



Gavin Stevenson
Chief Executive
Dumfries and Galloway Council
Council Offices, English Street
Dumfries DG1 2DD

Dame Melanie Dawes
Chief Executive
Ofcom
Riverside House
2a Southwark Bridge Road
LONDON
SE1 9HA

12 March 2020

Dear Dame Melanie

Borderlands Inclusive Growth Deal – Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26 (Market Review)

I am writing to you on behalf of all the Local Authorities in the Borderlands Partnership with respect to our concerns about the remedies proposed under the Market Review; please accept this cover letter as a part of our formal submission to the consultation. As you may be aware, the purpose of the Borderlands Inclusive Growth Deal is to tackle economic challenges and support transformational inclusive growth in Cumbria, Dumfries & Galloway, Northumberland and Scottish Borders. Improved digital connectivity, both full fibre and mobile infrastructure, is central to our ambitions for the area and underpins all other projects within the Borderlands Inclusive Growth Deal.

We understand that Ofcom's aim in designing the proposed remedies in the Market Review is to encourage investment in full fibre, stimulate network competition in areas where this is viable and support the replacement of the Openreach copper network. The Borderlands Partnership supports Ofcom in these aims. However, the challenges of deploying fixed telecoms networks and the current low levels of superfast coverage in our region, could mean that unless further public investment is targeted to improve connectivity in the Borderlands, there could be a disproportionately negative impact on residents and businesses due to some of the Market Review proposals.

We have identified the following issues that we wish to highlight to Ofcom to ensure that the risk arising from the market review can be appropriately mitigated:

- **Tackling the Digital Divide** - Superfast broadband coverage greater than 30Mbps download in the Borderlands Region at 93.5% is significantly less than the UK overall coverage of 96.2% (<https://labs.thinkbroadband.com/local/uk> as at 6th March 2020). It is therefore important that further public investment and commercial incentives are targeted at delivering services to superfast not spots



and rural communities rather than overbuilding areas with existing superfast services. It is accepted that Ofcom are seeking to support this aim by allowing a level of investment cost recovery by Openreach in areas where network competition is unlikely to be viable. However, this will not specifically prioritise communities with the poorest services in line with the UK Government's stated 'outside in' policy contained in the Future Telecoms Infrastructure Review 2019. Further, Market Review assumes that properties in the most challenging areas remaining on the copper network will be transitioned to alternative services, following further discussions between BT and Ofcom, with publicly funded intervention. As significant numbers of properties in the Borderlands region are likely to be considered to be in these 'challenging areas' Borderlands Partnership would like to highlight the need for appropriate futureproof service provision to be delivered to all residents and businesses in our region. **The Borderlands Partnership would like Ofcom to ensure that underserved areas do not remain the wrong side of an increasingly widening digital divide.**

- **Support for vulnerable communities in moving to VoIP** - The Borderlands, Cumbria and Northumberland particularly, have small but significant numbers of properties that use community networks for broadband services but still use Openreach's copper network for voice calls. It is expected that these properties will be able to switch their voice services to Voice Over Internet Protocols (VoIP) but some more vulnerable groups may need support with this change; particularly with installation of suitable battery back-up for emergency calls. **Borderlands Partnership would like to encourage Ofcom to make provisions to support vulnerable residents in transitioning to VoIP.**
- **Ensure rural customers are not unfairly penalised** - In areas where competition between networks is unlikely to be viable it is proposed that Openreach would recover costs for investment in full fibre from across a range of products using a Regulatory Asset Base (RAB) model – either on a forecast basis, if BT commits to specific investment plans, or a post-build basis. Our understanding is this could lead to differing prices for similar services in different parts of the UK. **Borderlands Partnership would like to request that Ofcom will not allow consumers to be unfairly penalised for living in areas with limited network competition and that incentives for investment in superfast not-spot areas are maximised.**

We look forward to hearing from Ofcom about how you will address the above concerns and how we can work with you to maximise connectivity investment in the Borderlands region.

