the discount, the Altnet Openreach was looking to compete against and its pricing strategy, and the demands of our ISP customers. Ofcom also suggest it would seek to block the introduction of other commercial terms that looked to *"accelerate migrations to FTTP"* with no clarity on why this would raise specific concerns when this will be a clear commercial objective of all FTTP providers (see also here our submission on copper retirement).
455. Our concerns with Ofcom proposing to apply these restrictive remedies for the duration of the TAR are compounded by our concern that Ofcom's market assessment and proposed geographic market boundaries and SMP findings fail to reflect the true nature of forward-looking competitive conditions. We believe Ofcom should find some Area 1s and should remove SMP. This would result in all SMP remedies dropping away in those areas. But even if SMP is retained in the TAR, Ofcom should acknowledge that the different competitive conditions in the Area 1s and in the VMO2 footprint justify different remedies.⁹⁷ In particular, we would see no case for maintaining geographic pricing restrictions in these markets given the forward-looking strength and maturity of competition.
456. Our overall position, therefore, is that Ofcom should revisit its assessment of the need for any remedies relating to geographic discounts and other commercial terms after it has conducted an appropriate forward-looking assessment of market conditions across the proposed Area 2. Our comments below nevertheless address the specific Consultation proposals that apply to the remedies across the whole of the proposed Area 2.

⁹⁶ TAR Vol 3 para 9.1

⁹⁷ We have discussed the variability of competitive conditions further in Openreach TAR response document 1

Market context and commercial challenges faced by Openreach

457. As we have set out in more detail in Openreach's TAR response document 1, we fundamentally believe that Ofcom has not reflected the diversity of competitive conditions across the UK. This has also been set out in section 2 of the NERA Report.
458. It is clear that competition for the supply of broadband has intensified hugely over the course of the current market review period. As Ofcom noted in its most recent Connected Nations update,⁹⁸ 74% of UK premises (22.5m) can now access a full-fibre broadband connection, up from 69% in July 2024. Further, at the end of 2024, 9.1m premises had access to two or more FTTP networks⁹⁹ (up from 5.7m the year before) and 1.3m had access to three or more FTTP networks. VMO2 alone has gigabit-capable services available at 18.3m¹⁰⁰ premises, matching the scale of Openreach's FTTP footprint.
459. It is also notable that VMO2's network penetration is just over 31%,¹⁰¹ notwithstanding the fact that VMO2 has not yet commenced any wholesale operations. We understand that VMO2 has indicated that it will start to wholesale its full-fibre network¹⁰² in 2025 (this will cover its whole footprint once the upgrade to FTTP is complete).
460. In addition, CityFibre has a significant existing FTTP footprint of 4.1m premises¹⁰³ and has publicly stated that it has a clear path to building to 8m premises. It also achieved positive EBITDA in FY24 and has now entered into wholesale arrangements with all the major ISPs (excluding BT and VMO2). These deals are reportedly aggressive and may require exclusive or priority use within the CityFibre footprint.
461. Openreach is feeling the impact of rising competition from wholesale and retail Altnets, with line losses and falling market share being widely reported.¹⁰⁴ We would expect this trend to worsen with the expected migration of some Sky end

⁹⁸ [Connected Nations update: Spring 2025 - Ofcom](#)

⁹⁹ [UK broadband availability in 2024: FTTP premises up 23% y-o-y](#) Point Topic

¹⁰⁰ [VMO2 O2 results reveal 6.4 million premises full fibre footprint | thinkbroadband](#)

¹⁰¹ 5.8m fixed broadband lines in 18.3m footprint <https://news.virginmediao2.co.uk/wp-content/uploads/2025/02/Full-Year-2024-Results-Infographic.pdf>

¹⁰² [Liberty Global CEO Updates on VMO2's UK Wholesale Broadband Plan - ISPreview UK](#)

¹⁰³ [CityFibre delivers first full year of profitability, with... | CityFibre](#)

¹⁰⁴ [UBS Predicts Openreach to Lose 800k UK Broadband Lines in 2025 - ISPreview UK](#)

customers from Openreach to CityFibre,¹⁰⁵ and with the launch of VMO2 wholesale.¹⁰⁶ [REDACTED]¹⁰⁷

