

Ben Harries
Policy Director, Network and Communications Group
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

By email

30 July 2026

CC: [REDACTED]

Dear Ben,

On 30 July 2026, Openreach notified an amendment to the Equinox contract that will apply the current discount levels and structure to footprint made Ready For Service (RFS) up until 31 March 2027 – an extension from the current RFS release date of 30 November 2026¹. As this applies Equinox pricing, conditional on the mix of services, to additional volumes we have notified this under Condition 8.6 with 120 days' notice.

This continues the current Equinox charging structure in full. For connections, this means the price varies based on whether a residential premises is located in Equinox Area 2 or Equinox Area 3 (which align to the WFTMR 21 market areas). Under the TAR, charges that vary within TAR WLA Market Area 2 are presumed to be discriminatory, however under Condition 4.5 the Equinox offer connection charge structure has been exempted. The wording of this exemption is that it covers the differences "*...attributable to discounted Connection Fees charged by the Dominant Provider in accordance with the terms of the Equinox 1 Offer or the Equinox 2 Offer as at 1 April 2026...*".

While the charging structure is unchanged by the contract amendment, we understand it is Ofcom's view that technically this extension is not covered by the Condition 4.5(b) exemption as the terms of Equinox at 1 April 2026 only covered footprint to the end of November 2026. We therefore need to seek consent for geographic pricing in the extended footprint.

We note that according to the wording of SMP Condition 4, if we can show that a geographic price is not unduly discriminatory (e.g. if it does not have any adverse impact on competition), then it is not prohibited under Condition 4.1 and therefore consent is not required. On that basis, our position is that consent is not required in respect to the extension of the Equinox offer, and we expressly reserve all rights and our position in this regard.

¹ [NGA2019/26](#) and ACCN OR1119 [Pricing notification details](#)

Notwithstanding the above and in light of Ofcom's view, we submit the following request to get Ofcom's consent to the extension of the Equinox offer (or confirmation that extending the Equinox offer is not unduly discriminatory and does not fall within the prohibition of Condition 4.1).

Request for geographic consent

1. At this time we are extending Equinox discounts to footprint RFS to 31 March 2027, [§<].
2. To accommodate a further extension as simply as possibly,
 - We have drafted the amendment to the Equinox contract to apply to footprint "made Ready for Service on or before 31 March 2027 (inclusive) or such later date as Openreach may notify by way of industry briefing". This will save the need to have a further amendment signed by all Equinox CPs in the future.
 - We are requesting Ofcom's consent for the Equinox geographic connection charges to apply to footprint RFS to 31 March 2027 and any additional footprint that comes within the scope of the Equinox contract. This would save the need to reiterate that request on the same geographic charging structure in the future (as soon as four months' time).
3. For the avoidance of doubt, any further footprint extension would still be notified with 120 days' notice as a conditional offer.
4. If consent to future footprint beyond 1 April 2027 is not acceptable, then we request a review to cover the footprint extension to 31 March 2027 at this time.

Rationale

5. We do not believe this pricing structure is discriminatory, and indeed it fits with Ofcom's policy objectives set out in the TAR:
 - It is consistent with Ofcom's FTTP charge control. Ofcom have set a charge control for FTTP 80M (where applicable) that applies the Equinox Area 2 and Area 3 charging structure with no consideration of footprint RFS date. Therefore, even without this Openreach proposal, for FTTP 80M (where the charge control applies) no geographic consent would be required for extended footprint. This is applying the same principle to other FTTP bandwidths.
 - It is consistent with a change to the Equinox contract to apply Equinox Area 2 and Area 3 charges to all national volumes, [§<] as part of the "Contract Focussed Approach" consulted on within the TAR.
 - It aligns with Ofcom's policy objective of pricing continuity and certainty set out in Volume 4 of the TAR. If the Equinox offer footprint is not extended then list prices would apply, creating price disruption for CPs. It would also lead to a different form of geographic pricing that might also require consent.
 - It aligns with Ofcom's rationale for approving the Equinox geographic pricing exemption in Condition 4.5, as set out in Volumes 3 of the TAR that it does not give

rise to competition concerns, is unlikely to harm the development of network competition, provides pricing certainty and avoids market disruption.²

6. We believe that the four conditions required for Ofcom to give consent under Section 49 of the Communications Act are met:
 - Consent is objectively justifiable because Ofcom has already exempted the Equinix connection fees under Condition 4.5(b) after conducting a thorough analysis and the extension aligns with that same rationale;
 - Consent would not discriminate unduly against particular persons or against a particular description of person;
 - For the same reason as it was proportionate to provide an exemption under Condition 4.5(b), consenting to the extension would be proportionate to the objective it is intended to achieve; and
 - The publication of the consent will ensure the requirement for transparency is met.

A consultation is not required

7. Ofcom's consent (i.e. what Ofcom is consenting to) would not have any material market impact and according to Section 49A(1)b, does not require a consultation.
8. Ofcom has already established that the Equinix connection prices warrant an exemption from the scope of Condition 4.5(b) on the basis that it does not give rise to competition concerns, is unlikely to harm the development of network competition, provides pricing certainty and avoids market disruption.³
9. A mere limited extension of the scope of the Equinix offer would not lead to any different conclusion, because by maintaining the status quo it avoids market disruption.

Conditionality

There is no requirement to make a submission for conditional pricing assessments, but it can be advisable. In this case, we believe that the conditionality has been assessed in full in previous reviews of the Equinix offers.⁴ As a result we do not believe Ofcom should have any concerns about the conditionality being extended.

Process

As discussed with Ofcom⁵ we are seeking geographic consent in parallel with the 120 day assessment of the conditional aspect of the pricing, rather than seeking consent before

² TAR vol 3 paras 9.76 – 9.79

³ TAR vol 3 paras 9.76 – 9.79

⁴ [Openreach Proposed FTTP Offer starting 1 October 2021](#), Statement, Ofcom, 30 September 2021; and [Openreach Proposed FTTP Offer starting 1 April 2023 \(Equinix 2\)](#), Statement, Ofcom, 24 May 2023.

⁵ Meeting with James King and James Francey of Ofcom, 28 July 2026

notifying.⁶ The contract amendment is dependent on the outcome of the Ofcom review and will not come into effect if Ofcom are not satisfied. We have also been clear on this dependency within the associated offer extension briefing.

If Ofcom require any further information in relation to this proposal, we would be happy to discuss.

Yours sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Viv Steup

Regulatory Policy and Strategy Senior Manager

Openreach Limited

⁶ This is consistent with the approach taken on the Incremental New to Openreach in VMO2 areas offer.