BT response to Ofcom’s consultation on Pricing Wholesale Local Access Services in Geographic Area 3 2021-26

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[1] At time of writing, the UK is dealing with the COVID-19 pandemic. COVID-19 has already impacted existing operational plans and will continue to do so for some time to come. In this context, as the full impact of COVID-19 becomes apparent, it might be necessary to change some of the positions set out in this submission. In those circumstances BT would make subsequent representations to Ofcom at the appropriate point in time and would expect Ofcom to fully consider any such further representations.

1. Executive Summary

1.1. We share Ofcom (and Government's) aim for customers in all parts of the UK to enjoy the benefits of ultrafast broadband. To help deliver this, we plan to ramp up our FTTP build programme to 20 million premises by the mid- to late-2020's, including significant commercial build by 2026 in those parts of the UK that are hardest to reach, assuming a supportive regulatory and policy environment. Other operators have ambitious plans too, including in the trickier areas (either commercially or with the support of public funds the Government has pledged).

1.2. This offers the prospect of significant deployment across the country, but timing is uncertain and we can see why the customers in harder to reach areas will (rightly) want access to ultrafast broadband on a similar timescale to customers elsewhere. So we plan to reach 3.2 million premises commercially in these areas cumulatively by the end of 2025/26 assuming the right regulatory and political enablers are in place, and are confident Openreach can deliver. This is in addition to the deployment which will be delivered by others, including through government schemes.

1.3. As elsewhere in the country, the regulatory regime will need to support our planned 3.2 million build in Area 3 by creating a price environment which is conducive to investment and by supporting the migration of customers to enhanced fibre services. Specifically, we fully support Ofcom's proposed 'pricing continuity' policy to keep prices for a set of baseline wholesale services the same in real terms (with a modest premium for full fibre services), as well as support for migration to help us avoid having to run old and new networks in parallel.

1.4. But it is also critical for Ofcom to explain how any further regulation (should it be needed in the future) would fairly treat the commercial bets being taken by BT and other fibre providers. Even with regulatory support, these are not risk-free investments. Investors need at least the prospect of reward if things go well, to balance the downside risks. Otherwise they will not proceed commercially, and the burden on public funds could be much higher.

1.5. The measures needed to support our 3.2 million build are the same as those being considered for the prospectively competitive parts of the country (and other fibre providers with similar deployment plans say the same). While there is so much uncertainty about roll-out, it makes sense to apply the same regulation nationwide, leaving market developments open rather than pre-judging outcomes which are bound to be wrong. There is little risk in this for Ofcom (or Government) - after all, our commitment will ensure that customers in harder to reach areas are not left last in the queue.

1.6. There is no need for a bespoke regulatory model – Ofcom's proposed 'forecast RAB' - to achieve this. [✂] This is a major obstacle given that our investment case has been approved on the basis that commercial bets will be fairly treated. If pursued further by Ofcom details would needed, therefore, on how the forecast RAB will leave in play the possibility of upside (i.e. through the design of incentive mechanisms and the allowance of a reasonable return) in order to ensure that the deployment can proceed with reasonable return expectations. We have real doubts about how this could be achieved.

1.7. Furthermore, if Ofcom decides to proceed with its bespoke model for Area 3 (a 'forecast RAB'), it will need to be properly specified with the usual rigour associated with setting charge controls. Correcting for a number of errors, and unrealistic assumptions, Openreach finds that prices flat in real terms for at least two charge control periods are warranted (pointing to a simple national solution).

1.8. More clarity over regulatory design (including in future periods) is needed today in both Areas 2 and 3. Leaving these issues un-addressed is not in consumers' interest: it reduces the scope for risky investments that consumers in the harder to reach areas would otherwise benefit from. We are ready to support the ultrafast transformation of harder to reach areas across the country provided Ofcom implements the regulatory environment needed to support this. This regime is within easy grasp, building on the regime Ofcom has already set out for other parts of the country. We look forward to working with Ofcom to refine and implement it.