462. Within the CityFibre footprint, all end customers are now fully contestable, and we see ISPs prioritising CityFibre for supply on contractual and price grounds. It is clear that Openreach needs to be able to continue to compete on the merits in this highly competitive marketplace and that any regulation imposed by Ofcom must be proportionate to what it is intended to achieve in this context- to limit only Openreach in this context is to uneven the playing field.
463. Openreach's estimates of line losses to Altnets and VMO2, which continue to rise each year, are shown in Figure 3.3 below:¹⁰⁸

Figure 3.3: Estimated Broadband Line Losses to Competitor Networks (Thousands per quarter)

[REDACTED]

464. The market continues to evolve quickly, and while the nature of future developments is uncertain, there is no doubt that the trend of rapidly intensifying competition will continue. Adding to this, consolidation between Altnets is expected to accelerate over the next three years (for example, CityFibre is believed to be in talks with All Points Fibre Networks,¹⁰⁹ having only just consolidated with LitFibre and Connexin). As some investors seek to exit the market, we may also see Altnets sold for less than their costs to build, allowing their acquirers to rapidly expand their own footprints at speed and reducing their average build costs per premises. This will only allow them to compete even more aggressively on price.
465. We have also seen the rise of aggregators, with recent launches from Zen and AllPoints Fibre Network (both in May 2025). The aggregation of multiple networks (including Openreach and CityFibre) will allow ISPs to shift their supply between networks even more easily and will increase the attractiveness of Altnets to smaller ISPs, who will only need to integrate once with the aggregator in order to access multiple Altnets.

¹⁰⁵ [REDACTED]

¹⁰⁶ See also the NERA Report section 2.3 for a view of Openreach's current and forward looking market share.

¹⁰⁷ [ISP Sky Broadband Launch Pilot of CityFibre Based UK Full Fibre Packages UPDATE - ISPreview UK](#)

¹⁰⁸ Internal estimates using data on total line losses less dual line losses etc., calibrated against publicly available data on Altnet adds.

¹⁰⁹ [Cityfibre in talks to buy smaller broadband rival](#)

466. In the face of this growing competition, the issue is not whether we can or should increase prices, but how we can compete more effectively. Over the last few years, Openreach has clearly sought to compete (fairly) on price. In particular, the Equinox offer seeks to offer ISPs more attractive pricing through encouraging them to place as many orders on Openreach FTTP (where available) rather than copper, when choosing to place orders with Openreach. Equinox has been successful for Openreach in terms of changing ISP behaviour to prioritise FTTP over copper for new acquisitions¹¹⁰, [X].
467. Nevertheless, even with these discounts, ISPs multisource between Openreach and Altnets. Different ISPs will have varying priorities in terms of factors such as product, price and bandwidth level. In this context, Openreach needs to be flexible and it is crucial that we are able to work with our ISP customers to serve their needs. Altnets are able to offer targeted commercial terms, with pricing that reflects different contestable end user types and geographies, yet under Ofcom proposals, Openreach would be constrained from giving ISPs similar offerings – this is entirely inconsistent with Ofcom’s procompetitive objectives and completely unnecessary in this wider context.
468. In order to compete effectively, we will need to continue to work with our ISP customers and to innovate to meet their demands. This could potentially include, for example:¹¹¹
- i. [X];
 - ii. [X];
 - iii. [X]; and/or
 - iv. [X].
469. Each of these proposals would benefit end customers by allowing ISPs [X] – passing on the benefits of competition to end customers. Nevertheless, in a number of cases under Ofcom’s proposed new rules, Openreach would need to seek consent – at best delaying end customers from benefitting from lower prices and at worst denying them the benefit entirely. Such an approach stifles investment and innovation and leads to inefficient outcomes.

¹¹⁰ As noted by Ofcom at TAR Vol 3 para 2.13

¹¹¹ The details and structure of any price change would be subject to governance and a full competition law and regulatory assessment.