Yours sincerely

Gavin Stevenson
Chief Executive
Dumfries and Galloway Council

Your response

Question (Volume 2)	Your response
<p>Question 2.1: Do you agree with our description of retail markets? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? N</p> <p>Overall the market assessment for the UK as a whole appears reasonable. However when we consider the Borderlands region, which includes Cumbria, Dumfries & Galloway, Northumberland and Scottish Borders, it should be noted that:</p> <ul style="list-style-type: none"> • Coverage of broadband services of 30Mbps or more in the Borderlands Region is significantly less than the UK overall coverage of 96.6% (Thinkbroadband 25th March 2020). Currently coverage in the Borderlands region is estimated to be less than 92%. • In the Borderlands there are still significant numbers of properties that are unable to access basic broadband of 10Mbps. Many of these properties are not able to receive 4G signal and are unable to install satellite broadband services. • National network provider competition is much more limited than in the majority of the UK, with only Carlisle having a competing presence from the Virgin Media network. There are locally operated alternative networks (AltNets) in the region but these are unlikely to provide true competition to BT • The Borderlands, Cumbria and Northumberland particularly, have small but significant numbers of properties that use community networks for broadband services but still use BT for voice calls. <p>It is our view that the retail market in the Borderlands Region, while likely to follow similar trends, is therefore different from that of the wider UK. At a smaller scale, in Cumbria just over 94% of properties have access to superfast services on the Openreach network, but many properties in the remaining 7% have less than basic broadband services and many of these will not be addressable through the universal service obligations because of cost.</p>
<p>Question 3.1: Do you agree with our provisional conclusion on physical infrastructure product market definition?</p>	<p>Confidential? – N</p>

<p>Please set out your reasons and supporting evidence for your response.</p>	<p>Overall the physical infrastructure product market definition for the UK as a whole appears reasonable.</p>
<p>Question 4.1: Do you agree with our provisional conclusion on physical infrastructure geographic market definition? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? –N</p> <p>The provisional conclusion put forward is that the overall UK physical infrastructure market is similar. We do not fully agree with this conclusion, as the strong need for further public investment targeted at delivering services to rural communities in the Borderlands Region and lack of capacity for expansion or upgrade using existing infrastructure, make the market in our region different from other parts of the UK.</p> <p>In the Borderlands Region the level of physical infrastructure currently in place – including ducting and poles – is more limited than in more highly populated regions. Further, the geographical challenges in the Borderlands Region, particularly in the National Park areas, have historically discouraged investment in high capacity physical infrastructure which supports further upgrade or sharing by other networks.</p>
<p>Question 4.2: Do you agree with our provisional conclusion on the application of the three criteria test to the physical infrastructure market? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The provisional conclusion put forward is that the overall UK physical infrastructure market meets the three test criteria and is susceptible to ex ante regulation. We agree with this conclusion.</p>
<p>Question 5.1: Do you agree with our provisional finding on SMP and resultant competition concerns in the physical infrastructure market? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The provisional conclusion put forward is that BT has SMP in the UK national market. We agree with this conclusion.</p>
<p>Question 6.1: Do you agree with our provisional conclusions on product market definition for wholesale networks? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? –N</p> <p>The provisional conclusion put forward is that all fixed technologies, speeds, residential and business properties are in the same market and the leased lines and wireless access are in separate markets. We agree with these conclusions.</p>

