

Brian Potterill
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3 March 2021

Dear Brian,

Ofcom's Copper Retirement Proposals

We discussed Ofcom's approach towards Copper Retirement, and I promised to send you a short note summarising Openreach's position on each of the proposed regulatory thresholds and on two important related issues namely the definition of a premise and the proposed CNI exemption.

In summary our position against Ofcom's three proposed Copper Retirement thresholds is as follows:

- Threshold 1, "stop sell": Openreach is supportive.
- Threshold 2, "price regulation moves from copper to fibre": Openreach is supportive of the principle but believes there will be a need for more exceptions that Ofcom currently proposes and therefore it is important that Ofcom retains the flexibility to define these exceptions during the WFTMR control period via direction under the SMP Conditions, as more real-life experience becomes available.
- Threshold 3, "removal of remaining copper regulation": Openreach is not supportive of Ofcom's proposals which we believe could have the practical effect of making copper retirement impossible and risks sending the wrong signals regarding the need to migrate. We therefore think it would be better for Ofcom not to set this threshold now, but it should retain the flexibility to define it during the lifetime of the WFTMR control period as more information becomes available.
- Defining coverage measures: we consider it important to agree the definition of a premise upfront to avoid future disagreements about the percentage ultrafast coverage achieved. We think the right measure is premises where people "live or work".
- CNI exemption: While we understand and accept the objective to ensure CNI does not suffer a disruption to service due to the migration to fibre, we consider Ofcom's current proposals to be too broadly drawn since they make no distinction as to whether an upgrade path to fibre is available.

Mark Shurmer
Managing Director, Regulatory Affairs

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More detail

It is important that a supportive regulatory framework for Openreach copper retirement is established if the Government's and Ofcom's FTTP objectives are to be realised. Openreach has made significant commitments regarding FTTP and is building at pace, and it is therefore crucial that the appropriate regulatory conditions are in place to facilitate the retirement of the copper network and prevent the duplicative cost of running parallel fibre and copper networks – this is a key building block of our FTTP strategy. Regulation also needs to play its part by sending the right signals to our Communications Provider (CP) customers and other stakeholders to help them prepare in a timely manner for the inevitable switchover to the new full fibre platform.

Ofcom is effectively proposing an approach whereby the regulatory focus will switch from copper to fibre once certain thresholds have been met and Openreach has given the required notice that it expects to meet these thresholds. We support this overall approach as striking the right balance between creating the right signals and incentives for migration and ensuring that customers can be migrated smoothly and without disruption to their service. It is important, however, that each threshold is set at the right level and that the timescales are not unduly elongated if the benefits of the move to full fibre are to be efficiently realised.

Openreach's position with respect to each of Ofcom's proposed thresholds is as follows:

Threshold 1: Stop Sell – Openreach is supportive

We support Ofcom's proposals which mean that once ultrafast coverage reaches 75% in an exchange area, and where fibre is available at the premises, Openreach should be allowed to stop selling copper services when a customer moves premises, changes service or switches provider (the "stop sell").

As you will be aware, Openreach has already given 12 months' notice that we expect to reach at least 75% ultrafast coverage as follows:

- 29 June 2020 117 FTTP exchanges covering 1.2m THP
- 5 October 2020 51 FTTP exchanges covering 511K THP
- 25 January 2021 51 FTTP exchanges covering 429k THP

Assuming that the threshold is met, stop-sell will come into effect 12 months after the above dates.

Threshold 2: Price regulation moves from copper to fibre – Openreach supportive with qualification

At the second threshold, Ofcom is proposing to remove price regulation for the 40:10 FTTC anchor product and for MPF, retaining price regulation on the 40:10 FTTP anchor. This threshold will be passed no earlier than 2 years after threshold 1 is met and Ofcom propose to set this at coverage of "100% less exceptions". As you know, we have made representations to you that our experience suggests that there will be a coverage glass ceiling closer to 90% coverage reflecting issues of access and technical and economic constraints.

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In your June consultation, you proposed to wait until after the final decisions in the WFTMR statement to consider how to define the circumstances in which premises can be excluded from the definition of a completed ultrafast exchange in which the copper charge control can be lifted. You proposed to define those circumstances by giving a direction under the WFTMR SMP conditions.

We think Ofcom could be bolder and set the second threshold 12-months after the implementation of stop-sell, without a further coverage threshold beyond 75% ultrafast coverage.

If Ofcom does not agree with this proposal, we think it important to retain the flexibility to define the circumstances in which premises can be excluded later when further information about fibre take-up and the challenges behind overall coverage figures will emerge.

Threshold 3: Removal of remaining copper regulation – Openreach not supportive of proposal

Ofcom's October 2020 consultation proposed the introduction of a third threshold that would remove the general and specific network access obligations on Openreach that apply to existing copper services. This threshold would be met when no more than 10 percent of premises are still supplied with a copper-based service; and Openreach has put in place reasonable measures to support the migration of vulnerable customers from copper to fibre services. The publication of a third threshold notification by Openreach will have the effect of withdrawing copper regulation in the relevant exchange area two years after its publication.

While we think it is important to signal that Ofcom's intended direction of travel is to allow for the complete retirement of the copper network, we think the parameter currently proposed by Ofcom is unrealistically high and setting it now could undermine incentives for stakeholders to prepare for migration to fibre. Instead, we propose that Ofcom does not define the criteria in the WFTMR Final Statement but instead retains the flexibility to set it via direction and suggest a further review based on experience within the initial cohort of exchanges currently progressing to the stop-sell threshold.

Other Issues

Definition of premises: Openreach believes clarity needed upfront

It is important to have clarity upfront about the way in which coverage levels will be measured, such that there is not subsequent disagreement about whether or not a threshold has been met. We have previously suggested to Ofcom that we consider the right definition to be premises where people live or work. We understand that Ofcom broadly agrees with this approach and will address this issue in the Final WFTMR Statement.

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CNI Exemption: Openreach not supportive

Ofcom's October consultation proposed a new exemption for Critical National Infrastructure (CNI) in relation to threshold three. While regulation may be withdrawn in an exchange if all the other conditions are met, Ofcom propose that this withdrawal should not apply to Openreach products used by customers to support CNI services, such as utilities or emergency services.

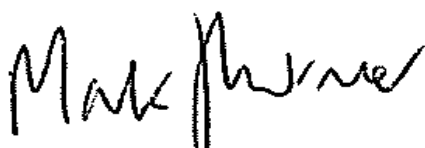
Openreach accepts the need for particular care to ensure that CNI does not suffer a disruption to service due to the migration from copper to fibre. We consider, however, Ofcom's proposal which appears to permanently exclude from copper retirement those end users subscribing to an electronic communications service which supports Critical National Infrastructure (CNI), regardless of whether a fibre-based alternative is available, is misplaced and will be damaging to the whole copper retirement process.

Next steps

I trust the above summary of Openreach's position with regards to Ofcom's Copper Retirement proposals is helpful.

I would of course be very happy to address any further questions or clarifications you may have.

Yours sincerely,



Mark Shurmer
Managing Director of Regulatory Affairs
Openreach