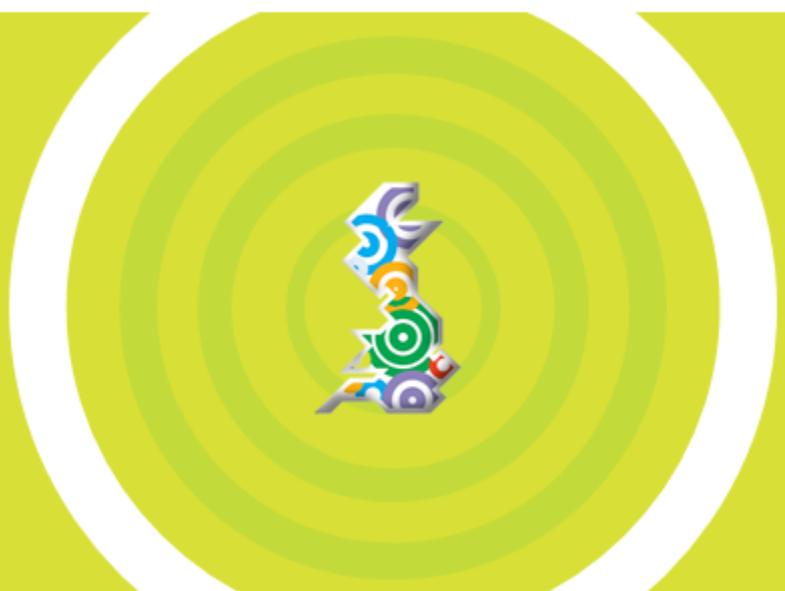


# County Broadband

Response to Consultation:

Promoting competition and investment in fibre networks  
Wholesale Fixed telecoms market review 2021-26



**REDACTED VERSION**

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## Introduction

1. County Broadband (“CBL”) is pleased to present its response to the Wholesale Fixed Telecoms Market Review (“WFTMR”). The WFTMR is of critical importance to CBL and in addition to this response, we have actively participated in the development of the Independent Networks Cooperative Association (“INCA”) response, which we support.
2. This submission is intended to complement the INCA response and we do not repeat points made in that response, other than at a summary level.

## Executive summary

3. CBL welcomes Ofcom’s focus on encouraging competitive investment in full-fibre networks, but we are deeply concerned that the proposals for how this should be done will result in a reduction in competitive investment due to Ofcom’s preferential treatment of Openreach investment in what Ofcom has categorised as Area 3.
4. CBL agrees with Ofcom’s position that raising the price of copper services increases investment incentives for full fibre. Ofcom’s proposed approach to price regulation in Area 2 is pro-competitive and should be extended to Area 3. However, despite stating that its objective is to encourage fibre investment and removing barriers to such investment, the WFTMR in fact proposes to erect new and significant barriers to altnet investment in Area 3.
5. CBL believes that Ofcom’s proposed price remedies in Area 3 will deter altnet investment to the detriment on consumers, citizens and the UK economy.
  - a. The RAB approach will not provide strong investment incentives to BT but will deter altnet investment and lock large ISPs into BT due to increased ISP margins.
  - b. The forecast approach will sterilise the most economically viable parts of Area 3 and reserve it for BT, thus severely limiting altnet investment.
6. CBL believes that Ofcom’s implementation of Areas 2 and 3 are oversimplified and does not reflect the actual definitions which refer to where commercial deployment may be economic. Simply using the most immediately available operator deployment plans does not determine where deployment may be economic. Further, CBL and several other full fibre operators were not consulted by Ofcom to include our deployment plans in the Area definitions.
7. CBL is an MSN, as are many other altnets. The demand mix of broadband and leased lines in the areas we cover is such that only a few leased lines are required, but we serve those customers and plan to continue doing so. While there may always be a demand for “exceptional” leased lines capability, the leased lines market was established at a time when viable alternatives were not available. Over time we expect the demand for leased lines to reduce further as high-quality, high-speed symmetrical broadband connections offered at significantly lower pricing are used instead.
8. CBL believes that the vast majority of the UK is economically viable for full-fibre deployment, but in some places only for one single full-fibre network. We have examples where we have cancelled plans to build FTTP networks and redeployed that investment elsewhere because another provider has built an FTTP network in the area before ours was deployed.
9. Those locations that are not economically viable, can be covered using public subsidies, such as the Rural Broadband Voucher scheme, and can be covered equally well (probably better and faster) by altnets than by BT<sup>1</sup>. Again, we have first-hand examples of this in our network.