2. Full fibre coverage is best supported by adopting a consistent regulatory model across the UK

2.1. We agree with the objectives of Ofcom and Government that fibre deployment should be balanced across the country, avoiding areas being left behind. The Government's £5bn pledge will help but this public funding will go much further if the full potential of *commercial* deployment is realised.

2.2. To this end, we have announced plans to build (commercially) in both urban and rural areas. Other fibre providers have announced their own plans (some as scale operators, others as rural specialists). This indicates that commercial deployment is likely across a broad swathe of the UK (including within the area Ofcom defines as uncompetitive – Area 3).

2.3. The precise pattern and pace of roll-out by different providers remains unclear. Indeed, there is a strong case – accepted by Ofcom – for keeping regulation the same across the entirety of the UK to allow things to play out. We – and other fibre providers – say this approach will support commercial deployment and is preferable to pre-judging (now) where competitive investment will and will not be viable (which is bound to be proved wrong).

2.4. Customers in harder to reach areas should not be the last to be served. So we have announced plans to reach 3.2 million premises (commercially) in these areas by the end of 2025/26, assuming the right regulatory and political fibre enablers are in place. Specifically, we need clarity on the longer-term regulatory framework (in particular the fair bet) and confirmation of the regulatory enablers set out in Ofcom's Wholesale Fixed Telecoms Market Review (WFTMR) consultation.[2]

2.5. We explain in this section that there is material scope for commercial deployment by BT and others in Area 3 and that this area is more similar to the prospectively competitive Area 2 than Ofcom has found. We also explain that our build plans are best supported by applying the regulatory model proposed for Area 2 nationwide. This would allow an (appropriately) agnostic approach to the question of *who* builds, whilst our committed plans will reduce uncertainty on *when* build will occur.

We and others are planning to deploy commercially in Area 3

2.6. Our FTTP build plans (announced in May) will take us to 20 million premises passed by the mid to late 2020s, including at least 3.2 million premises commercially built (i.e. without public subsidy) in Area 3 by the end of 2025/26. We are determined to deliver the entirety of this plan, but we have *committed* (voluntarily) to the Area 3 build. With this commitment (as well as government-funded build), Ofcom (and others) can be confident that customers in these areas will not be left behind.

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[2] Ofcom, January 2020. *Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26* ('WFTMR Consultation'), Vol. 1, pages 3 to 4.

2.7. On the basis of what we know today, we are confident that Openreach can deliver this build subject to confirmation that the regulatory enablers set out in Ofcom's WFTMR consultation are extended from Area 2 to Area 3 and that a more comprehensive statement is given on how Ofcom intends to apply the fair bet principle.

2.8. But we are not the only operators with ambitious commercial build plans, including in Area 3. Their plans are facilitated by several factors including a relatively flat cost of build curve up to around 80% of premises, and the fact that regulated access to our ducts and poles significantly reduces build costs.[3] Innovative techniques such as micro-trenching will also help reduce build costs.

2.9. Although others have not offered commitments, they have made clear that Area 3 is in their sights and will form part of their commercial build programme (sometimes in conjunction with subsidised build).[4] Ofcom recognises that "*a number of providers have indicated that they have ambitions to build in Area 3, with some rival investment taking place today*".[5] Specifically:

- **Virgin Media** believes "*that up to 80% of premises could be viable to build to* … [over] *time*",[6] and is exploring plans to expand its network to cover 80% of the UK.[7] It has already deployed in parts of Area 3, for example the Test and Dun Valley.[8]
- **CityFibre** considers "*that only around 20% of the UK will be unable to support commercial fibre deployment.*"[9] It plans to pass eight million homes,[10] some of which will be in Area 3.[11]
- **Gigaclear's** entire (current and planned) network falls within Area 3. It plans to reach 500,000 premises before 2026 from 130,000 today.[12]
- **Others.** Axione (a French operator with rural deployment experience) has UK build plans[13] and entities such Jurassic and Swish have funding behind them[14] and an interest in Area 3. Swish Fibre estimates "*there are between 3.1m and 6.2m economically viable premises in Area 3*" and its "*build targets could lie anywhere in this area*".[15] Similarly, Jurassic Fibre argue that "*well over 95% of*

