Telecoms Access Review 2026

Sky's response to Ofcom's consultation

June 2025

Summary

1. This is Sky's response to Ofcom's Telecoms Access Review 2026 consultation ("TAR 26"). While there has been significant roll out of full fibre networks since 2021, network competition is not fully established, and it is appropriate therefore to continue to promote the roll out of full fibre networks in the TAR.

2. We set out below the changes Ofcom should make to the approach it laid out in the Wholesale Fixed Telecoms Market Review 2021 ("WFTMR 21") to better balance its objectives of promoting rivalrous investment in infrastructure while protecting competition and consumers.

3. First, Sky agrees with Ofcom that the wholesale local access ("WLA") anchor product price control should move from 40Mbps to 80Mbps. The 40Mbps anchor is an increasingly ineffective constraint on the prices of faster services and its current location no longer strikes an appropriate balance between promoting network competition and investment and protecting consumers and retail competition.

4. Second, in relation to anchor pricing, Ofcom should set a limit on the maximum amount the price caps can rise by each year to guard against the risk that Consumer Price Index ("CPI") inflation is materially greater than expected. CPI inflation in the period of the WFTMR 21 was much higher than Ofcom anticipated when it set the price caps – peaking at over 11%. Openreach's costs did not rise by the same amount, resulting in unjustified windfall gains for Openreach and significantly higher prices for consumers. Capping CPI indexation will avoid this effect while still striking the right balance between promoting investment and protecting consumers.

5. ✂

6. That said, Ofcom should resist calls for an extensive list of Openreach terms and pricing structures that would be prohibited *ex ante*. The success of the Equinox schemes show that it is far better to evaluate proposals on their merits by assessing their impact on competition, consumers and fibre take-up. Ofcom should not therefore unnecessarily deter innovative and pro-competitive future schemes – which could include, for example, new discount schemes in cable-only areas and in exchanges where the second copper retirement threshold has been met.

7. Fourth, Sky broadly agrees with Ofcom's copper retirement proposals but is concerned about the risk to the long tail of (often vulnerable) consumers if price regulation is removed on copper-based services once the second threshold is met. Rather than the stick of much higher copper prices, a better approach would be to allow Openreach freedom to introduce commercial incentives to encourage FTTP migration by reluctant customers (e.g., by offering lower rental or connection charges targeted at sticky copper customers).

8. Fifth, consumers are at risk from poor Openreach provisioning and repair service quality across the UK. Competition will not be sufficiently widespread or effective enough over the review period to incentivise Openreach to deliver a decent quality of service ("QoS"). This is why Ofcom proposes to continue to impose regulated minimum service levels ("MSLs") on Openreach's copper services everywhere. It also rightly recognises this dynamic for Openreach's FTTP services (where provisioning service quality is particularly poor) by proposing to introduce FTTP MSLs, but only in Area 3. Ofcom needs to do the same in Area 2 to address the risk that Openreach will exploit its market power by continuing to deliver QoS that falls well short ✂. There is also the added risk that Openreach will divert

resources from Area 2 (particularly from where it does not face material network competition) to meet Area 3 targets – further worsening QoS in Area 2.

While there has been significant roll out of full fibre networks since 2021, network competition is not fully established, and it is appropriate therefore to continue to promote the roll out of full fibre networks at the TAR

9. At the WFTMR 21, Ofcom said its strategy of promoting investment in full fibre networks and network competition would likely last for at least two market review cycles to provide a degree of regulatory certainty while networks were being roll out and adopted. The key pillars of Ofcom's strategy were, (i) regulated access to Openreach's ducts and poles via which altnets could install their full fibre networks, (ii) limiting Openreach annual price increases on anchor products to CPI while allowing it pricing flexibility on its faster services and (iii) previewing Openreach pricing offers to ensure that they would not harm the rollout of competing networks. Without 'fettering its discretion', it therefore indicated that it would apply similar regulatory policies at the TAR 26.

10. Since then, Ofcom's strategy has proven effective at promoting investment. There has been significant roll out of full fibre networks and increasing network competition.

- At the beginning of 2021, around a third of premises could get gigabit-capable broadband and a fifth could get full fibre. There was limited choice of competing gigabit-capable networks with only one in 50 premises having a choice of at least one full fibre network and cable and only one in a 100 having a choice of at least two full fibre networks.[1] Consumer adoption was increasing but relatively low. For example, around a fifth of eligible premises were connected to Openreach's full fibre footprint.[2]
- Fast forward to 2024 and more than four fifths of premises could get gigabit-capable broadband and over two thirds full fibre. Nearly half of premises now had a choice of at least two competing gigabit-capable networks, with one in eight having a choice of three or more.[3] Even though Openreach is rolling out full fibre at a "*ferocious*" pace (around four million homes per annum), penetration rates on its new network continue to accelerate with over a third of eligible premises connected to Openreach full fibre.[4]

11. Although by 2026 there will have been even more rollout and take-up, there will still be some way to go before this investment phase is complete and it is unlikely there will be any material effective and sustainable network competition from altnets. While Openreach has already achieved good levels of full fibre penetration, altnet penetration levels are generally far lower. Openreach's relative success has been in part underpinned by the order mix thresholds in its Equinox offer where its customers receive discounts to Openreach FTTP prices if a high proportion of their total orders with Openreach are for FTTP where available. Even absent the Equinox offer, Ofcom has allowed Openreach to stop selling copper where its FTTP is available (subject to certain conditions being met). With these routes to driving full fibre penetration unavailable to altnets, altnet penetration rates are generally lower and often below the level required to make a reasonable

[1] Ofcom Connected Nations 2020 Report and Update Spring 2021.
[2] BT Results Q3 2020/21.
[3] Ofcom Connected Nations 2024, December 2024.
[4] BT Results H1 2024/25.

investment return. Under these circumstances, the scope for altnets to exert an effective, sustained competitive constraint on Openreach remains uncertain.

12. As set out in Figure 1, while alternative networks have passed a large proportion of UK premises, generally penetration rates are too low at this stage to guarantee that the fledgling competition from these networks is not temporary. Moreover, the expected consolidation of altnets over the next market review period is too uncertain in timing and form (and will not necessarily make a material difference to the penetration by postcode of the acquirer) to conclude that any postcodes should be earmarked as fully competitive and therefore in for Area 1 in this Market Review. Indeed, premature deregulation could hinder the path to established competition.

Figure 1: Network rollout

Openreach FTTP competitors have ~20m HHs passed to date

Provider	Footprint	Build	Customers	Utilisation
CityFibre	Aims to cover 1/3 of UK; ISPs include Sky, Voda, and TalkTalk	4.4m[1]	518k[1]	12%
Virgin O2	Broad coverage across the UK	2.8m[3]	470k[4]	9%
nexfibre	Areas not covered by VMO2 network	2.2m[3]		
Substantial Group	Focus on suburban areas across the UK (Netomnia & BRSK)	2.3m[3]	288k[3]	13%
hyperoptic	Focus on MDUs, present in 64 town	1.9m[5]	400k[5]	21%
Community Fibre	Focus on London, parts of Surrey, Sussex	1.3m[1]	336k[1]	26%
Zzoomm FullFibre	Zzoomm available in 29 towns & Full Fibre available in 81 towns across England	0.6m[4]	70k[4]	12%
Gigaclear	Focus on rural areas	0.6m[1]	130k[1]	22%
allpointsfibre	New 'open access' wholesaler, with retail arm 'Cuckoo'	0.5m[2]	75k[2]	14%
trooli	Semi-rural communities, focus on SE England	0.4m[2]	30k[2]	8%
fibrus	Regional areas in Northern Ireland and Cumbria	0.4m[3]	114k[3]	28%
G.Network	Focus on inner London boroughs	0.4m[2]	22k[2]	6%
freedom fibre	Cheshire, Manchester, Shropshire, and N. Wales	0.3m[2]	24k[2]	8%
Others	Varied geographic focus, largely local players	~2m	-	-

Note: 1) Company reported figures from Q4'24. 2) Enders estimates from Q4'24. 3) Company reported figures from Q1'25. 4) Estimate for total VM FTTP subs from Ofcom / VM and is Q4'24 data, assumes RFOG considered cable in Ofcom reporting. 5) Company reported figures from June '25

13. As the full fibre investment cycle is not yet complete and material effective and sustainable network competition is not established, for the next review period (2026–31) a continuation of Ofcom's overall strategy is justified. This will be an important period for emerging competition as penetration on full fibre networks continues to increase with consumers less inclined to switch networks thereafter. While for the most part the WFTMR remedies applied in 2021 could simply be reapplied in 2026 to maintain Ofcom's strategic goals, there are a limited number of areas where the market has evolved such that some remedies require amending to ensure that they remain fit-for-purpose in maintaining Ofcom's overall objectives – specifically, with respect to the appropriate product speed for the regulated anchor product and price cap and the application of MSLs to Openreach's no-longer-nascent FTTP services.