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<sup>1</sup> In this document we refer to BT, rather than differentiating between BT and Openreach. This is because Ofcom regulates BT, Openreach is simply a part of BT and it is important that the remedies are seen as covering BT overall. Only where necessary (e.g. in relation to the PIA product), do we refer to Openreach.



10. CBL specialises in rural and small town/village coverage. This is our core business, whereas for BT it is at the bottom of their priorities. We do it well and better than BT.
11. Many Area 3 locations now have good superfast broadband services because local initiatives have been created to make this happen, because BT would not do it. Ofcom should allow willing smaller providers to do what they do best instead of trying to force an unwilling supplier like BT to do so.
12. Instead, Ofcom is favouring BT investment over altnet investment, with no economic rationale for that preference. CBL believes this to be in direct conflict with Ofcom's duties, and that it will almost certainly result in market distortion that will cause harm to consumers due to the resulting reduction in overall investment in fibre across the country. Further Ofcom's proposal, resulting in BT covering Area 3 only, would result in consumers being served by a reluctant supplier as opposed to a willing supplier that focuses specifically on the needs in the local area.
13. CBL strongly supports the development of a common wholesale platform for altnets and is actively working with INCA on this initiative. The common platform is now under development (in the feasibility stage) and will ensure that many small operators can access the wholesale market. The platform will make it commercially attractive for large ISPs to use altnet networks as it will offer sufficient volume of premises passed to make economic sense for them.
14. CBL relies on PIA for its business case to work and has achieved path to collaboration status with Openreach. The PIA product needs to be improved and move towards Equivalence of Inputs ("EoI") compliance. CBL urges Ofcom to review the current No Undue Discrimination ("NUD") rules and tighten them in preparation for a move to EoI.

## Introducing CBL

15. The Company was started in 2003 as a Wireless Internet Service Provider and more recently has been deploying Fibre to the Premises networks using a mix of Overhead and Underground new build and PIA infrastructure.
16. CBL is based near Colchester, North Essex, close to the Suffolk Border and is actively engaged in building FTTP networks in Essex, Norfolk and Cambridgeshire and plans to further expand this footprint into Suffolk in 2021.
17. The Company has 70 direct employees. As well as its in-house resource, the Company is engaged with two civils contractors both of which have CBL dedicated administrative and project management resources allocated and use multiple gangs in-field to complete the build plan in place.
18. CBL achieved a £46m ✂ investment from Aviva Investors in 2018. This funding is to support provision of FTTP to 30,000 premises. CBL commenced build in Q4 2019 and is on-target to achieve ✂ premises past this year, with the remaining premises scheduled for completion in 2021.
19. ✂.
20. The following map identifies our built, in-build and planned FTTP (only) coverage.  
  
✂
- Figure 1: Map showing our Built, In Build and Planned FTTP coverage by area**
21. ✂
22. Our wireless network (which is NOT shown on the above map and now includes substantial areas that have been overbuilt with state funded FTTC and FTTP) covers:



## CBL is an MSN

23. CBL provides broadband and leased line services to private individuals, businesses and public authorities in our coverage areas. The need for leased lines in our areas is not as significant as in larger cities, but it is still important to the business located in our coverage areas.
24. As fibre broadband is deployed more widely, the demand for leased lines will reduce. The leased lines market was established when there was no reasonable alternative available. This is no longer the case and we are already seeing significant churn from leased lines to broadband connections where fibre to the premises has been deployed. High quality symmetrical broadband connections are cheaper and perform at near-equivalent levels to leased lines. Only businesses and organisations that need extremely high-speed connections and extreme low latency and jitter are likely to continue relying on leased lines. Those types of organisations (such as financial institutions) are typically based in urban areas, but in any event will become a significantly smaller market over the near future.