470. Ofcom should be consistent across its objectives. Whilst this Consultation was launched with a clear objective to promote growth, Ofcom's unnecessary caution will actively slow the nationwide adoption of FTTP, holding back from the UK the wider benefits of competition and the lower prices that would otherwise be achievable, and against the government growth agenda.

Ofcom's proposals on Geographic discounts

471. Ofcom's specific competition concern with geographic discounts is that Openreach *"could use geographically targeted price reductions or retail inducements in order to undermine Altnet's ability to become established competitors"*.¹¹² Ofcom generally notes the progress of rollout of Altnet build since 2021, but repeats points made in Volume 2 that network competition from the Altnets is not yet established and that they need to increase take-up from current levels to become so.

Ofcom has shifted in its policy objective

472. Geographic pricing restrictions were first introduced in the 2018 WLA on rentals only. The concern at this time was that Openreach might reduce FTTC prices to deter Altnet FTTP build by targeting specific areas where build had been announced. The remedy was explicitly positioned as only being needed in the short- to medium-term with Ofcom stating in context of concerns that the prohibition could encourage inefficient investment

*"we consider restricting [Openreach] from making targeting price reductions for VULA during this review period to be necessary, while we are in the early stage of network rollout. In the longer term, consumers' interests are likely to be best served by removing such restrictions and allowing [Openreach] to respond to competition. New investors will know that they will have to compete with BT without this provision in the longer term."*¹¹³

473. These restrictions were extended to all services in the WFTMR (albeit only for rentals).¹¹⁴ But at this point, FTTP build by Altnets remained at a low level. In the TAR, Ofcom proposes to continue this remedy through to 2031 (albeit extending it to connections as well as rentals) – resulting in a 13-year period of application that

¹¹² TAR Vol 3 para 9.9

¹¹³ WLA 2018 Vol 1 para 11.37

¹¹⁴ TAR Vol 3 para 9.6 acknowledges this: *"the condition we imposed in 2021 was intended to support altnets in rolling out new networks."*

clearly goes beyond Ofcom's original intentions. Put simply, the scope has increased to include connections and positioning has shifted from protecting entrants' build investment to a much broader objective of protecting Altnet take-up and business models: *"If Altnets increase take-up on their networks this is likely to result in them becoming stronger competitors... Geographic discounts could deter the use of Altnets, as well as incremental build, which could in turn weaken the competitive constraint they pose to Openreach in the future. As a result, limiting the circumstances in which Openreach can apply geographic discounts is likely to promote network competition in the longer term."*¹¹⁵

474. The change in rationale for the remedy and yet further extension of its period of application and scope gives clear rise to concerns around regulatory consistency and whether the geographic restriction will ever be rolled back as had been initially intended. Ofcom has clearly met its original objective of promoting network build – Altnets have now built to over 17m premises. The geographic restriction should now be removed; to do otherwise ignores the significant market developments that have taken place during the preceding market review periods. These have been set out above, and in greater detail in Openreach TAR response document 1, in the overview of Ofcom's market assessment, and also in the NERA Report, section 2.
475. In the TAR, Ofcom appears to be seeking to restrict Openreach's flexibility to discount prices in specific geographic areas where competition is present as a means of protecting individual Altnets by increasing their opportunity to increase take-up and to allow them to become sustainable competitors. This is unnecessary and unjustified, as set out in the NERA Report at section 4.3.
476. In any event, an increasing number of retail Altnets are also now reporting positive EBITDA (including Fibrus,¹¹⁶ Grain and Community Fibre), indicating that they are financially sustainable across their full footprint.
477. The relevant question for Ofcom at this stage of market development, where substantial networks have been deployed, should not be whether Openreach is targeting discounts at particular Altnets or areas, but whether those discounted prices in themselves meet competition or alternatively are potentially exclusionary.
478. Ofcom has set out some views as to how it might assess Openreach's FTTP prices in the TAR period, making referencing to its updated Fibre Cost Model (which is

¹¹⁵ TAR Vol 3 para 9.11

¹¹⁶ [Fibrus Hits EBITDA Breakeven as UK Broadband Customers Top 113.5k - ISPreview UK](#)

based on the ARPU that a hypothetical entrant might need earn to achieve a reasonable return on its investment). As noted in response to question 4.1, when assessing Openreach's price levels, this model and the specific ARPU range it produces will not be the only relevant consideration given that Altnets will set pricing looking to recover forward-looking costs.