<p>Question 7.1: Do you agree with our provisional conclusions on geographic market definition for wholesale networks? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? –N</p> <p>We agree with the provisional conclusions on geographic market definition. However when we consider the Borderlands region it should be noted that national network provider competition is much more limited in the region than in the majority of the UK. Carlisle is currently the only part of the region with competition between two significant providers; specifically Virgin Media and BT.</p>
<p>Question 7.2: Do you agree with our provisional conclusion on the application of the three criteria test to the wholesale inter-exchange connectivity market? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The provisional conclusion put forward is that the wholesale inter-exchange connectivity market meets the three test criteria and is susceptible to ex ante regulation. We agree with this conclusion.</p>
<p>Question 8.1: Do you agree with our provisional SMP findings and resultant competition concerns for wholesale networks? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? –N</p> <p>We agree with the provisional SMP finding and the competition concerns. There is very limited wholesale network competition in Cumbria and the Borderlands region.</p>
<p>Question 9.1: Do you agree with our proposal not to regulate WFAEL, ISDN2 and ISDN30 markets on the basis that they no longer fulfil the three criteria test set out in the EC Recommendation? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>We agree with the conclusion that these markets no longer fulfil the three criteria test. We further agree that these markets are expected to terminate in the next few years and that further investment is unlikely.</p>
<p>Question 10.1: Do you agree with our proposal not to regulate WBA market on the basis that it no longer fulfils the three criteria test set out in the EC Recommendation? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>We agree with the conclusion that these markets no longer fulfil the three criteria test. We further agree that investment is unlikely in this market.</p>

Question (Volume 3)	Your response
<p>Question 1.1: Do you agree with our proposed approach to remedies? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>We agree that in the current and expected circumstances that competition law alone would be insufficient to address the identified competition issues and protect consumers.</p>
<p>Question 2.1: Do you agree with our proposed approach to Copper retirement? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>We agree that the approach of migrating services from copper and then allowing a managed retirement of the copper network provides a pragmatic and predictable route forward for networks and users. However, we have concerns that 75% and 100% ultrafast coverage can be deemed to be achieved while discounting challenging to cover properties. It is accepted that issues with a limited number of properties should not prevent work to migrate the majority of properties from the copper network but it is important that challenging to cover properties are not discounted from consideration entirely. Ofcom must commit to ensure that such properties and consumers are fully protected.</p> <p>We also anticipate vulnerable people in deeply rural areas will require support in the transition to VoIP services. Particularly in ensuring that suitable battery back-ups are in place to allow contact with the emergency services during power cuts. Ofcom must make a commitment to ensure that such vulnerable consumers are fully supported; particularly in areas with high risks of flooding and other extreme weather events.</p>
<p>Question 3.1: Do you agree with our proposed general remedies? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The proposed general remedies are reasonable and we agree with the proposals. However, as noted previously, it is expected that in Cumbria and the Borderlands region there will be a higher than UK average number of properties (business and residential) that will be unattractive for ultrafast investment by</p>

	<p>operators. Ofcom must commit to working with the government to ensure that rural properties are not left on the wrong side of an increasingly wide digital divide.</p>
<p>Question 4.1: Do you agree with our proposed specific PIA remedies? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The proposed Physical Infrastructure Access remedies are reasonable and we agree with the proposal. However we would like it noted that in rural areas it is particularly important to provide access to physical infrastructure and dark fibre in a reasonable and straight forward manner to support development of community connectivity projects in areas which otherwise may remain underserved. Ofcom must commit to ensuring that the access process is transparent and accountable. Further Ofcom must ensure that the requirements for personnel to work on physical infrastructure are not so onerous that community networks are unable to reasonably make use of access.</p>
<p>Question 5.1: Do you agree with our proposed specific remedies in the WLA, LL Access and IEC markets? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The proposed specific remedies are reasonable however we note that BT has previously expressed concerns about the regulatory asset based model for Area 3. In areas like Cumbria and Borderlands region, which will predominantly be classified as area 3, there is a significant need for further investment in infrastructure. Ofcom must ensure that the charge control model used for Area 3 maximises the opportunities and incentives to invest in ultrafast infrastructure in underserved areas.</p>
<p>Question 6.1: Do you agree with our proposed dark fibre access and dark fibre inter-exchange remedies? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The proposed dark fibre access remedies are reasonable and we welcome the focus on area 3 areas for this remedy. Ofcom must ensure that dark fibre is accessible for the development of community network projects and 4G mobile infrastructure in under serviced areas.</p>

