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Ofcom
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Email: planofwork@ofcom.org.uk

28th January 2025

Dear Ofcom,

Ofcom's proposed plan of work 2025-26

I am writing to you on behalf of Open Fibre Networks Limited (OFNL), part of the BUUK Infrastructure Group of companies, in response to [Ofcom's Proposed Plan of Work for 2025-26](#) which was published in December 2024. I can confirm that this response is not confidential and can be published on the Ofcom website.

An introduction to BUUK and OFNL

BUUK Infrastructure (BUUK) is a leading UK multi-utility infrastructure investor, working across Great Britain and competing against incumbent utility companies. We have provided over 3 million utility connections and now serve customers across 48,000 discrete networks and six essential utilities. Our main shareholder is Brookfield, a global investor in property, infrastructure, and renewable energy. We cover every utility sector and can therefore provide a unique perspective on evolving utility and regulatory policy.

We apply our considerable experience, across multiple utilities, to the fibre industry via OFNL which has been providing gigabit ready full fibre broadband connections to the new build housing sector since 2008. Our fibre networks are chosen by developers in preference to the solutions offered by the monopoly incumbent. We also operate a wholesale business, Open Fibre Networks (Wholesale) Limited (OFN(W)L), offering wholesale services to Communication Providers across the UK.

Ofcom's Proposed Plan of work for 2025-26

We welcome the transparency that publication of Ofcom's proposed plan of work for 2025-26 provides, particularly recognising the opportunity it gives stakeholders to comment on the content presented and to seek to influence Ofcom's focus for the coming year. Given our role in the fibre industry, we have focused our comments on the planned work that Ofcom presents with respect to its priority around securing 'internet and post we can rely on'. Our comments on the work proposed regarding this priority relate to the Telecoms Access Review (TAR) and the Openreach Monitoring Unit (OMU); each of which is discussed in the following section.

Key issues for the TAR

The UK communications sector has been characterised by rapid change and transformation over the past 20 years and this trend is only likely to accelerate in the future. In this respect, we are acutely aware that the broadband sector is currently undergoing significant change due to several substantial programmes of work that have been commenced by Openreach. This includes its rapid rollout of fibre, its copper retirement programme, the PSTN switch-off, and the planned local exchange closure programme.

Recognising the combined impact that these projects could have and the potential for significant change in the broadband market between 2026 and 2031, we see the upcoming TAR as a critical market review. A detailed assessment of anticipated industry change will be important to ensure that the review is appropriately scoped and captures all relevant issues. Having said this, however, we note that within the Telecoms Access Review 2026 document published in March 2024, Ofcom stated that its intent was to “continue with the same underlying objectives”. This suggests that the regulator does not foresee the need to make significant changes to the strategy that it presented in the 2021 Wholesale Fixed Telecoms Market Review (WFTMR), and we are concerned with this approach. We think there is a clear rationale for a deeper review of the fibre market to assess emerging issues, such as the Openreach exchange exit programme, as well as long-running issues such as the separation arrangements applicable to BT Consumer and Openreach.

In line with the response that we submitted to the TAR, in July 2024, we have identified four key areas that we are particularly interested to understand in more detail and which we strongly believe should be included within the scope of the TAR.

- **Openreach exchange closure and ‘Area’ classifications:** As you know, Openreach is planning to exit around 4,600 of their current 5,600 local exchanges by the mid 2030’s; retaining around 1,000 enduring receiving exchanges. Our key concern is that as the remaining 1,000 exchanges will be Openreach Handover Points (OHPs) (where CPs connect to receive FTTP and FTTC traffic), the areas that are currently classified as Area 2 or 3, in line with Ofcom’s WFTMR definition may be reclassified as a ‘competitive’ Area 1. This is particularly concerning given that, at present, all local exchange areas are either classified as Area 2 or 3 and none are classified as Area 1. We do not think any of the existing exchange areas are characterised by sufficient competition to be categorised as Area 1 and consider it more likely that the whole of the UK will continue to fall within either an Area 2 or 3 classification. Notwithstanding any decisions taken around the classification of areas 1, 2 and 3, we note the importance of retaining the concept of Local Access EADs.
- **Openreach exchange closure, PIA and dark fibre:** The initial Openreach programme of exchange closures will affect several existing OFNL PIA routes from new-build sites to local exchanges. Our current understanding is that the associated OFNL assets are at risk of being stranded as Openreach do not plan to migrate External CableLinks to the enduring receiving exchanges. And, once the full programme of exchange closures is rolled out, a substantial number of further OFNL new-build sites will be affected. We think there are two potential options to address this issue. The first is that Openreach could be mandated to

provide a cabinet mounted Optical Distribution Frame (ODF), with connectivity to an enduring receiving exchange outside each exchange they plan to exit, allowing CPs to establish dark fibre connectivity to support their existing assets. The second is that Openreach could be mandated to reimburse CPs for costs associated with the changes they will be required to make to their network architecture to allow for existing dark fibre installations to connect to an enduring receiving exchange. We do not have a strong preference for either option, but further analysis would provide insights on their suitability.