479. We also refer to the NERA Report at Section 4.4.3 in this regard, which considers Altnets' ability to compete at lower prices. The simple point is that Ofcom should consider all of these factors in the round when assessing whether any discounted price was harmful, rather than applying a remedy designed to restrict any level of discounting through the five-year period of the TAR without any regard to these wider considerations.

The restriction applies to a significantly broader geographic area given the expansion of Area 2

480. As well as changing course by continuing to impose the existing geographic restrictions, Ofcom has gone even further in extending their scope: (i) beyond rental charges and; (ii) to a much wider geographic area – i.e. the proposed expanded Area 2. This is despite this area being more competitive now than when the remedy was originally imposed.
481. In the WFTMR, Ofcom argued that given that Area 2 as defined at that point was a closer match for the VMO2 footprint, such that Openreach could still compete against VMO2 given that any Area 2-wide pricing strategy would more closely, if not precisely, align with a pricing strategy targeted at VMO2. The proposed increase in Area 2 to 90% of the UK creates a significant shift: Openreach would now require consent for geographic pricing within the VMO2 footprint.¹¹⁷ This represents yet a further increase in regulation proposed in the TAR, despite Ofcom finding that there is significantly more competition than in 2021.
482. We find Ofcom's position on geographic targeting of VMO2 confusing. The general competition concern is with targeting of new network build by Altnets that are not yet considered well established. While we challenge the relevance of that, Ofcom clearly accepts that VMO2 is a well-established material and sustainable network operator. Ofcom makes clear in the Consultation that its competition concerns

¹¹⁷ See also Annex 1: NERA Report section 4.5.2

primarily relate to new network build by Altnets, rather than established operators within their existing footprint, such as VMO2 (albeit "new" network build in this context is widely defined covering recent build and not limited to build completed in the TAR period).¹¹⁸

483. We see no reason why Ofcom would have any concerns with Openreach targeting discounts at any VMO2 build completed after 2021 or at any future point and, notwithstanding our views that Ofcom should more fundamentally redefine geographic markets and reassess the need for any remedy on geographic discounts, Ofcom should clarify and justify its position in any final statement.
484. On this basis, if imposing this restriction with an unchanged Area 2 market definition and SMP finding, Ofcom should give timely consent to geographic pricing that only impacted the pre-2021 VMO2 footprint. There can be no plausible competition concerns when considering two established and sustainable competitors in this context, given that Ofcom have set out that their concern is protecting new build by entrants and support Altnets to be sustainable.
485. Ofcom should also be clear that discounting targeted at VMO2 that cut across areas of Altnet build would not be prohibited. VMO2 is an established and successful retail player and is considering providing wholesale access to its network. In doing so, it would face no constraints in how it prices across different geographic areas in its footprint and the extent to which it targeted lower prices where it faced Altnet wholesale competitors. Constraining our ability to compete against VMO2 in order to provide protection for Altnets who would themselves need to compete against VMO2 would make no sense.
486. This issue would be resolved if Ofcom correctly define sub-markets, as also set out in the NERA Report.

The proposals have become more restrictive

487. Ofcom set out the conditions where geographic pricing may be allowed consent, and the three cumulative conditions allow only for a cost-based price variation.¹¹⁹ Within the WFTMR a wider set of grounds would have been considered.¹²⁰ Given

¹¹⁸ TAR Vol 3 para 9.12 and footnote 246.

¹¹⁹ TAR Vol 4 para 9.40.

¹²⁰ WFTMR Vol 3 paras 7.131 to 7.139

increasing levels of competition it is counter-intuitive that regulatory restrictions should increase.