Sky supports shifting the regulated anchor, but further protections are needed to guard against excessive pricing

It is necessary to move the regulated anchor product from 40Mbps to 80Mbps to protect consumers and network competition

14. In the WFTMR 21, Ofcom imposed a wholesale price cap on Openreach's anchor products so that prices could not increase by more than inflation, but it allowed Openreach pricing freedom on its faster services. As Ofcom notes in the TAR 26, this approach was intended to strike a balance between protecting consumers from Openreach exerting its market power through excessive price rises and allowing sufficient pricing headroom for Openreach and altnets to have an opportunity to make a reasonable return on their investments in full fibre networks – and the need to strike this balance remains relevant for the current review.[5]

15. When Ofcom set the anchor products as MPF (ADSL) and 40Mbps FTTC (and FTTP) it considered that the price of the 40Mbps service would act as a constraint on the prices of Openreach's faster services. The principle was that there is relatively low willingness among consumers to pay materially more for higher speeds and, as such, if the prices of faster services were too high relative to anchor product prices, then consumers would remain on the anchor product (or shift from the higher speed to 40Mbps in sufficient numbers to limit Openreach's ability to increase prices). Therefore, Openreach's profit maximising prices for faster services would be anchored to the 40Mbps price with only modest pricing increments being feasible.

16. Ofcom now proposes that the anchor moves to 80Mbps for both FTTC and FTTP at prices that maintain 'continuity' because:[6]

- shifting the anchor to 80Mbps keeps pace with how consumers are using their broadband services and directly protects most consumers on legacy products.
- consumers will be more adequately protected through a greater substitution effect (if higher bandwidth prices increase) with an 80Mbps anchor product, than if the anchor were retained at 40Mbps.
- an 80Mbps fibre[7] anchor would provide a better constraint on higher speed fibre prices because it is more likely to delay an upgrade to higher speeds in the event of price increases; and
- an FTTC anchor price which provides continuity with Openreach's current discounted FTTC price may provide ISPs that use altnets with protection against the threat of Openreach raising prices in response to ISPs signing commercial agreements with altnets.

17. Sky strongly supports this proposed change in the anchor and Ofcom's reasoning. In short, we agree that shifting the anchor directly protects more customers, creates a more effective constraint on the prices of higher speed products,[8] ✂

[5] Paragraph A8.4, TAR 26.

[6] Annex 8, TAR 26.

[7] In this response, we define 'fibre' as FTTP and 'copper' as including both FTTC and MPF.

[8] Ofcom has long recognised that anchors may need to 'float' to *"mitigate the risk that the anchor fails to remain an effective price constraint on higher bandwidth products over time"*; paragraph A7.4, Ofcom 'Future broadband: Policy approach to next generation access' (2007).

18. Consumers have now largely adopted faster FTTC services. By 2024 on Openreach's network alone, 40Mbps lines made up less than a quarter of its GEA lines (down from a third in 2021), with the remainder being faster services. For Sky, less than a ✂ of its non-DSL broadband lines were on 40Mbps in 2024 and by 2026 we expect this proportion to fall to less than a ✂. Around ✂of our FTTC lines will be at 80Mbps in 2026 – and therefore shifting the anchor must provide a greater directly protective effect.

19. This is important because there is evidence of the weakening effect of the 40Mbps anchor as customers move to higher speeds[9] – and therefore its ability to constrain price increases at 80Mbps and above. Importantly, despite consumers having a relatively low average willingness to pay more for a faster service than their current package, once they have a faster service there is high willingness to pay to stay on that speed and not spin down to a lower speed.

20. This means that once most of the market has adopted speeds above 40Mbps, the relative price of the 40Mbps service is a far weaker anchor to the prices of faster services than it was when more consumers were taking services at 40Mbps and below. This asymmetry in willingness to pay demonstrates typical, well-understood concepts of consumer behaviour (e.g., reference dependence, loss aversion, present bias and regret aversion).

21. The willingness to pay asymmetry is shown by evidence recently submitted to Ofcom that was commissioned by Sky, Platform X and Vodafone from Frontier Economics. Frontier Economics (along with the consumer research company, Red Blue) conducted consumer research which quantified the asymmetry in willingness to pay to either spin up or down broadband speeds including to and from 40Mbps and 80Mbps. The report found that:

> *"...the average reduction in price that a respondent was willing to accept to downgrade from 80Mbps to 40Mbps (£11.38 per month) was significantly larger (more than double) the average price a respondent was willing to pay to upgrade from 40Mbps to 80Mbps (£5.32 per month)."*[10]

£11.38 is around ten times larger than Openreach's current wholesale price differential between 40Mbps and 80Mbps FTTC, demonstrating a significant risk to consumers and retail competition from Openreach raising its 80Mbps prices.

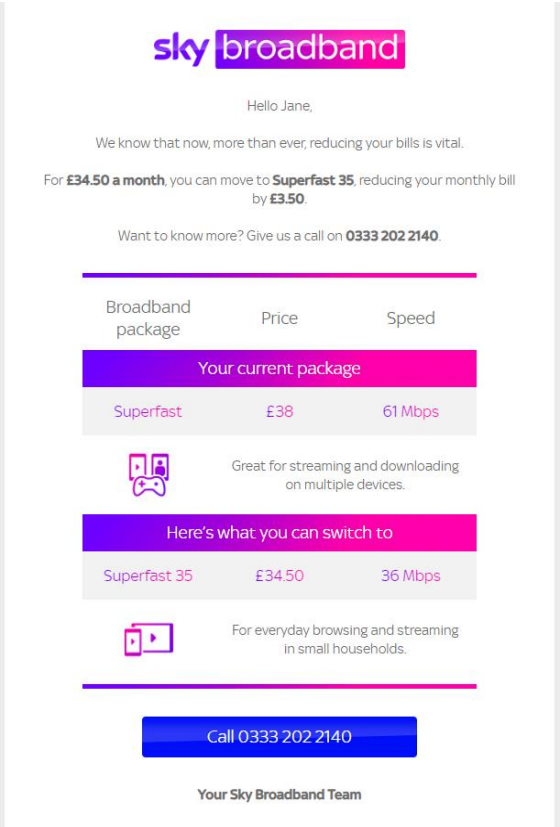
22. Sky has also conducted its own internal research to test its customers' willingness to stay on an 80Mbps package as opposed to downgrading to 40Mbps to save money. The results of this test also appear to demonstrate a strong willingness to pay to stay on the higher speed service.

23. As shown in Figure 2, in September 2024 we emailed around 3,000 Sky Superfast (advertised speed 61Mbps) customers offering them a £3.50 per month saving if they downgraded to Sky Superfast 35 (advertised speed 36Mbps).

[9] The number of connections at speeds greater than 300 Mbps is expected to rise substantially over the period to 2031; see paragraph 2.47, volume 2, TAR 26.

[10] Page 7, Frontier Economics 'Willingness to pay for different broadband speeds' (2024).