<p>Question 7.1: Do you agree with our proposed approach to QoS? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The proposed approach to quality of service is reasonable.</p>
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<p>Question (Volume 4)</p>	<p>Your response</p>
<p>Question 1.1: Do you agree with our proposals for charge controlling WLA and LL access services in Area 2? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The proposed approach charge controls in Area 2 is reasonable.</p>
<p>Question 2.1: Do you agree that a RAB based control will achieve our objective in Area 3? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? - N</p> <p>We have concerns about the use of the RAB model in Area 3. As noted previously the levels of broadband infrastructure in Cumbria and the Borderlands region is below the UK average. Further, the rurality of our region makes investment less attractive than in many semi-urban areas which will also be classified as Area 3 under the Ofcom proposals. It is therefore vital that the model adopted maximise the amount of potential investment and strongly incentivise investment in challenging areas. We are concerned that BT has put forward its opinion that the proposed RAB model will not maximise the potential for investment and that the model is flawed. Ofcom must ensure that investment into ultrafast infrastructure in underserved areas like Cumbria and the Borderlands region is maximised.</p>
<p>Question 2.2: Do you agree that is appropriate to impose a post-build RAB charge control in Area 3? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>We agree that charge control is required in Area 3 to provide certainty for investors and protection for consumers. It is however vital that consumer prices in Area 3 are not allowed to be increased significantly above the prices charged in more competitive areas of the UK as rural business and residents must not be priced out of vital ultrafast services.</p>
<p>Question 2.3: Do you have any comments on our proposed design and method for calculating the proposed post-build RAB</p>	<p>Confidential? – N</p> <p>We have concerns about the use of the RAB model in Area 3. As noted previously the levels</p>

<p>charge controls? Please set out your reasons and supporting evidence for your response.</p>	<p>of broadband infrastructure in Cumbria and the Borderlands region is below the UK average. Further, the rurality of our region makes investment less attractive than in many semi-urban areas which will also be classified as Area 3 under the Ofcom proposals. It is therefore vital that the model adopted maximise the amount of potential investment and strongly incentivise investment in challenging areas. We are concerned that BT has put forward its opinion that the proposed RAB model will not maximise the potential for investment and that the model is flawed. Ofcom must ensure that investment into ultrafast infrastructure in underserved areas like Cumbria and the Borderlands region is maximised.</p>
<p>Question 2.4: Do you agree with our proposals to charge control LL access services and dark fibre in Area 3? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The proposed approach charge controls for leased lines and dark fibre in Area 3 is reasonable.</p>
<p>Question 3.1: Do you agree with our proposals in relation to charge control design and implementation? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? - N</p> <p>We agree that charge control is required in Area 3 to provide certainty for investors and protection for consumers. It is however vital that consumer prices in Area 3 are not allowed to be increased significantly above the prices charged in more competitive areas of the UK as rural business and residents must not be priced out of vital ultrafast services.</p>
<p>Question 4.1: Do you agree with our proposals for charge controlling in the IEC markets? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The proposed approach charge controls for IEC market is reasonable.</p>
<p>Question 5.1: Do you agree with our proposals relating to calculating PIA rental charges? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The proposed approach to calculating physical infrastructure access is reasonable. However, it is important that the process remains transparent and accessible to support development of community networks in underserved areas.</p>

<p>Question 5.2: Do you agree with the above proposal to introduce the PIA simplified underground lead-in service and the associated timings? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? –N</p> <p>The proposed approach to physical infrastructure access is reasonable. However, it is important that the process for accessing PIA remains transparent and accessible to support development of community networks in underserved areas.</p>
<p>Question 6.1: Do you agree with our proposed approach to charge controls for ancillaries? Please provide evidence to support your views. Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? – N</p> <p>The proposed approach to ancillary charge controls is reasonable.</p>
<p>Question 6.2: Do you agree with our proposals for fair and reasonable obligations for ancillaries not covered by a charge control? Please set out your reasons and supporting evidence for your response.</p>	<p>Confidential? –N</p> <p>The proposed fair and reasonable obligations for ancillaries are reasonable.</p>