488. Further, this implies that Ofcom would decline geographic consent even if a proposed price for a certain area was fair and reasonable and consistent with wider competition law obligations. However, under the remedies as proposed such a price would be perfectly acceptable on a nationwide basis. This makes no sense from a protecting competition perspective.
489. Ofcom is also proposing to extend the requirement to seek consent for geographic pricing to connection charges and to circumstances where we introduce "retail inducements". This proposal adds a further level of restriction on our commercial options in working with our ISPs to support take-up of FTTP and is unnecessary and unjustified in the absence of legitimate competition concerns (for which no clear evidence has been provided). Wholesale Altnets are not charging ISPs for connections, and retail Altnets are not charging end-customers.
490. Our commercial approach under Equinox 2 has offered discounts on connection charges to encourage take-up and we have recently reduced upfront charges for proactive upgrades to FTTP to zero. It is perfectly legitimate for Openreach to respond to competitive conditions and/or to use lower connection charges to support the pace of migrations in certain areas – e.g. where we wish to exit exchanges – it cannot simply be assumed that such an approach would necessarily give rise to competition concerns.
491. Introducing a consent process for such commercial changes undermines our agility. The option of using retail inducements to support take-up is also important and is something that we have tried in highly localised trials. To require any initiatives to go through a consent process is unnecessary, disproportionate and acts as a significant disincentive to even consider opportunities to drive FTTP take-up (risking innovation and investment in the process).

Conclusion on a geographic pricing restrictions

492. Ofcom should roll back the geographic remedy that has already been in place for eight years (and should definitely not extend it to connections and retail inducements), particularly in light of now established network build. Competition should be allowed on the merits and Openreach should be allowed to innovate in response to the competitive landscape that has now emerged. In this respect, competition law has well-established parameters on how to meet competition and avoiding exclusionary pricing.

Conditional and volume offers

493. In light of the levels of competition now achieved, Openreach does not see any need for Ofcom to impose additional regulatory hurdles around conditional and volume offers and associated notification requirements. In a market in which competition continues to intensify at a rapid pace, it is wrong in principle (and disproportionate) to deepen the regulatory burden further, which is what Ofcom seeks to do in three key areas:

- i. increasing the existing 90-day notification period to 120 days;
- ii. increasing the number of issues to be considered and resolved during the approval process; and
- iii. increasing the weight placed on putative concerns around migrations to FTTP (and incentives that may be put in place to encourage these further) in any assessment.

The notification period should reflect the complexity of the proposal

494. Ofcom proposes to retain the consent process for offers with conditional or volume terms, increasing the notification period from 90 days to 120 days. This slows market dynamism and will delay the benefit of competition for end customers.

495. In practice, Openreach will also always consult Ofcom on offers ahead of notification and work to secure consent where required. This means that the time Ofcom need to consider an offer can start ahead of formal notification. Ofcom already has sufficient time to consider Openreach's pricing proposals as it will have considerable engagement on complex offers before the 90-day notification commences. 90 days remains more than sufficient for other stakeholders to consider any proposed commercial propositions.

496. We recognise that Ofcom may be of the view that it is challenging to complete a full review of a complex offer within 90 days.¹²¹ The key issue is that there are many more straightforward offers that could contain conditional or volume elements but for which a 120-day review would be entirely unnecessary and disproportionate.

¹²¹ TAR Vol 4 footnote 268 sets out that Equinix assessments took longer than 90 days.

The proposed notification regime does not allow Ofcom any opportunity to triage such offers effectively, reducing innovation and efficiency in the process.

497. If Ofcom does extend the review period to 120 days, we therefore propose that, at a minimum, Ofcom provides that 120 days represents the maximum notification period, but that a shorter notification period may be permissible where appropriate given the nature of the offer.