Figure 2: Screenshot of email to Sky customers



Of the 58% who opened the email, no customers called the number provided to take up this offer.

24. Sky's and Frontier Economics' evidence therefore shows that maintaining the regulated anchor at 40Mbps would no longer protect consumers and retail competition from excessive prices for faster services.

25. [11] ✂

26. ✂

27. [12] ✂

28. .✂

29. ✂

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30. :✂

[11] Paragraph 1.51, volume 4, TAR 26.

[12] ✂

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35. ✂
36. ✂
37. ✂
38. .[15] ✂

Ofcom should limit the maximum amount by which anchor price caps can rise each year where CPI is materially higher than expected

39. While allowing the anchor price caps to increase annually in line with inflation (e.g., CPI) may be appropriate during periods where inflation is stable and relatively low, we consider that in more exceptional circumstances where inflation is very high (or very low) Ofcom should limit the amount by which the price caps can change. During periods of high inflation, neither Openreach's cost base nor consumers' disposable income increase by anywhere near as much as the CPI anchor price caps. Given that a proportion of the higher wholesale prices are passed through to retail prices, consumers are materially harmed. Further, to the extent that Openreach's external customers cannot fully pass through their wholesale cost increases, they are disadvantaged compared to BT Consumer and retail competition is weaker as a result.
40. The amount by which regulated price caps can increase annually is typically tied to some measure of inflation (e.g., CPI-X). The purpose of this price cap indexation is to remove the risk of unforeseen movements in inflation affecting a regulated company's profitability (which assumes that the regulated company's cost base moves broadly in line with inflation), and to provide some protection to consumers by ensuring charges move in line with their purchasing power (which assumes that their purchasing power moves broadly in line with inflation).
41. In practice, large variations in inflation indices from the Bank of England target have largely been driven by external macro-economic shocks and are a poor proxy for changes in Openreach's costs or consumers' purchasing power:

[13] ✂
[14] ✂
[15] ✂

- There was a period of low inflation following the global financial crisis.
- There was a period of very high inflation in recent years following post-COVID supply chain issues and the war in Ukraine. For instance, at the time Ofcom introduced a price cap in WFTMR 21, CPI inflation was 1.5% and was expected to remain around the Bank of England's official inflation target of 2%. But, over the course of the following few years, CPI inflation reached 6.2% by February 2022 and peaked at 11.1% in October 2022. A year later inflation sat above 10%. It has slowly reduced since then and now sits at around 2.5%, which is still above the Bank of England's official target.

42. In the light of these non-monetary drivers of inflation, allowing regulated price caps to increase with official inflation indices such as CPI has not de-risked price controls from the perspective of either regulated companies or consumers:

- For regulated services based on capital intensive networks with long asset lives, most of the regulated costs of delivering services are the depreciation and capital charges on sunk assets rather current expenditure[16]; and
- Consumers' nominal disposable income has not been well correlated with movements in inflation indices.

43. For providers of capital-intensive regulated services, the indexation of regulated prices is not a good hedge against their cost inflation but instead produces windfall gains or losses as assets are revalued when actual inflation differs from the expected level of inflation. To the degree that the risk is symmetric, the holding gains or losses form part of the 'fair bet'.

44. However, the lack of correlation between (recent, very high) inflation indices and changes in Openreach's costs and customers (nominal) disposable income has been marked and has resulted in undue harm to consumers and competition. The increases in energy costs due to the Ukraine war led to a cost-of-living crisis rather than increasing consumers' disposable income in nominal terms. Increases in other regulated utility prices, including fixed broadband, exacerbated cost of living pressures rather than mitigating them.

45. This issue of official inflation indices not always being good proxies for changes in regulated firms' costs or consumers' disposable income has been implicitly recognised by Ofcom. In the TAR, it is proposing to move to a fixed 2% indexation[17] of Openreach's duct and poles asset cost increases (as opposed to using CPI) as part of its approach to the PIA charge control. While the PIA price control itself from 2026–31 is still CPI linked, Ofcom's change to a fixed indexation of asset cost increases will limit any holding gains (and subsequent increases in future depreciation costs and returns on capital) when the PIA charge control is updated for 2031-36. This approach would mean that if CPI is higher than 2%, this would not result in higher Openreach costs and the subsequent 2031–36 (cost based) price control would be lower as a result.

46. However, as Ofcom is proposing for the 2026–31 period continued indexation (to CPI) of both the PIA and downstream charge controls themselves, Openreach will still benefit from any unexpected increases in inflation through higher wholesale charges, even though the upstream infrastructure costs will not be affected by changes in CPI.

47. In view of this, an appropriate method for mitigating extraordinary inflation risk would be to limit the degree to which changes to inflation outside an ordinary level of variation feed

[16] During the recent period of very high inflation, even Openreach's 'current' expenditure was on costs inputs that were not inflating by as much as CPI (e.g., labour costs, where wage inflation was far lower).

[17] Paragraph 5.78, volume 6, TAR 26.

through into the price cap, e.g., by setting a floor and ceiling on the rate of inflation used to set the charge control.

48. If the floor and ceiling were set symmetrically, for example 0% and 4% respectively (symmetric with respect to the Bank of England 2% CPI target), then this would still be consistent with a 'fair bet', as Openreach investors would face equally upside and downside risk.

49. If such a ceiling had been in place during the current market review period (2021-2026), wholesale price increases and pass through to consumers would have been far lower. In three of the years in this period, the controlling CPI for increases to the anchor product price caps exceeded 4%.

50. [18] ✂

51. This demonstrates the important role such a ceiling could play in protecting consumers from excessive price increases during periods of high inflation,

52. We consider that Ofcom should set a cap on the maximum amount the anchor price caps can rise by each year if CPI is higher than expected. This is necessary to safeguard competition and consumers, and to mitigate the risk that Ofcom's approach does not strike an appropriate balance between promoting investment and protecting consumers.

Ofcom should retain the existing Equinox review framework for new fibre pricing offers – it works well

Ofcom already provides sufficient safeguards against potential attempts by Openreach to undermine the development of network competition

53. As Ofcom notes in Volume 4 of the TAR consultation, Openreach may have the ability and incentive to use commercial terms agreed with access seekers/retail ISPs to undermine the development of network competition.

54. In the 2021 WFTMR Ofcom imposed *ex ante* regulation to address these concerns:

- It prohibited geographic price differentiation within Area 2, by default, though with the possibility to seek consent for geographically differentiated offers which Ofcom will consider on a case-by-case basis.
- It introduced a comprehensive notification regime for any planned changes to Openreach's terms and conditions – in particular, Openreach is required to notify Ofcom of any proposed price changes (e.g., volume-linked price discounts) 90 days in advance.

55. Ofcom has set out in the TAR 26 that it is planning to retain the notification regime and extend the notification period from 90 to 120 days for offers where pricing is linked to volumes. This should allow ample time for Ofcom to review and address any potential concerns. In addition, Openreach can discuss any proposals with Ofcom prior to formal notification, to allow it to pre-empt and address any potential concerns – indeed, as outlined below, this already happened in Equinox 2. This allows Openreach to avoid

[18] We note that not all Openreach prices increased by CPI during this period, although they did for Openreach's main products purchased by Sky.

multiple rounds of formal notification, leading to unnecessary delay, if concerns are identified with initial proposals.

56. Ofcom's case-by-case approach provides both altnets and access seekers with comprehensive protection against the full range of potential anti-competitive strategies that Openreach might deploy, including the specific examples in Ofcom's guidance as well as other cases that may be harder to pre-empt. At the same time, it gives Openreach flexibility to introduce innovative offers that can help drive deployment and take-up of fibre, and to work with Ofcom and stakeholders to address any concerns e.g., through incorporating provisions to address specific, potentially problematic features.