## CBL delivers in hard to reach locations

25. The recent closure of the Gigabit Broadband Voucher Scheme meant this scheme was not aligned to our roll-out plan. ✂. This is evidence it is possible to provide state funding for hard-to-reach areas while maintaining competition and without distorting the market.
26. It is our intention to deliver ubiquitous coverage in our areas, using a mixture of commercial deployment and reliance on Government subsidies. We are concerned that Ofcom appears to think that small altnets will not deliver to hard-to-reach premises, but that BT will. That is incorrect. History suggests that it is the other way around.
27. CBL is preparing to participate in the Outside-in programme, which will complement our commercial deployment plans and help ensure ubiquitous coverage.
28. In many locations across the UK, the only broadband networks delivering acceptable connectivity are altnet networks. This is because Openreach has chosen not to deliver good broadband infrastructure in those locations. In many instances, the altnets have originated from dissatisfaction with the BT service. There is nothing to suggest that CBL and other altnets that focus in Area 3 will not deliver ubiquity. In fact, it is highly likely that altnets will deliver to the hard to reach locations faster than BT.

## CBL uses PIA

29. CBL uses PIA extensively in its network design and deployment. This means we can reduce our average cost per premise for deployment and also that we can deploy more rapidly.
30. We work with established quality sub-contractors for network deployment and have achieved 'path to collaboration' status with Openreach, meaning that fewer of our requests for network adjustments are subject to field checks by Openreach.
31. CBL urges Ofcom to change the DPA remedy to remove obvious areas of discrimination and to incentivise Openreach to negotiate solutions to problems with the PIA product when these are highlighted by PIA customers. The current NUD provisions should be strengthened and the product should be targeted to be EoI compliant during this review period.

CBL ✂



## Common altnet wholesale platform

32. CBL deploys in areas where it is unlikely to be economically viable to deploy and operate more than a single fibre network. It has always been our intention to open our network to wholesale access, and we already provide services on a wholesale basis to smaller providers. However, despite our best efforts we have not been able to attract interest from retail ISPs. Our approaches are continually “kicked into the long grass” by these providers which remains a constant source of frustration.
33. Presently we are a vertically integrated business with only a limited number of wholesale customers, we hope the launch of a common wholesale platform will gain the support of DCMS and Ofcom and be used by the major ISPs. We understand that some small operators are nervous about the threat wholesale access may present to their retail business, but we believe this is because they currently work on a less than 35% penetration model. Once the threat presented by the current Ofcom proposal is removed, those altnets will be able to open their networks to the wholesale market which in turn will lead to better penetration and avoid subsidised/mandated overbuild by BT.
34. If ✂.
35. CBL (and a number of other altnets) therefore prefers to offer wholesale access to our network to all ISPs, including BT. We understand that this would require us to offer a wholesale price that is comparable to BT’s regulated wholesale price for equivalent services. We believe that the drop in ARPU (which would become a retail and wholesale mix) would be compensated for by a significant increase in penetration. Once BT switches off its copper network, our network would be the only network in that area and we understand the responsibilities associated with that.
36. INCA’s initiative to create a common wholesale access platform is critical to smaller operators like CBL. Even with the platform, we are concerned that large ISPs may prefer to only use the Openreach network, if available. We believe it is important that Ofcom and the Government lend support to the development of the common altnet wholesale platform, in order that BT and the other large ISPs cannot collude against it and instead prefer for BT to overbuild our network so that the ISPs can remain on their wholesale platform, avoiding spending management time and making systems investment to use the altnet platform.
37. We are looking at the possibility of making the altnet wholesale platform an add-on to the Gaining Provider Led (“GPL”) switching platform, that is currently being specified through the OTA<sup>2</sup>-led industry working group. We believe that having the altnet wholesale platform as an add-on to the switching platform would have a number of significant benefits, including:
  - a. The main interfaces to the GPL platform will have to be used by all ISPs and network operators, so using the same interfaces will reduce barriers to adoption of the altnet wholesale platform;
  - b. The GPL platform will benefit from Ofcom and OTA oversight to avoid bias towards or against individual or groups of users; and
  - c. The costs of the wholesale platform may be reduced relative to building a separate stand-alone wholesale platform.
38. Although it looks like the GPL platform may not be launched until Q3 or Q4 2021, this will still be early enough to get full-fibre retail competition into altnet areas well in advance of BT’s earliest copper retirement time, which we understand may be 2026 or 2027.
39. We are currently in the feasibility phase of the common wholesale platform project and are already in discussions with potential solutions providers. We are also planning discussions with ISPs and with DCMS and Ofcom to ensure that the platform developed, and the services offered on the platform, meet with the needs of these key stakeholders. We would welcome the support of the OTA in the final specification of the platform interfaces.