With increasing competition there should not be increased hurdles to consent

498. Ofcom has also complicated the consent process by increasing the number of issues to be considered before granting consent to a conditional or volume offer. In the WFTMR,¹²² Ofcom explained that conditional offers needed to: (i) be unlikely to have a material impact on nascent network competition; and (ii) generate clear and demonstrable benefits (such as being essential to Openreach's FTTP rollout business case or necessary to offer more efficient prices that would deliver benefits to end customers).
499. In the Consultation, Ofcom reasserts these principles, but also sets out three additional requirements,¹²³ including a specific question as to whether the terms create a barrier to using rival networks. It is disproportionate to increase hurdles to consent in a market where competition is clearly increasing. Competitor network build is no longer "nascent" (the concern in the WFTMR) and Openreach continues to expand its own FTTP footprint, with its potential expansion to up to 30m premises. This continued increase in competition will be to the benefit of end customers across the UK, and Ofcom should ensure that there are the right conditions for continued Openreach investment.
500. Ofcom should not set hurdles any higher than the obligations that already apply under competition law, which already prevent Openreach from introducing commercial terms that could have an exclusionary effect on Altnets (already a very high bar).

¹²² WFTMR Vol 3 para 7.154

¹²³ TAR Vol 3 para 9.75

Ofcom's concerns around accelerating migrations to FTTP are unfounded

501. When considering conditional pricing and volume offers, Ofcom has also raised a new concern around the acceleration of migrations to FTTP.¹²⁴ This may be an attempt to address a putative concern raised by Altnets around an idea that once an end customer is connected to an FTTP network, they are less likely to switch to another FTTP network.¹²⁵
502. We do not agree with this proposition – there is plenty of scope for end customers to be switched between FTTP providers. Differentiated prices, products and services will all remain strong incentives for switching once an end customer has initially been connected to FTTP on a particular network. This is reflected in the Openreach FTTP business case, which assumes that Openreach will connect an FTTP Optical Network Terminal at every end customer premises, even though take-up will be below our current market share.
503. [REDACTED].
504. This suggests that in a well-developed and competitive market with multiple FTTP networks present, [REDACTED]. One Touch Switch will also facilitate and further encourage such switching.
505. Given this, concerns around the potential impact of accelerating migrations to FTTP are not well-founded. Reference is made to large ISPs agreeing to buy from an Altnet with significant footprint, but that this is not yet implemented.¹²⁶ We presume this is a reference to Sky and CityFibre, and as discussed earlier in this question response, to the contrary this is now live and operational – demonstrating the fast-moving nature of the market and speed with which ISPs are now able to agree wholesale agreements with different network providers. Chilling migrations to FTTP is also contrary to Ofcom's (and the Government's) key strategic objectives to encourage take-up of FTTP as quickly as possible and to support investment in FTTP. It also delays the benefit to end customers of high bandwidths and more reliable service on FTTP, and the efficiency benefits of running a lower cost network.

¹²⁴ See also the NERA Report section 4.6.1.2

¹²⁵ This was put forward in the Grant Thornton report "Strengthening infrastructure competition by addressing barriers to expansion" prepared for INCA and Ofcom discuss in TAR Vol 3 para 9.81.

¹²⁶ TAR Vol 3 para 9.87

506. At an absolute minimum, it is important that Ofcom makes clear that the following propositions do not give rise to any material competition concerns:
- i. Offers that encourage migration to FTTP in exchange closure areas (which might have an end date in order to encourage migration in required timelines). Ofcom is clearly supportive of Openreach closing exchanges and improving efficiency, and supports commercial solutions to achieve this. Ofcom should be consistent across the TAR and not discourage or limit commercial incentives that support these overarching policy objectives.
 - ii. Offers that encourage migration from WLR to other products – including FTTP – ahead of PSTN closure. Again, these offers will be time limited and will be of benefit to end customers, particularly vulnerable end customers who are over- represented in the remaining end customer base on WLR.
 - iii. The existing Proactive Migrations offering, which allows an ISP to migrate an existing end customer to FTTP using an efficient process if it wishes to do so, at any time. This is a simple, permanent proposition with no conditionality or volume requirement and was discussed in detail with Ofcom ahead of its launch.
507. Ofcom should clarify this so that it is clear which types of pricing and other terms would likely be seen as permissible during the TAR period. Certainty and stability supports investment and competition, to the benefit of end customers across the board.
508. In this regard, we do welcome Ofcom's confirmation that it continues to adopt the view that new-to-network offers are not captured by the scope of the rules on geographic prices in any event.¹²⁷