57. The guidance also gives stakeholders clarity around the sort of terms and conditions that would be deemed acceptable/unacceptable without fettering its discretion to adapt its approach where necessary. For example, Ofcom has indicated that overtly loyalty inducing pricing terms, such as exclusivity discounts, should be avoided. On the other hand, Ofcom, indicates that the creation of certain barriers to using rival networks could be justified where (i) the impact on network competition is unlikely to be material and (ii) the arrangements will generate demonstrable benefits (e.g., where they are essential to Openreach's business case for deploying fibre).

58. An approach which instead proscribed specific behaviour *ex ante* would both (i) constrain Ofcom's ability to act where Openreach introduced offers that are technically compliant but could nonetheless have anticompetitive effects or (ii) limit Openreach's ability to introduce offers that would be welfare enhancing.

The existing approach appears to be functioning well

59. Openreach has already introduced two sets of wholesale offers through the notification regime, which have proven highly popular with access seekers and have helped drive consumer migration from copper to full fibre:

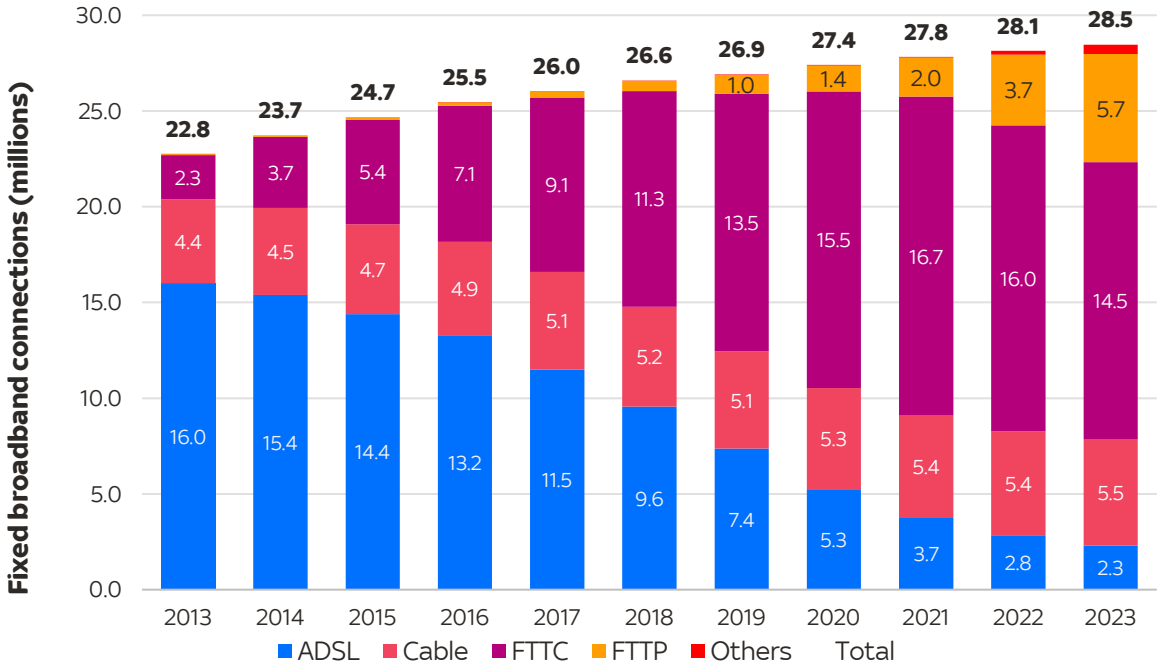
- Openreach notified new pricing arrangements for its FTTP services that applied from 1 October 2021 (Equinox 1). This offered ISPs real-terms reductions in rental prices, if they used mainly Openreach's FTTP products for new orders (where Openreach FTTP is available) instead of Openreach copper-based broadband services products. Ofcom assessed the proposed offer, taking on board stakeholder views, and found that it did not raise competition concerns. This view was upheld by the Competition Appeal Tribunal following an appeal.
- Openreach subsequently introduced an updated offer in 2022 (Equinox 2), following active engagement with ISPs about how terms of access could be improved. Ofcom provided informal feedback on potential competition concerns relating to initial Equinox 2 proposals. Openreach subsequently formally notified the offer to Ofcom in December 2022 and Ofcom found that it did not raise competition concerns. Equinox 2 included a 'failsafe mechanism' intended to address any risk of ISPs being disincentivised from placing orders with altnets.

60. All the major access seekers (i.e., TalkTalk, Sky and Vodafone) have adopted Equinox 2. Further, as Ofcom notes in TAR 26, there has been a significant fall in ISPs' propensity to place new orders for copper-based broadband products in areas where Openreach FTTP is available.[19] This has in turn supported one of Ofcom's key objectives, to encourage timely migration from copper-based services to gigabit-capable networks – as shown by Figure 3

[19] Paragraph 2.13, volume 2, TAR 26.

below, usage of copper-based services has continued to decline rapidly over the course of the past review period as customers switch to full fibre. Between 2021, when the first Equinox offer was introduced, and 2023, FTTC volumes fell 15% (following steady annual growth in previous years). Over the same period, fibre volumes nearly tripled, from 2 million lines to 5.7 million.

Figure 3: Change in mix of broadband connections over time



Source: Frontier Economics analysis of Ofcom Communications Market Report 2024 data

Openreach's wholesale deals have not undermined altnets

61. There is no evidence to suggest that Openreach's Equinox offers have undermined altnets' ability to invest and compete. To the contrary, recently announced wholesale deals indicate that there continues to be robust demand for alternative fibre infrastructure and developing competition at the wholesale level:

- Sky and CityFibre announced in August 2024 that they have agreed a long-term partnership that will see Sky launch broadband services on the CityFibre network. This is in addition to active deals that CityFibre has had with Vodafone and TalkTalk since 2017 and 2020 respectively and means that CityFibre now provides wholesale services to all three of the UK's largest independent ISPs as well as several smaller ones.[20]
- Altnet aggregator, Platform X Communications recently announced its intention to sign a wholesale agreement with Netomnia (and brsk) with the aim to enable Netomnia (and brsk) to onboard their first customer through the Platform X platform by February 2025.

[20] Paragraph 4.60, volume 2, TAR 26.

- Wholesale-only network, Nexfibre launched as a joint venture between InfraVia Capital Partners, Liberty Global and Telefónica in 2023, with VMO2 as the initial anchor customer.
- Ofcom also notes that there are further altnets that have recently signed wholesale deals or are in the process of finalising contracts.[21]

62. The robust demand for alternative fibre infrastructure is also reflected in the fact that altnets and their funders continue to make large investments to expand their networks.

- Between FY23 and FY24, CityFibre's network coverage grew by around 30% from 3.2 million premises passed to 4.1 million, with plans to eventually cover 8 million premises. Customer connections grew 54%, from 337,000 to 518,000 over this period.[22] CityFibre stated in its February 2025 trading update that "*[t]he year ahead will mark an important inflection point for our business as we prove the benefits of our wholesale-only model; with rapidly increasing revenues and stable underlying operating costs resulting in a resilient and sustainable high gross margin business*".[23]
- Since launching in 2022, Nexfibre has deployed its full fibre network past 2m premises and aims to reach 5m premises passed by 2026.[24]
- Gigaclear, Hyperoptic, Community Fibre and Netomnia have also continued to invest in their networks and together cover around 5 million premises.

63. Take-up has also been improving – according to the Independent Networks Cooperative Association (INCA) live connections for independent operators stood at an estimated 2.7 million at the end of December 2024, up from 2 million or 35% year-on-year. Larger players such as Fibrus reported take-up rates of 27% over its network and CityFibre announced it had take-up of over 40% in 'mature' cohorts.

64. More broadly, Ofcom has also highlighted how altnets have strengthened their position over the course of this review and have the potential to further strengthen their positions in the retail and wholesale markets:

> *"Since 2021, the market has evolved and a number of additional altnets have reached a considerable amount of network coverage, have gained take-up and have the potential to further strengthen their market position by extending their network, increasing their sales and/or implementing deals with ISP"*[25]

65. Ofcom has also noted that it anticipates that consolidation could help altnets achieve greater scale and become stronger competitors in future.