- **Exchange closure and access to required duct space:** As the Exchange Closure program progresses, we anticipate that duct space will become scarce, due to increased usage of common routes to OHP exchanges. We note Ofcom's August 2017 response to the [WLA consultation on pricing proposals for Duct and Pole Access](#) referred to the Openreach view that "25mm was... a reasonable space to enable network deployment with room for growth". Since 2017 PIA fibre technology and installation techniques have evolved and CPs can now install smaller cables and subducts that save space and could address this potential emerging issue. We think Openreach should encourage the use of smaller diameter cables / sub-ducts by offering graduated charges proportional to duct capacity utilised, to avoid potential congestion.
- **BT and Openreach strategic and operational independence:** Discussions regarding the strategic and operational independence of BT Consumer and Openreach within the BT Group, have been ongoing for many years. In March 2017, BT Group made a series of commitments to Ofcom around how it would run the Openreach Division going forward and agreed that it would continue to operate in accordance with these undertakings until Ofcom removed them. In parallel Ofcom established the Openreach monitoring unit (OMU) to monitor the compliance of Openreach and BT Consumer with the commitments. We note that, since then Openreach has reported annually on the performance of BT and Openreach with respect to their levels of compliance with these undertakings and, in each case, has concluded that the "Commitments have generally proved to be successful".

However, if functional separation between two affiliated entities had been successful, we would expect the commercial retail arm of the business to be motivated to serve customers where the potential existed for that organisation to increase its returns. However, we have not observed BT Consumer, as the commercial retailer, operating in this way. Indeed, empirical data shows that BT Consumer remains loyal to Openreach and does not yet use the services of AltNets operating in the fibre industry. We believe that this is indicative of continued affiliation between BT Consumer and Openreach given that (a) BT Consumer could reach more customers by partnering with AltNets and (b) there may be better value offers in the market that BT Consumer could take advantage of. This is of particular note in cases where an AltNet provides fibre infrastructure to a new development of commercial and / or end customer properties; with BT Consumer only able to serve these customers if it enters a contract with the relevant AltNet.

In its Initial Conclusions from the [2016 Strategic Review of Digital Communications](#), Ofcom highlighted that the rationale for enforcing legal separation of BT and Openreach was linked to concerns that the vertically integrated structure of Openreach within the BT Group left the company with an ability to discriminate against competitors. We fully support

Ofcom's thinking in this area but think it should expand its regulatory focus to recognise that the industry position BT Consumer holds could equally allow the company to discriminate against BT Group competitors. Indeed, as set out above, we think there is evidence indicating that BT Consumer is behaving this way, and it is unclear why equivalent protections have not been put in place.

In an ideal world, our concerns would be addressed via full structural separation of the BT Group into two standalone entities. While we recognise that full separation would likely involve significant cost and resource to achieve, we would be interested to understand how these costs compare to the benefits that could accrue; and therefore consider there would be merit in Ofcom progressing a targeted cost-benefit analysis (CBA) in this area. An alternative, less radical solution could be to "requir[e] BT to tender for network providers for its retail operations" as proposed in the industry 10-point plan for Openreach reform referenced in the 2016 Ofcom publication [Strengthening Openreach's strategic and operational independence](#). Another even lighter-touch solution would be to facilitate increased visibility of the new build market and BT Consumer / Openreach performance. The adoption of similar approaches in the water and waste industry has led to a significant improvement in incumbent performance. We anticipate that it could facilitate a positive change in BT Consumer behaviour, and thereby help to support competition.

Key areas of focus for the OMU

As outlined in the preceding section, we have had concerns about some of the operational practices that BT Consumer and Openreach engage in for quite some time, and indeed, raised these concerns in response to the OMU reports which were published in December 2021, June 2023, and September 2024. We think there is a clear rationale for the OMU to carry out a more in-depth assessment into the levels of structural separation that currently exist between BT and Openreach. This review should draw on evidence not only from BT Group but also from representative entities operating in the market to ensure that the range of experiences that competitors have had effectively feed into the conclusions that are reached. As outlined above, we have ongoing concerns about the levels of separation that we have observed between the two entities and believe that this will only be addressed through the implementation of additional separation measures, such as those referenced in the preceding section.

We would also like to invite the Ofcom team to our Offices in Bury St Edmunds where we can explain in more detail our business and how this can support both Ofcom's and the wider Government objectives relevant to the Telecom's sector and to growth and housing. Please let us know of dates that would work for you. I would be happy to discuss our response in more detail; please feel free to get in touch via email [REDACTED].

Yours sincerely

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