Equinox – existing geographic pricing should continue unchanged

509. The existing Equinox offer – which has conditional terms – remains compliant with Ofcom's proposed remedies under the TAR and would continue in the next review period (noting that Ofcom itself notes that it would expect the offer to continue in

¹²⁷ TAR Vol 3 para 9.41.

its discussion of pricing remedies). We also note that PlatformX set out in its pre-TAR submissions the importance of existing offers being allowed to continue.¹²⁸

510. Equinox connection prices currently vary between Area 2 and Area 3 as defined according to the WFTMR postcode sectors (as provided for in the contractual terms of the Equinox offer). Given that it is now proposed to apply the geographic restriction to connection pricing, the existing Equinox pricing would fall within this restriction, given connection prices would then vary within Area 2 and Area 3 as re-scoped under the TAR, if kept unchanged.
511. The existing contractually agreed pricing structure under Equinox should be allowed to continue to apply based on the existing geographic definitions during the next market review period. This reflects the commercial agreement that has already been reached through careful negotiations with our ISP customers - Ofcom should seriously consider these agreements before regulatory intervention. It is also noted that Ofcom has already closely scrutinised both Equinox 1 and Equinox 2 during formal consultations conducted before implementation.
512. We believe this also matches Ofcom's intention,¹²⁹ that the FTTP connection charge control has been set so as not to require any change in prices, supporting Ofcom's objective of pricing continuity.
513. In any event, under the TAR, geographic pricing for connection charges will be subject to notification and consent. Ofcom say that we could seek consent to "*avoid disruption to the market*"¹³⁰ however, this will be unnecessarily complex. We are unable to follow this consent process at this time, as our pricing remains consistent with the WFTMR rules and the rules under TAR do not yet exist. To comply with the TAR regulation if implemented as currently envisaged, we would need to change prices within TAR Area 2 on 1 April 2026 to align with new market definitions, follow the process for approval of the geographic pricing and then, following consent, reinstate Equinox price levels as initially envisaged and agreed. This would not be compatible with pricing continuity, would create uncertainty for ISPs, and would clearly be unnecessary and disproportionate given the reviews already conducted by Ofcom itself.

¹²⁸ PlatformX TAR Integrated submission 2.124

¹²⁹ TAR Vol 4 para 6.101

¹³⁰ TAR Vol 3 para 9.29

514. Openreach's position remains that the geographic pricing restriction is unnecessary. Notwithstanding that position, in the event that Ofcom were to impose additional requirements here, we would propose that SMP Condition 4.5 makes clear that it *"does not apply to prices, terms or conditions that were introduced before the date on which this Condition 4 enters into force"*. This approach would maximise certainty and avoid placing an unnecessary administrative burden on Ofcom and on industry.
515. We would also welcome clarification that a change in price or other terms of a conditional or volume offer that does not affect the underlying nature of the conditionality itself would only require a simple notification as a change to a special offer under proposed SMP Condition 8.5 and not trigger the enhanced consent process as proposed under SMP Condition 8.6. This would allow Openreach to react to market developments and ISP demands in a timely fashion, while still allowing Ofcom to consider the potential impact of volume requirements or other conditions as appropriate.

Other observations

516. We note that Ofcom states that it may consider the use of other ex ante powers to direct Openreach to modify terms that are not conditional, if they undermine network competition.¹³¹ In this regard, Openreach is firmly of the view that its obligations under the fair and reasonable/no undue discrimination SMP conditions and ex post competition law would in any event prevent it from introducing anticompetitive terms and that this is, therefore, not a cause for concern. It has not been necessary for Ofcom to exercise these powers during the WFTMR.
517. On the topic of Openreach practices around discussing and amending its FTTP price with ISPs, it remains our position that such legitimate discussions cannot give rise to any feasible competition concerns. We therefore welcome Ofcom's observations that it is evident that ISPs have the resources to consider and engage with multiple potential suppliers simultaneously (as demonstrated by recent wholesale agreements), and that Openreach needs to be able to engage with its ISPs and understand their commercial needs – a pro-competitive aspect of commercial life.¹³²

¹³¹ TAR Vol 3 para 9.96.