[21] Paragraph 4.190, volume 2, TAR 26.
[22] https://cityfibre.com/news/cityfibre-delivers-first-full-year-of-profitability-with-sky-to-launch-in-2025.
[23] https://cityfibre.com/news/cityfibre-delivers-first-full-year-of-profitability-with-sky-to-launch-in-2025.
[24] https://www.nexfibre.co.uk/nexfibre-network-passes-2-million-premises/.
[25] Paragraph 4.61, volume 2, TAR 26; CityFibre, CityFibre delivers first full year of profitability, with Sky to launch in 2025.

Replacing the notification regime with a prescriptive approach risks undermining competition and take-up with no benefit

66. Moving away from the current notification regime, towards a prescriptive set of rules specifying *ex ante* exactly which commercial terms are acceptable or prohibited creates significant risk of regulatory failure:

- Openreach's latest Equinox offer has been the product of iterative commercial negotiations, with the final terms – in particular, the level of pricing and various 'Order Mix Targets' or 'OMTs' – being mutually agreed between Openreach and ISPs. If Ofcom were to proscribe specific commercial terms in advance this would distort this process, and risk leading to sub-optimal outcomes – for example, specifying a 'price floor' in advance would carry a significant risk of regulatory error given (i) unit costs can vary significantly over time and geography, and (ii) it could constrain Openreach's ability to respond to demand conditions by recovering common costs in the most efficient manner across its wholesale products.
- Openreach has incorporated certain novel features into its commercial offers – particularly OMTs – designed to drive migration away from copper towards gigabit-capable services which, as explained above, appear to have been highly effective. Equinox 2 also introduced a 'failsafe mechanism' designed to address potential concerns around the impact on altnets' ability to compete for wholesale customers. Specifying in advance which commercial terms are acceptable or unacceptable would likely inhibit Openreach's ability to incorporate such features or deter it from introducing innovative wholesale products into the market that would be welfare enhancing.
- For example, as explained in our response below on copper retirement, it would be valuable for Openreach to work with ISPs to develop a wholesale offer which provides appropriate incentives for the long tail of more inert legacy copper customers to migrate to fibre and thereby enable copper switch-off. In addition, it may be pro-competitive to allow Openreach to use conditional terms to compete more effectively with VMO2 in areas where there is limited or no prospect of altnet rollout. There is a risk that these types of schemes would be inhibited by a prescriptive approach to regulating Openreach's commercial offers.
- Further, if Ofcom were to rely entirely on a prescriptive approach (i.e., remove the notification regime altogether) there is a significant risk that certain anti-competitive behaviour will be challenging to pre-empt, and could therefore 'fall through the cracks' in the absence of a comprehensive pre-notification regime – for example, Ofcom is proposing to amend the SMP condition that prohibits geographic pricing discounts so that it also applies to retail inducements offered by Openreach on a geographic basis to encourage consumers to purchase its VULA products. This follows Openreach's trialling of such as scheme in summer 2024. Openreach could potentially use similar 'loopholes' to circumvent any proscribed commercial terms.

67. At the same time, any potential benefits from pre-specifying acceptable commercial terms are likely to be limited:

- As set out above, the current notification regime appears to be working well and there is no evidence that demand for alternative infrastructure or altnets' ability and incentives to compete and invest in their networks has been undermined by Openreach's Equinox offers.

- Removing the pre-notification regime could, in principle, allow beneficial new wholesale offers to be brought to market sooner. However, the benefit from this would likely be marginal when compared to the risk of regulatory errors highlighted above – in particular, the risk that welfare enhancing offers may not come to market at all and/or, conversely, the risk that Openreach is able to circumvent the regulation by developing offers that are technically allowed but nonetheless anticompetitive.

Copper retirement

68. Ofcom's TAR consultation[26] and its previous decision in WFTMR 21 has set out a framework for the retirement of Openreach's copper network and transitioning of services to FTTP networks.

69. In developing this framework Ofcom has aimed to balance four main objectives, which Sky generally agrees with:

- incentivising timely migration of customers to FTTP networks and the switch-off of the copper network, which would improve productive efficiency (through reducing costs by removing the dual running of parallel networks), and maximise the consumer benefits that FTTP-based services can provide.
- supporting Openreach's investment in gigabit-capable networks.
- supporting competition at both the network and retail level, including supporting gigabit-capable network investment by BT's rivals and take-up on those networks; and
- protecting consumers, particularly vulnerable consumers.

70. In practice Ofcom has proposed to maintain the 'three-threshold approach' set out in the WFTMR 21, where regulation of Openreach's copper-based WLA services would change once FTTP network coverage in a BT exchange area reaches particular thresholds:

- Threshold 1, when Openreach can stop selling copper-based WLA services to premises in an exchange area. This would be triggered once 75% of premises in an exchange area are passed with Openreach FTTP and Openreach makes ultrafast services available at those premises.
- Threshold 2, when the proposed charge control on the anchor copper-based WLA service is withdrawn. This would be triggered once 100% of premises are passed with Openreach FTTP and have Openreach ultrafast services available, but with some proposed exclusions.[27] Although not stated explicitly in the TAR 26, we assume that Ofcom is continuing to propose removing the prohibition on geographic price discrimination for copper-based WLA services at this threshold, consistent with its framework in WFTMR 2021.[28]
- Threshold 3, when there would be complete deregulation of copper-based WLA services. This would allow Openreach to stop offering copper-based services and

[26] Chapter 2, volume 3, TAR 26.

[27] These would be premises where (1) Openreach cannot technically get access to the premises (e.g. cannot get site access); (2) the cost to serve is high and the premises are covered by non-Openreach FTTP under public funding, and (3) any other premises not under (2) but are extremely costly for Openreach to serve.

[28] Paragraph 2.14, WFTMR January 2020 consultation.

'force migrate' customers off the copper network. The criteria for triggering this threshold are left open by Ofcom.

71. Although Ofcom has proposed to maintain its approach from WFTMR 21, there is now more information available on key factors that will determine if this approach appropriately balances Ofcom's objectives. This includes information on the willingness of different groups of customers to migrate from copper to FTTP services, and further information on the speed and extent of FTTP roll-out by Openreach and rival operators.

72. As explained below, we consider that Ofcom's overarching approach is broadly sensible, but that the proposal to remove price regulation completely on copper-based WLA services once the second threshold is met risks both material consumer harm and detriment to competition.

73. First, there is empirical evidence that there is a substantial cohort of customers who would not or could not switch, even in the face of significant increases in legacy prices, without additional assistance (e.g., full fibre take-up sits at around 38% across the UK even though 74% of UK homes can now access full fibre[29]). Openreach could use its market power to target this group of customers with excessive prices leading to consumer harm and, to the degree that wholesale price increases are not passed on to end users, result in a reduced ability of retail ISPs to compete for customers. At the extreme, Openreach could effectively force migrate (or force off the network) customers by increasing copper prices to a point where copper-based services were unaffordable, even before the third threshold is met.

74. ✂

75. An outcome where regulation ensures moderate increases in copper prices across all areas after Threshold 2 is met, coupled with potential further price incentives on FTTP, is more likely to balance appropriately Ofcom's regulatory objectives. One option to achieve this would be to extend Ofcom's proposed approach to assessing future commercial FTTP offers to copper pricing, which would allow Openreach flexibility to test and adapt its copper pricing to best incentivise migration and still allow Ofcom to assess whether the pricing appropriately balances its wider set of objectives before these are introduced.

76. ✂

Initial take-up of FTTP has been relatively high, but there is evidence that there will be a 'long tail' of customers requiring significant resources to migrate from copper

77. Initial take-up of FTTP services has been relatively strong, with data presented by Ofcom showing that the number of FTTP connections reached 7.5m as of 2024. As recognised by Ofcom this has been facilitated by Openreach's Equinox 1 and 2 offers, which offer lower FTTP prices to ISPs if they meet targets for using Openreach FTTP for new orders instead of copper based broadband products.[30]

78. However there remains a significant number of broadband customers yet to migrate from copper, with more than 50% of UK broadband customers remaining on copper-based services as of 2024.[31]

[29] Ofcom 'Connected Nations update: Spring 2025', https://www.ofcom.org.uk/phones-and-broadband/coverage-and-speeds/connected-nations-update-spring-2025.