[3] National Infrastructure Commission, 2017. *Costs for Digital Communications Infrastructures*. Pages 54 and 57 show the cumulative premise cost to build from cheapest to most expensive with and without access to our physical infrastructure.
[4] Some respondents to Ofcom's WFTMR Consultation set out their plans and ambitions to combine Government subsidised deployments with commercial deployments in adjacent areas. Gigaclear response to the WFTMR Consultation, paragraph 53.
[5] Ofcom, 29 July 2020. *Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26 Pricing wholesale local access services in Geographic Area 3 with a BT Commitment to deploy a fibre network ('Area 3 Consultation')*, paragraph 3.41
[6] Virgin Media response to the WFTMR Consultation, para 2f. Virgin Media has already built in some of Area 3, and "believe[s] there is a risk that Ofcom has underestimated the potential for competitive build … [in] Area 3." Virgin Media response to the WFTMR Consultation, paragraph 57.
[7] Liberty Global Investor Call, Full Year 2019, slide 6.
[8] Virgin Media response to the WFTMR Consultation, paragraph 60.
[9] CityFibre response to the WFTMR Consultation, paragraph 1.42.
[10] CityFibre website [last accessed 10 September 2020].
[11] CityFibre response to the WFTMR Consultation, argues that Ofcom "*must* reconsider its proposed market definition" suggesting that Ofcom reduce the size of Area 3, paragraphs 1.38 to 1.60.
[12] Gigaclear response to the WFTMR Consultation, paragraph 2.
[13] Axione response to the WFTMR Consultation, paragraph 1.6.
[14] Fern Trading, a large lending business, has "committed to fund at least £500m of capital into Jurassic and Swish over the next five years", and expects to inject "more equity capital … as further additional economically viable locations are identified". Fern Trading response to the WFTMR Consultation, paragraphs 8 & 9.
[15] Swish Fibre response to the WFTMR Consultation, page 3, bullet 2.

postcodes … could support at least one giga-bit capable network on a commercial basis".[16]

2.10. These plans make it very hard to predict now the future boundary between areas where two or more networks are viable, and areas where there is scope for commercial build by only one network. Indeed, the evidence today suggests that, come 2026, there will be areas within Area 3 where providers other than Openreach will have extended their network or built new network; similarly, in Area 2 there may well turn out to be areas where Openreach hasn't built but others have.

2.11. Given this uncertainty, we don't see advantage in Ofcom trying to predict market boundaries now and designing a bespoke regulatory model for Area 3 (the 'forecast RAB' approach). It is far better (and simpler) to apply the regulatory package proposed for Area 2 nationwide, thereby taking a more agnostic approach to the question of *who* builds, but with the re-assurance that our committed plans will reduce uncertainty on *when* build will occur.[17]

2.12. Ofcom agrees that the same regulated price levels ought to apply nationwide given uncertainties about roll-out, at least for the first review period. It comments on the benefit of aligning pricing approaches in Areas 2 and 3 as this "*will provide the same support to rival network investors regardless of where they plan to build*."[18] But Ofcom proposes to achieve this through a calibration of its bespoke Area 3 model.

2.13. We explain further below why extending Area 2 regulation is preferable to this approach as it will deliver the clarity and predictability we need to plan and finance our committed build. It will also incentivise others to play their part in building FTTP in Area 3 and be simpler to administer.

Fully extending the pricing regime from Area 2 will support our investment (and that of others)

2.14. The regulatory measures needed to support our 3.2 million build (and the plans of others in Area 3) are the *same* as those being considered for the prospectively competitive parts of the country (Area 2).

2.15. The key requirements are: a price environment which is conducive to investment and which is stable over investment horizons; support for the migration of customers to enhanced fibre services; and clarity that Ofcom will fairly treat commercial 'bets' should regulation be needed in the future.