¹³² TAR Vol 3 paras. 9.102 and 9.103.

LLA

518. We disagree with Ofcom's proposals on geographic discounts and "other commercial terms" – specifically conditional pricing – as set out in Volume 3, Section 9 of the TAR.
519. The specifics of the competitive dynamics in LLA, mean that these restrictions are very likely to have an adverse effect on the competitive process. This is particularly true in the context of bids.

Ofcom's proposals on geographic discounts

520. Ofcom proposes to apply a restriction on geographic discounting to LLA Area 2, which is a continuation on the restriction on rental discounting and an extension to also restrict connection discounting. In doing so, Ofcom's justifications are opaque and appear to predominantly revolve around features and elements of the WLA market.
521. In bidding markets, geographic restrictions prevent us competing for specific sites in Area 2 at a lower price point. Geographic pricing in bids is a common commercial practice and limiting Openreach's ability to compete on the merits results in weaker overall competition and higher prices for the end customer.
522. We note that, prior to the WFTMR, Openreach had been working in the leased lines market for a number of years utilising a minimum 28 days' notification obligation for geographic discounts with no impact to competitive entry evident. There is therefore an absence of evidence, based on history, that operating on a reduced 28-day notification harmed competition or stymied new entry into the LLA market. Openreach also notes that as part of its standard governance processes for any new commercial arrangement, a detailed assessment is made to ensure that the proposal is compliant with relevant SMP, competition law and equal treatment obligations. This means that there is already a mechanism in place to help ensure that the arrangements created are not anti-competitive in nature.

Conditional and volume offers

523. Ofcom continues to apply the restriction on conditional offers in the LLA market. We do not believe there is any justification for this, particularly in relation to offers that apply to specific bids. As Ofcom will be aware, the risk of such offers being loyalty inducing is lessened when their impact is limited to just a specific bid, as is the risk of disadvantaging a particular Altnet or ISP, as all have a credible chance of competing for the same level of volumes. In practice, even if Ofcom believes they

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might grant such a request from Openreach, their proposed framework amounts to a de facto prohibition, as a 90 day or 120 day notification period is longer than the typical response window for a bid.

524. Further, as noted in our response to question 3.7, many such bids are subject to confidentiality agreements, which makes the obligation to publish all pricing as part of our RO problematic. We therefore propose that Ofcom does not apply this restriction to LLA Area 2.

Conclusion

525. Ofcom has not adequately justified the need to restrict Openreach's ability to implement geographic or conditional pricing in the LLA markets. These remedies will impair the competitive process and deny CPs and end-customers the benefits of such competition.

Ofcom does not have the power to impose conditions on geographic discounting and volume discounts under Section 87 the Act.

526. Ofcom is only empowered to "*..... set such SMP conditions*" as are "*authorised by*" section 87 of the Communications Act 2003 (the CAO3) (see section 87(1)(a)). Openreach contends that the way in which Ofcom has sought to control Openreach's geographic and conditional/volume pricing does not accord with Ofcom's powers under section 87 of the CAO3.
527. Ofcom is clearly purporting to use the provisions of section 87(6)(a) of the CAO3 to impose the prohibition against differential geographic pricing.¹³³ The geographic prohibition goes beyond what an SMP condition relating to undue discrimination should focus on.¹³⁴ It is in effect a price control and does not fall within the remit of Section 87(6)(a) of the CAO3.
528. The same comment applies in relation to the notification condition imposed on conditional/volume discounts. This obligation goes beyond the objective of transparency. Ofcom is seeking to impose a control on Openreach's pricing by imposing a number of constraints listed in the Condition and in Ofcom's Guidance

¹³³ TAR Vol 3 para 9.106

¹³⁴ Article 10(2) of the Access Directive and Recital 17 of the Access Directive.

on conditional terms.¹³⁵ As such, section 87(6) of the CAO3 is not an appropriate statutory basis.

¹³⁵ TAR Vol 3 para 9.106