[30] Paragraph 2.13, volume 3, TAR 26.

[31] Ofcom Connected Nations Report 2024.

79. Evidence also suggests that there will be a 'long tail' of these copper customers who will require significant resources to migrate to FTTP services.

- For example, a report produced for TalkTalk Group forecasts that between a sixth and a third of broadband customers will remain on copper-based services in 2030, due to a variety of barriers to migration.[32] The report highlights rational barriers to migration, including customers being unable to pay the premium for FTTP services and the difficulties in physically installing FTTP in homes, but also a number of behavioural barriers. These include that many consumers will disproportionately focus on a perceived risk of an outage or deterioration in service if they migrate (loss aversion) and perceive the benefit of migrating to FTTP to be low given they have not experienced it yet.
- Many consumers will also be attracted to the 'easy' choice of remaining on their current service to minimise effort, even if switching would give them a better experience (status quo bias). This indicates that many consumers will be unlikely to migrate to FTTP irrespective of the price they pay for their existing copper service, without receiving additional assistance in switching.

80. This long tail is also likely to include a large tranche of vulnerable customers, given evidence that these behavioural barriers will disproportionately impact those groups: qualitative research by Ofcom has suggested that vulnerable customers are more likely to exhibit loss aversion and status quo bias than non-vulnerable customers.[33]

81. There being a long tail of copper customers would be consistent with other past technology transitions such as the migration from ADSL to FTTC and the transition to digital voice, where a significant minority of customers have proven resistant to migration despite price increases, sunset dates or other inducements to migrate. For example, over 8% of broadband customers in the UK remained on ADSL services as of 2024[34], despite over 95% of UK premises having had access to VDSL or gigabit-capable services since 2020.[35]

There is also likely to be a significant number of premises where Openreach faces limited wholesale competition once it reaches full FTTP coverage

82. As highlighted by Ofcom there has been significant FTTP build by altnets since 2021, as well as a material number of premises on the VM02 network now able to be upgraded to FTTP.[36]

83. However, it is still likely that once Openreach has reached full FTTP coverage in an exchange area, there will be many customers in those areas where Openreach faces limited or no competition over the TAR period.

84. For example, Ofcom estimates that 30% of premises passed by Openreach FTTP by July 2024 are not covered by any other operator offering gigabit-capable broadband, and that this will remain at 15% by 2030 on the assumption that altnets will complete their planned FTTP roll outs.[37]

[32] Unlocking the gigabit dividend: Using behavioural insights to accelerate FTTP take-up.
[33] https://www.ofcom.org.uk/__data/assets/pdf_file/0018/168003/broadband-price-differentials.pdf.
[34] Ofcom Communications Market Report 2024.
[35] Ofcom Connected Nations Report 2024
[36] Chapter 2, volume 2, TAR 26.
[37] Table 2.2, volume 2, TAR 26.

Full removal of copper price regulation once Threshold 2 is met could therefore result in profit maximising behaviour from Openreach which is not consistent with Ofcom's objectives

85. Ofcom's implicit assumption appears to be that once Openreach reaches full FTTP coverage and copper price regulation is removed, Openreach would implement a relatively small price increase in copper prices across all areas to incentivise more rapid switching to FTTP.

86. However, in practice, if prices are fully deregulated it would be a profit maximising strategy for Openreach to increase prices significantly to exploit its market power and the limited pricing sensitivity of many customers.

87. While competition from other infrastructure-based competitors may constrain Openreach's ability to increase prices in some areas, deregulation would allow it to differentiate its approach between areas where it faces higher levels of competition from other FTTP-based operators, and those where it faces more limited competition:

- In the material number of areas where Openreach faces no or limited competition, it could be profit-maximising for Openreach to implement very significant price rises, given such rises would result in little or no risk in Openreach losing these customers.
- In areas where it faces a greater competitive constraint it may instead be profit-maximising for Openreach to implement limited or no copper price rises, given that higher copper prices could incentivise customers to migrate to rival operators as well as to Openreach FTTP.
- This form of differentiation would not be precluded under Ofcom's proposals, given our understanding that the prohibition on geographic differentiation of copper prices would be removed once Threshold 2 is reached.

88. This outcome is highly unlikely to balance appropriately Ofcom's objectives, even if large price rises did incentivise some customers to migrate to FTTP relative to smaller-scale increases:

- If significant price rises are passed through to retail customers, this would lead to direct and material consumer harm, as the expected long tail of customers (particularly vulnerable customers) who cannot or will not switch in response to price increases will face excessive prices.
- To the extent that the significant price rises are not passed through to retail customers, this would be likely to reduce materially retail competition for that long tail of 'sticky' copper customers, by reducing the competitiveness of ISPs competing with BT's retail business: the price rises would materially reduce or eliminate copper margins for competing ISPs, but would have little impact on BT Group's 'end-to-end' profitability (as a vertically integrated operator, the wholesale price increases would simply re-assign profits from BT's retail arm to its wholesale arm).
- Also, if price rises are significant enough, it could result in customers effectively being forcibly migrated off copper services earlier than that envisaged by Ofcom, either because the customers are unwilling to pay the increased price, or because ISPs will terminate customers' service after the end of their contract period because continuing the service would be loss-making.
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- ✂

89. It follows that to ensure regulation achieves a fair balance between Ofcom's objectives, Ofcom should not completely remove copper price regulation once Threshold 2 is reached but instead retain some mechanism to constrain Openreach's ability to introduce excessively large increases in copper prices, and to ensure that any price increases are applied uniformly across all areas once the threshold is met.

Further commercial incentives on Openreach FTTP once Threshold 2 is triggered could be consistent with Ofcom's objectives

90. Beyond increases in copper prices, there could also be a role for further price incentives on Openreach FTTP once Threshold 2 is met, given as highlighted above and by Ofcom, FTTP pricing offers to date have been effective in driving strong migration to FTTP.

91. These incentives could be targeted at the long tail of sticky copper customers, such as offering lower FTTP rental or connection charges if ISPs are able to get these to migrate within a particular time after Threshold 2 has been triggered. These lower prices could incentivise ISPs to take the actions required to reduce the barriers to these customers switching, either by offering lower retail prices (where affordability is the barrier), or by making additional investments to tackle behavioural barriers: this could include targeted information campaigns to emphasise the superior reliability of FTTP (to reduce the perceived risk and thus tackle loss aversion associated with migrating), and measures to further reduce the effort required to switch (such as door-to-door sales with on-the-spot switching). These incentives could also be profit-enhancing for Openreach, as the impact of further FTTP discounts could be offset by the cost savings generated from migrating the customers off copper more quickly.

92. In practice it will likely be too difficult to identify the specific set of copper customers who fall into this category. However, this could be approximated by these incentives being triggered once the percentage of customers remaining on copper in each exchange area reaches a particular threshold.

93. To the extent that there is any actual tension between these incentives and Ofcom's objective to support FTTP investment by altnets, this impact could be managed by restricting the scope of any further discounts (i.e., by setting the remaining copper customer % threshold to a sufficiently low level).

Openreach should have flexibility to determine the structure of prices that would drive migration once Threshold 2 is met

94. Taking the above together, a combination of moderate increases in copper prices across all areas and further FTTP commercial incentives is likely to best facilitate faster migration to copper once Threshold 2 is met, while also balancing Ofcom's wider set of regulatory objectives.

95. In practice Ofcom could ensure this through taking one of two broad approaches to copper pricing:

- A 'prescribed approach', where Ofcom would aim to pre-determine the appropriate level of copper-based prices after Threshold 2 and continue to set a specific price cap on this basis.