2.16. We note, and welcome, that Ofcom's proposed calibration of its 'forecast RAB' approach will partially deliver these requirements (i.e. from 2021 to 2026) but questions about the long term regulatory approach and the fair bet remain which are critical to resolve given the long term investment horizons (spanning decades) for our (and others') fibre build.

2.17. The requirements for our fibre build in Area 3 can be met by explicitly extending the package of regulation proposed for Area 2 nationwide, but with better

[16] Jurassic Fibre response to the WFTMR Consultation, paragraph 15.
[17] Ofcom should signal today that an SMP finding (and associated SMP conditions) *could* apply to operators other than Openreach depending on the developments in competitive conditions which Ofcom finds when it does its market analysis as part of future reviews.
[18] Area 3 Consultation, paragraph 3.51.

signals about Ofcom's longer-term policy (which are also needed to support our broader deployment).

A stable price environment conducive to long-term investment

2.18. We fully support Ofcom's proposed 'pricing continuity' policy to keep prices for a set of baseline wholesale services the same in real terms (with a modest premium for full fibre services). This policy strikes the right balance between promoting competitive investment and protecting customers during a transformative period (spanning decades) as the UK transitions away from copper and towards fibre.

2.19. But Ofcom could do more to signal their policy intent over the longer term. Specifically, it should clarify that this policy is intended to endure for the entirety of this transformative period (rather than for 10 years which Ofcom has indicated orally in its interactions with investors and analysts).

2.20. This also holds for Area 3, where BT, and other firms making long-term investments, need to know that Ofcom's policy for supercharging full fibre investment will endure beyond the end of the upcoming five-year market review period. Full fibre investment is recovered over decades, i.e. much longer than five years. For the Area 3 portion of our overall build plan, for example, we estimate that over 90% of the capital cost will be incurred in the first five-year market review period with revenues to pay for it following later.[19]

2.21. We (and other fibre providers) need this long-term signal in order to commit capital today to deliver world-class connectivity at scale and at pace in line with the Government's ambition, and for that to include Area 3 as per our voluntary commitment. Such a policy is also consistent with the Government's Statement of Strategic Priorities which makes clear the need for stable and long-term regulation.[20]

2.22. Customers will see great outcomes during the transition as rivals race to deploy and offer keen prices to promote take-up of enhanced services. Although the risk is low, anchor regulation (namely a cap on prices of GEA 40/10 FTTC moving to 40/10 FTTP with a modest premium) will protect customers from high prices as the transition occurs.

2.23. We see no case for this anchor regulation moving to a higher speed product. A regulated 40/10 wholesale product provides customers with access to a relatively low-priced, very reliable (particularly on FTTP) product which will act as an effective substitute (and source of price constraint) for higher speed variants for many years to come. The migration of customers to the higher 80/20 wholesale product (incentivised through commercial contracts offering migration price discounts) does not change this. These contractual prices have been constrained by competitive pressures, and by the need to price reasonably (i.e. not

[19] It is likely that connection costs will not all have been incurred for all the premises passed by 2026 as connecting a premise would require a customer to demand it.
[20] DCMS, 2019. *Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services* ('DCMS Statement of Strategy Priorities').

excessively) above the anchor, otherwise migration would be resisted by customers. This will remain the case at any contract renewal.[21]

2.24. Equally, it is critical that Openreach has pricing flexibility for products above the 40/10 anchor so that, as demand strengthens, all fibre providers have the opportunity to earn incremental value which will contribute to cost recovery and a reasonable return on investment in ultrafast broadband. This is consistent with Ofcom's policy objectives and with Government's Statement of Strategic Priorities which expressed the view "*that promoting investment should be prioritised over interventions to further reduce retail prices in the near term*."[22]

Support for prompt migration to enhanced fibre services

2.25. Our investment in Area 2 and Area 3 requires regulation to support the migration of customers to enhanced fibre services so that we minimise the time (and associated cost) of running two networks. We continue therefore to be supportive of Ofcom's proposals to adjust access supply remedies to support copper retirement, i.e. allowing Openreach to implement a stop-sell of legacy services where FTTP has been deployed to 75% of an exchange area and that legacy regulation could be withdrawn after a minimum of two years (when an exchange can be defined as ultrafast enabled).[23]

Clarity that Ofcom will fairly treat commercial bets should further price regulation be needed in the future

2.26. Ofcom says that it will set charge controls in Area 3 (as part of its 'forecast RAB' approach) "*by giving regard to allowing the fair-bet on BT's investments*."[24] We welcome the statement but Ofcom provides no explanation of what it means.