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<sup>2</sup> Office of Telecommunications Adjudication.



## Ofcom's proposed regulation in Area 3 is discriminatory

40. CBL agrees with the INCA response both in respect of the comments on how Ofcom defines Areas 2 and 3, and the impact of the proposed regulatory remedies for Area 3.
41. We are particularly concerned that Ofcom's proposed Area 3 price remedies are effectively Ofcom expressing a strong preference for BT investment over altnet investment. Ofcom is picking winners and losers and:
  - d. Are actively increasing the probability that BT will overbuild altnets;
  - e. Are reducing the regulated price of BT's regulated wholesale products to a level that cannot be matched by altnets;
  - f. Are actively encouraging BT investment through either the RAB approach or the forecast approach;
  - g. Are providing no investment incentives for altnets in Area 3 at all.
42. We believe this behaviour to be in direct conflict with Ofcom's duties. In particular with the following provisions:

### **Article 4 (6) of the 2003 Communications act, which states:**

*"The fourth Community requirement is a requirement to take account of the desirability of OFCOM's carrying out their functions in a manner which, so far as practicable, does not favour—*  
*(a) one form of electronic communications network, electronic communications service or associated facility; or*  
*(b) one means of providing or making available such a network, service or facility, over another."*  
[EMPHASIS ADDED]

### **Article 3. 4. (b) of the European Electronic Communications Code, which states:**

*"ensure that, in similar circumstances, there is no discrimination in the treatment of providers of electronic communications networks and services;"*

43. It is our view that Ofcom's clearly documented preference for investment by BT over altnets conflicts with both of the above provisions.
44. Ofcom offers no justification for why it prefers BT investment in Area 3. It seems to simply believe that where only a single network is likely to be economically viable, BT should be the preferred supplier/investor.
45. In response to questions of why Ofcom has this preference, Ofcom has answered that it has concerns in relation to whether altnets will deliver ubiquitous networks; whether altnets will offer effective wholesale access to secure retail competition in their coverage areas; and whether altnets would be sufficiently financially resilient to not present a significant risk of customers connected to altnet networks being without service should the altnet go out of business.
46. None of those points were presented in the WFTMR consultation documentation, nor has Ofcom justified those concerns. The INCA response addresses all of the points raised by Ofcom and CBL and other INCA members will work with Ofcom to ensure that it can have full confidence that altnets provide at least as good and reliable a service as would BT. The issue of wholesale access is additionally addressed above.

## BT's resources are not unlimited

47. Openreach can only invest the budget allocated to it by BT Group, and that budget needs to be distributed between competitive urban areas (Area 2) and less or non-competitive areas in smaller towns, villages and rural areas (Area 3). Recent reports that BT is considering spinning off Openreach and selling a part of it to raise more funds, back up our view that Ofcom is mistaken in assuming that



BT's resources are unlimited.

48. In Area 2 there is a race to be the first full fibre network provider and win the business of large retail ISPs. Openreach and CityFibre are specifically competing in that space. This has been, and remains, BT's focus. In Area 3 there is less competitive pressure and therefore there has been a reluctance from BT to allocate resource and capital in these areas. Many altnets on the other hand are focussed on deployment in Area 3.
49. It will be natural for Openreach to prioritise Area 2 fibre deployment where competition remains and is encouraged by Ofcom. Removing the opportunity for any realistic competitive activity in Area 3 will serve only to give BT more time, under less competitive pressure to deploy in Area 3. This is counterintuitive to Ofcom principles.