- A more flexible approach, consistent with Ofcom's proposed approach to assessing any future commercial FTTP offers made by Openreach. This would give Openreach flexibility to set its copper prices but require it to notify Ofcom of proposed price changes (with supporting evidence and justification). This would allow Ofcom to assess whether the proposals appropriately balance Ofcom's objectives before these are introduced.

96. Sky considers the latter approach may be most appropriate for the upcoming period, particularly given the uncertainty around what exact combination of pricing is likely to best facilitate migration.

97. This approach would enable Openreach to work with ISPs to test packages of copper and FTTP pricing that best incentivise migration, and to adapt its approach when further information comes to light. This should in principle result in more timely copper retirement. It would however still provide a mechanism to allow Ofcom to assess Openreach's proposals in advance, and ensure these appropriately protect consumers, competition, and investment incentives.

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99. ✂

It is appropriate and practicable for Threshold 2 to be assessed on an exchange basis with narrowly defined set of exclusions

100. Ofcom asserts that the purpose of Threshold 2 is *"to enable Openreach to use higher prices for copper-based services to encourage migration away from its copper-based network"* but that this *"does, however, require Ofcom to exercise its judgment about the point at which the protection offered to consumers by our charge controls on copper-based access should be removed."*[38] For the reasons set out above, we consider the incentive effect of higher copper prices to encourage remaining copper customers to migrate to full fibre to be relatively weak. Of course, conversely, the potential harm to consumers from removing the protection of copper-based charge controls is both high and, given BT's continued significant market power, entirely likely. Accordingly, it is imperative that the bar is set high as to when Threshold 2 is satisfied.

101. Sky agrees with Ofcom's proposed approach of setting Threshold 2 at the exchange level with 100% of premises required to be passed by Openreach full fibre, other than for a narrow set of *in extremis* exclusions for premises where the barriers to full fibre deployment are too high.

102. Moreover, we consider Ofcom's concerns over the practicability and precision of defining these exclusions misplaced. It is appropriate for Ofcom to set out the principles and guidance regarding defined exclusions. In doing so, it will naturally exercise a degree of regulatory judgment (as it does on many other issues) but clearly the bar will need to be set high.

103. The onus should be on Openreach to demonstrate to Ofcom's satisfaction that certain premises qualify for an exclusion. Where there is uncertainty or a practical impediment

[38] Paragraph 2.59, volume 3, TAR 26.

(such as an absence of reliable data), Ofcom should err on the side of caution to protect consumers from Openreach's market power and determine that the case for an exclusion has not been proven, and Threshold 2 has not been met.

104. While a "Defined Exclusions Approach" by its very nature will be imperfect, we think the alternative of setting a fixed percentage of premises per exchange which would be automatically excluded (the "Fixed Percentage Approach") to be significantly inferior.

105. This is because not all exchange areas are the same. There will be some exchange areas where any fixed percentage of exclusions would be too high and others where it would be too low (noting that it would be inappropriate to set the fixed percentage too high). For instance, there could be some exchange areas where there is a high proportion of premises owned by a landlord (or group of landlords) disinclined to grant wayleaves or where there is a significant natural barrier (such as a river) to deploying widescale full fibre without incurring significant additional costs. Other areas could have no significant justifiable exclusions and for which the fixed percentage of exclusions would be too generous.

106. Further, inevitably, Openreach would have a strong incentive to take its full 'allowance' of exclusions in every exchange area and not deploy full fibre to some premises which would not qualify as exclusions under the Defined Exclusions Approach. Many more consumers would be deprived of having access to full fibre as a result.

107. Therefore, on balance, we consider it appropriate, justified and practicable for Ofcom to proceed with its preferred approach of setting Threshold 2 on an exchange basis with a narrowly defined set of exclusions.

Regulated Minimum Service Levels (MSLs) should be introduced on Openreach's FTTP services and maintained on its copper services

Ofcom proposes to impose minimum service levels on Openreach's FTTP services in Area 3, but not Area 2

108. Reduced service quality is analogous to higher prices for consumers (in effect consumers are getting less for the same inflation-adjusted price). In setting minimum service levels, Ofcom implicitly acknowledges that the service credits Openreach pays to its customers for individual service failures do not provide a sufficient incentive by themselves to protect consumers adequately from poor Openreach service quality.

109. In addition to continuing to impose MSLs on Openreach's copper services everywhere, Ofcom proposes to introduce MSLs for Openreach FTTP services in WLA Area 3, set at Openreach's current performance[39]. Ofcom justifies this on the basis that:

- material and sustainable network competition is unlikely to develop in this area, creating a significant risk of inadequate QoS being delivered by Openreach absent regulation.
- Openreach could also prioritise QoS performance where it faces competition at the expense of areas where it does not, further exacerbating poor performance in Area 3.
- QoS standards would also be unlikely to undermine the development of network competition in these areas, given the scope for such competition is limited; and

[39] The standards include minimum standards for service installation and fault repair.

- setting the minimum standards at Openreach's current performance would limit the risk of any regulatory failure from setting standards too high (which could reduce the incentive on Openreach to roll-out in the remaining parts of the area) but provide a backstop to guard against the risk of any future deterioration in performance.

110. Ofcom has however proposed not to introduce standards in Area 2, which covers 90% of UK premises, for three main reasons[40]:

- The absence of standards is unlikely to result in significant consumer harm because material and sustainable competition is expected to develop in this area and would increasingly drive FTTP quality of service. There is also evidence that QoS on Openreach FTTP services steadily improved over the WFTMR 21 period.
- Introducing minimum standards on Openreach could deter further FTTP investment and undermine the development of network competition in this area. This is because there is a risk of setting standards above the competitive level, which could impose higher costs on both Openreach and its rivals. Setting standards could also "*reduce the extent to which ISPs, currently reliant on Openreach's wholesale services, choose to purchase wholesale services from a competing network*"[41], to the extent that the standards set would be more challenging for rival operators to meet than Openreach.
- Ofcom would retain the requirement for Openreach to report FTTP performance in Area 2 and to maintain Service Level Agreements and Guarantees (SLA/SLGs), which it argues would provide protection for access seekers and consumers via the provision of compensation for poor performance.

111. Sky agrees with Ofcom's proposal to introduce minimum standards on FTTP in Area 3 (and to continue with copper MSLs) but disagrees that it is inappropriate to introduce similar FTTP standards in Area 2.

112. As explained further in the following sections, there is a material risk of Openreach delivering QoS that is below the competitive level in Area 2 over the TAR period, as it will still have market power in this area and, therefore, could set a sub-optimal level of quality. This is exacerbated by Ofcom proposing to introduce minimum standards in Area 3 but not Area 2, as it means Openreach would have the incentive to divert resources from Area 2, particularly from parts where it will continue to be the only gigabit-capable WLA service provider or only face competition from small-scale newly-established rival networks. ✂

113. On the other hand, setting minimum standards at the current level of Openreach performance (or reasonably higher) in Area 2 would have a negligible impact on FTTP investment incentives and network competition: this would be a level of performance that Openreach is already achieving or can reasonably achieve (so would not deter Openreach investment), and would not deter rival operators from investing further, given these operators are already promising and achieving quality well above Openreach's current level in Area 2.

114. Introducing minimum FTTP standards in Area 2 would better balance Ofcom objectives to protect consumers and retail competition while promoting investment and network competition.

[40] Paragraphs 3.31-3.41, volume 5, TAR 26.
[41] Paragraph 3.34, volume 5, TAR 26.

There is a material risk of Openreach delivering inadequate QoS in Area 2 absent any regulatory safeguard

Openreach will still have market power in Area 2 over the TAR period, so can exploit this by offering inadequate QoS

115. Where Openreach does not face material network competition, absent regulation it is able to exploit its market power to reduce quality below a competitive level, to the detriment of consumers and retail competition. Reducing quality may directly benefit Openreach by allowing it to reduce costs and increase profits. Further, lowering the QoS for all Openreach's customers may advantage BT's downstream business by inducing a 'flight to quality' if BT is perceived as being more reliable in a market where overall quality is poor.[42]

116. Ofcom has acknowledged that the likely lack of material competition in Area 3 over the TAR period risks Openreach delivering inadequate QoS absent regulation. However, this also applies in Area 2.