2.27. Our investment case (in Area 2 and Area 3) looks well beyond the next review period over multiple decades. There are inevitable uncertainties over this period – even with our best efforts and experience and our confidence in delivery, things might not turn out as well as we expect. This needn't get in the way of a commercial deployment provided we expect the upside, on average, to outweigh the downside; put another way, there is a positive *expected* return.

2.28. This is where the fair bet is critical because, in principle, it ensures that sufficient upside opportunity is left in play so that investors remain willing to bear the risk involved and proceed with the investment. This doesn't tilt the stakes; investors could still see poor returns *if* things go wrong. But it does mean that investors can be confident that, *if* things go well, and *if* Ofcom decides to regulate, it will not unreasonably remove rewards.

2.29. Our Area 3 deployment forms part of our 20 million premise deployment in relation to which we identify a range of risks which are broadly similar across areas. As we have said before, we see the following demand and cost risks across all areas:

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[21] We therefore agree with Ofcom's position that customers on higher speed products are (and will be) protected from the risk of excessive prices including in Area 3. We agree with Ofcom that the 40/10 anchor will constrain the prices for higher bandwidth products, and we agree that the Openreach GEA discount contract (in place until 2023) is also relevant. Area 3 Consultation, paragraphs 3.34 to 3.37.
[22] DCMS Statement of Strategic Priorities, paragraph 18.
[23] Openreach response to WFTMR Consultation, paragraph 5.2.
[24] Area 3 Consultation, paragraph 3.47.

1) **Copper customers may not migrate to fibre services as quickly or to the extent expected**. Copper migration will be managed by Openreach in consultation with its customers and the support proposed by Ofcom will help. But, even allowing for these levers, there is uncertainty about the commercial and operational processes involved (which creates risk). Deals with Openreach's wholesale customers on terms which incentivise migration are uncertain (including because CPs have other options than partnering with Openreach), and there could be a long tail of complex cases.[25] Ofcom argues that its levers in will "*significantly reduce the risk that customers will not migrate to [Openreach's] fibre network*". We agree that risk is reduced but it is far from being removed.
2) **Fibre customers may not take up higher speed products as expected** or their willingness to pay may be lower than expected. Specifically, customers may favour the 40/10 fibre anchor product for longer than expected rather than moving up the speed tiers to higher value products. And even if take-up occurs, the premium that can be charged for these products may be modest if demand is weak. Ofcom's own analysis does not envisage strong demand within the review period. It expects a large proportion of customers to stay on standard broadband and 40/10 anchor services and that the ability to charge higher prices for higher speed ultrafast products will be limited because the anchor product is an adequate alternative and will be available at a regulated price.[26] This creates uncertainty in our ability to generate incremental value which cannot be mitigated through regulatory intervention.
3) **The costs of full fibre build are uncertain.** Full fibre build costs are uncertain as they depend on a range of local and other factors which are difficult to predict with accuracy. This includes, for example, labour costs given possible limitations on the use of overseas labour, as well as difficulties in getting timely and cost-effective access to land, tenanted properties and public roads. We welcome the Government's intention to "*work with industry to identify and mitigate the practical challenges*" but for BT (and other fibre operators) cost risks remain significant until these mitigations are found and implemented. [27]

2.30. In Area 3 there is a further risk that the contribution to BT's fibre build from legacy services may be lower than expected if Openreach's copper lines are overbuilt more quickly and extensively by rival fibre providers (whether commercial or government funded deployment). The access remedies which Ofcom has imposed in Area 3 (duct and pole access, and dark fibre); the proposed consent requirement for geographic discounts; and entry via government-funded schemes to address the highest cost premises in Area 3[28] all create uncertainty about the number of lines Openreach will be able to rely on to help recover the cost of its fibre investment in future.[29] This risk includes potential line loss due to the emergence of rival technologies (as well as fibre overbuild). There have been