117. Ofcom has determined that Openreach will still have Significant Market Power (SMP) on WLA services in Area 2 over the TAR period, which means, Openreach would have sufficient market power to reduce quality on FTTP services below a competitive level in Area 2.

118. While Sky acknowledges that the strength of competition in Area 2 is likely to develop over the TAR period, evidence presented by Ofcom shows that Openreach is unlikely to face material competition in large parts of this area, even by the end of this period.

- Openreach is currently the only provider of gigabit-capable WLA services in 20%-30% of its FTTP footprint[43], and approximately 80% of UK premises are only covered by one rival network[44] (which is below the two rival networks considered by Ofcom to be a pre-requisite to exert a material competitive constraint on Openreach).
- Where rival operators are present, the competitive constraints on Openreach vary significantly across Area 2, ranging from areas covered by more established large-scale operators that provide WLA services, such as VM02 and CityFibre, to areas covered by only small-scale operators that currently only offer retail services.[45]

119. As acknowledged by Ofcom, the development of competition in Area 2 is also uncertain.

- Ofcom estimates that Openreach will remain the only provider of gigabit-capable WLA services in 10%-15% of its FTTP footprint by January 2030, a number which is predicated on all altnets completing their network roll-out as planned, which Ofcom acknowledges is uncertain.[46]
- It also acknowledges that a rival operator will need sufficient scale and take-up to be a sufficient and sustainable constraint on Openreach, but that it will take time for these operators to achieve this.[47]
- It also acknowledges that there will need to be consolidation among smaller-scale operators for these to exert a strong competitive constraint on BT but again accepts

[42] See "Frontier – TAR QoS Regulation and change to scope of Openreach services and charges".

[43] This was 30% as of July 2024 across the whole of the UK, and 18% in WLA Area 2 as defined in WFTMR 2021 (Table 2.2, volume 2). Area 2 as defined in TAR is much closer to the UK as a whole.

[44] Ofcom estimates that there are two rival operators present in 19% of UK postcode areas.

[45] Area 2 includes all premises within the planned coverage areas of operators planning to build to at least 50,000 premises by 2031, even if their current FTTP footprint in negligible. Paragraph 4.42, volume 2, TAR 26.

[46] Paragraph 4.96, volume 2, TAR 26.

[47] Paragraph 4.96, volume 2, TAR 26.

that there is inherent uncertainty over the level, form, and timing of this consolidation.[48]

120. Further, the way in which the Equinox order mix targets (backstopped by copper stop-sell regulation) operate also means that Openreach does not have a strong incentive to improve FTTP provisioning times. In effect, ISPs put nearly all new orders they place with Openreach onto its FTTP services irrespective of Openreach's provisioning service quality.

121. Sky therefore considers that Openreach does not currently face a sufficient competitive constraint in Area 2 to ensure it provides a competitive level of quality, and that this is likely to remain the case over the TAR period in significant parts of Area 2.

Available evidence suggests that Openreach is already offering inadequate QoS, even in parts of Area 2 where it is already facing some competition

Openreach's FTTP QoS is not where it should be – particularly, with respect to lead times for provisioning lines. Performance statistics provided to the OTA-chaired Service Management Forum (December 2024) showed the following comparative performance: ✂

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- ✂
- ✂

123. Despite Openreach's relatively poor performance and weak SLA and SLGs and the emergence of some network competition, Openreach's customers have been unable negotiate improved FTTP SLAs. Under the oversight of the OTA, ISPs wrote to Openreach in December 2024 clarifying their request for minimum quality thresholds for FTTP provision and repair. Openreach only responded in April 2025 and did not offer any minimum levels, instead outlining its non-binding "*ambition*" for service levels over the next 12 months.

124. It is evident from these negotiations that there is currently an insufficient competitive constraint on Openreach to raise its standards.

Imposing minimum standards in Area 3 but not in Area 2 could result in a worsening of Openreach performance in Area 2 over the TAR period

125. There is also an additional risk that Openreach QoS performance in Area 2 worsens over the TAR period, driven by Ofcom imposing minimum standards in Area 3. This is because where Openreach is faced with minimum standards in Area 3, it could be profit-maximising for Openreach to divert resources from Area 2 (where it is not obliged to meet minimum standards), to meet the standards in Area 3. This is particularly the case in parts of Area 2 where is little or no competitive constraint, as the decline in QoS from diverting resources from these areas to Area 3 would be unlikely to result in material Openreach line losses to competitors.

[48] Paragraph 4.76, volume 2, TAR 26.

Maintaining QoS reporting and SLA/SLG requirements will not provide sufficient protection

126. Obligations on Openreach to report QoS performance and to provide SLAs and SLGs will not ensure Openreach provides an adequate level of quality, as Ofcom argues.

127. ✂ There is therefore no reason to believe that maintaining these obligations will have a different effect over the TAR period.

128. Given the above, the introduction of minimum standards on Openreach's FTTP services in Area 2 would be required to protect consumers and downstream competition.

The risk of deterring FTTP investment and network competition by setting minimum standards levels would be negligible

129. While there are benefits to introducing minimum standards, the potential risks to FTTP investment and network competition highlighted by Ofcom are likely to be negligible.

130. First, setting standards at (or reasonably above) the current performance level is highly unlikely to be above the competitive level over the TAR period, meaning there is negligible risk that these standards would impose undue additional costs on Openreach.

- ✂
- The competitive level of quality is also likely to increase over the TAR period, as Openreach and other operators move out of the engineer-intensive build and growth phase. It is therefore reasonable to expect that Openreach can continue to increase QoS performance over the TAR period at limited additional cost.

131. Second, this is highly unlikely to deter additional investment by altnets and therefore harm the development of network competition, ✂.

132. Taken together, Sky considers that introducing QoS standards in Area 2 would balance Ofcom's objectives to protect consumers and retail competition, while promoting investment and network competition.

We propose new MSLs on FTTP in Area 2 that will effectively safeguard competition and protect consumers

133. Sky proposes the following values for MSLs for the first year of the market review period (not from 2027 as proposed by Ofcom). We think there is a strong argument for these MSLs to rise over the TAR period given they are below the competitive level.

FTTP Service Metric	Minimum Service Level description
First available appointment date	Openreach provides a provision appointment slot for **89%** of orders within 15 working days
Provision on committed date	Openreach completes the appointed provision order on the initial CCD for **94%** of orders
Recovery of delayed provisions	Openreach completes appointed provisions within 1 week of the CCD for **97%** of orders
On time repair of network faults	Openreach completes **85%** of repairs within the Care Level 2 SLA

Recovery of failed SLA repairs	Openreach completes **95%** of repairs within 5 working days of the Care Level 2 SLA

Finally, we agree that Ofcom should maintain MSLs on copper services

134. Sky supports Ofcom's position of retaining MSLs on ADSL and FTTC services and maintaining the targets at the 2025 / 2026 level. While the market is moving to widespread FTTP adoption, most consumers will be relying heavily on copper technologies for their broadband connections at the start of the next market review period. A large proportion of end users therefore will require continuing protection through the application of MSLs on Openreach's copper services.

135. Openreach has an even stronger incentive to reduce copper service quality in the future. By exploiting its market power and consumer inertia, it could increase its profits by cutting its copper costs through lower quality. Further, if Ofcom were to impose FTTP MSLs but not ones for copper, Openreach could divert resources away from copper to fibre such that copper quality reduced.

136. Overall, we consider the case for imposing continuing MSLs at the same level as they are today on Openreach's copper services to be even stronger for the upcoming TAR as the risk of Openreach reducing copper service quality is higher than before.