[25] Some of the complexities can include the need to access private property, local authority planning permissions and similar issues.
[26] WFTMR Consultation 2020, Volume 4, paragraph 1.30 and 1.32 to 1.33.
[27] DCMS, 23 July 2018. *Future Telecoms Infrastructure Review,* page 6.
[28] As things stand, it is highly uncertain how far publicly subsidised FTTP build in Area 3 is likely to go; which providers may win in public procurement exercises; or how much commercial FTTP deployment there will be.
[29] The last 10% of UK customers account around one third of the number of all Area 3 customers served by Openreach.

recent announcements that indicate new gigabit technologies are viable in the UK, including in rural areas.[30]

2.31. In light of these uncertainties, we think a more comprehensive statement is needed by Ofcom on how the fair bet will apply in practice. We think this has the following components:

- **An upfront statement of the project returns BT should be allowed to shoot for**: a fair treatment of our commercial bets would be to leave in play sufficient upside that the 20 million FTTP investment remains attractive (because, even with regulation, the expected return is no lower than the FTTP project weighted average cost of capital ('WACC') which we calculate to be [✂] %[31]). This equates to Ofcom allowing (not guaranteeing) BT to earn a project lifetime return of [✂] %.

- **An upfront statement of the period of time within which Ofcom will hold off imposing more regulation of fibre services**. In the early years of our investment we will be investing heavily and testing different commercialisation options. The risks we face will also take time to crystallize. Ofcom should stand back during this phase (as it did for FTTC) to allow this investment and innovation to play out. Ofcom has already orally indicated its intention not to impose further price regulation on full fibre services for the initial two market review periods (until 2031). This is welcome but should become an explicit commitment. It should also be fifteen years, not ten years (the period allowed for FTTC) given that our paybacks for this investment will be considerably longer than for FTTC – in the region of [✂]years.

- **A description of the market circumstances that would underpin any decision to regulate and a statement of the likely approach to further regulation should it be needed**. After 15 years, regulation would only be needed if market conditions indicated a risk of harm to customers due to market power with little prospect of competition emerging. A statement of how Ofcom would assess market power and competition conditions at this point would help make the regime more transparent and predictable. Equally, a statement of how Ofcom would treat the assessment of costs, early investment losses, evolving asset utilisation, as well as leaving legitimate upside in play when setting price controls, would also help with transparency and predictability.

2.32. Other fibre providers are also interested in whether (and if so, how) regulation might curtail future returns, particularly in areas that are found to be un-competitive where they (and not Openreach) may be found to have market

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[30] BT Group response to the WFTMR Consultation, paragraph 3.34. This is reinforced by other recent developments such as Facebook preparing to launch wireless broadband. See for example: ISP Review, 5 June 2020, Facebook Prep New 60GHz Terragraph Wireless Broadband Tech; and TotalTelecom, 11 August 2020, UKWISPA showcases Terragraph from Facebook as first three global vendors prepare Fixed Wireless Access for Gigabit Britain.

[31] The WACC Ofcom proposes is appropriate for FTTP services in its WFTMR Consultation for FTTP is significantly below our FTTP project WACC. Ofcom accepts that higher operating leverage and higher income elasticity of demand result in higher systematic risk for FTTP services than for FTTC services. But Ofcom achieves a differential between FTTP and FTTC systematic risk not by increasing the asset beta for FTTP, but by lowering that for FTTC (to align it with Openreach copper assets, thereby lowering its asset beta from 0.65 to 0.57). Only six months ago (in the BCMR 2019 Statement), Ofcom categorised FTTC in the 'Other UK Telecoms' category. We strongly disagree with this re-categorisation, as we set out our response to Ofcom earlier this year, and as we explain further in section 4 below (including by reference to the specifics of Area 3).

power. Openreach regulated prices may also affect their prices (and investment returns) even if they are not regulated directly.[32]

2.33. We have real doubts as to whether (and if so how) the 'forecast RAB can be designed so as to give investors the comfort they need that regulation in Area 3 will allow a reasonable opportunity for reward, given the risks they bear in committing capital to the 3.2 million build. [✂]. Details are needed, therefore, on how the forecast RAB will leave in play the possibility of upside in order to ensure that the deployment can proceed with reasonable return expectations. This is explained further in the following section.

[32] Stakeholder responses to Ofcom's January WFTMR Consultation confirm that the fair bet, including the policy commitment to long term price stability is important to other fibre builders. For example, Virgin Media made reference to our FY2019/20 results call and noted that '*Ofcom should be clear about what return BT will be allowed to earn on its fibre investments*' and that it should state that it is comfortable with Openreach earning a level of return as indicated, on the understanding that the downside risks will also be borne by investors, not consumers (Virgin Media response to the WFTMR Consultation paragraphs 37 & 38). CityFibre 'fully support the fair bet principle' and 'highlight that the concept is relevant for any firm who may be impacted by regulation (directly or indirectly), both now and at some point in the future' (CityFibre response to the WFTMR Consultation, paragraphs 6.71 to 6.83). Gigaclear would 'welcome Ofcom's commitment to extending the same principle of 'fair bet' [to other] operators that achieve scale in Area 3'(Gigaclear response to the WFTMR Consultation, paragraph 124).

3. For the proposed forecast RAB model to support our planned build it must be significantly improved

3.1. Although Ofcom sees benefit in a consistent pricing approach across Areas 2 and 3 between 2021 and 2026 (to support network investment), the regulatory model in Area 3 the ('forecast RAB' approach) is different in principle from the approach in Area 2. The forecast RAB explicitly allows Openreach to recover fibre investment costs across customers taking existing copper services as well customers who take up the new fibre services.[33] Ofcom proposes to set regulated prices with a view to allowing an expectation of cost recovery across the BT fibre and copper network (over the lifetime of those networks).[34]

3.2. To achieve this, Ofcom provides its estimate of the shortfall in the investment case for our planned fibre deployment to 3.2 million premises. The 'fibre shortfall' thus comprises: Openreach's incremental costs and revenues from deploying FTTP to 3.2 million premises, compared against the costs/revenues from continuing to operate the legacy (copper) network.[35] Ofcom then looks at possible cost recovery profiles that are consistent with an expectation of cost recovery over 20 years. It does this to ascertain whether, for the period of 2021 to 2026, flat, in real terms, pricing of legacy services (i.e. indexation) and no charge control of higher bandwidths, would provide BT with a reasonable *expectation* of cost recovery over the investment lifetime.[36] Ofcom concludes that it would.[37]

3.3. In future charge control periods (post 2026), Ofcom intends to re-base its forecasts (of volumes, costs and revenues – i.e. the fibre shortfall), but still with the aim of allowing an expectation of cost recovery across the fibre and copper networks. Ofcom says it can adjust pricing trajectories in future charge controls should it emerge that there will be a material risk of over- or under-recovery.[38] It is also willing to consider mechanisms to incentivise efficiency improvements (e.g. glidepaths), and will give regard to allowing the fair bet on BT's investment.[39]

3.4. We set out in the section above why our planned investment in Area 3 can be supported by extending the regulatory model proposed for Area 2 to the entirety of the country. We don't, therefore, see advantage in designing a bespoke regulatory model for Area 3. But if Ofcom does decide to proceed with the forecast RAB it will need to be properly specified, ahead of Ofcom's 2021 statement, with the usual rigour associated with setting charge controls. Even then, as explained below, we are unclear whether it can be designed to give investors the comfort they need that regulation in Area 3 will allow a reasonable

[33] Area 3 Consultation, paragraph 2.7.
[34] Area 3 Consultation, paragraph 3.19.
[35] Area 3 Consultation, paragraph 3.20.
[36] Area 3 Consultation, paragraph 3.23.
[37] Area 3 Consultation, paragraph 3.30.
[38] Area 3 Consultation, paragraph 3.30.
[39] Area 3 Consultation, paragraph 3.47.

opportunity for reward, given the risks they bear in committing capital to the 3.2 million build. [✂].[40]

3.5. The rest of this section summarises the errors we consider will need to be rectified in order to reach a more robust estimate of the net costs of our planned fibre investment, as well as Ofcom's assumptions we consider should be amended (summarising more detailed analysis by Openreach with which we agree). With the errors and assumptions amended, Openreach finds that a pricing policy of at least two periods of indexation of legacy services is warranted (consistent with a simple national solution).[41] We then set out some options available to Ofcom - within the constraints of the forecast RAB - to leave reasonable upside in play in order to allow the investment to proceed, which we consider to be significantly more complicated to achieve than adopting the same model as in Area 2 (with further clarity on how the fair bet will apply as set out in section 2).

A more robust view of the 'fibre shortfall' and the associated estimated future cost recovery path would be needed

3.6. There are a range of errors in Ofcom's estimate of the shortfall in BT's investment case for its planned Area 3 fibre deployment. Ofcom has also applied unrealistic assumptions, particularly on potential efficiencies that can be achieved by Openreach in the delivery of legacy services. If Ofcom does decide to proceed with the forecast RAB approach, the fibre shortfall will need to be properly specified with the usual rigour associated with setting charge controls, Specifically, Ofcom must conduct a more robust assessment of projected costs and revenues consistent with a reasonable view of how market conditions in Area 3 are likely to evolve.

3.7. As regards errors and assumptions that require amendment, we summarise below Openreach's findings as set out in its separate response. All estimates are presented in present value ('PV') terms and use a WACC of 7.9% for fibre costs and revenues in order to enable a like-for-like comparison with PV numbers quoted by Ofcom. BT does not accept that this is the right discount rate to use for fibre as set out in section 4.

- **Build and provisioning costs**. Ofcom uses build and provisioning costs in its modelling which are lower than those quoted in its Area 3 consultation document.[42, 43] Adjusting the costs to align with those in the consultation document has the effect of *increasing* Ofcom's estimated expected fibre shortfall (mid-point) of £1.2bn by about £290m.

[40] We note that while the Area 3 Consultation was published on 29 July, Ofcom only published its modelling on 12 August, leaving limited time for review. As set out in this section (and in Openreach's response), Ofcom's modelling contained inaccuracies and assumptions inconsistent with its consulted policy position which resulted in the need for follow up clarificatory conversations between Openreach and Ofcom and further limited the time available for BT to meaningfully review the forecast RAB. As such, we may want to submit supplementary analysis which we would expect Ofcom to fully review and consider.
[41] Openreach, 21 September 2020. Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026: pricing wholesale local access services in Geographic Area 3 with a BT Commitment to deploy a fibre network, 'Openreach response to Ofcom's Area 3 Consultation'.
[42] Area 3 Consultation, paragraph A2.12.
[43] Ofcom acknowledges this error. Ofcom, September 2020. *Pricing wholesale local access services in Geographic Area 3 with a BT Commitment to deploy a fibre network – Clarificatory questions and responses* ("Area 3 Clarifications"), Question 3.

- **Accelerated depreciation of copper costs**. Ofcom's modelling overstates the value of indexation by about £130m by not accounting for the effects of accelerated copper depreciation. This is because cost-based prices should have been higher (and so the increment from indexed prices lower) if the modelling had correctly accounted for accelerated copper depreciation.[44]

- **Copper volumes**. Ofcom assumes that Openreach will retain all copper lines in Area 3 for the whole 20-year period.[45] This does not reflect the fact (which Ofcom accepts) that other providers have ambitions to build in Area 3 and £5bn of public subsidy will be competed for by several providers. Copper lines will also reduce due to the decline of multi-line premises. A loss of 2 million lines would reduce the incremental revenue from legacy services by about [✂] m.

- **Fibre volumes**. Ofcom uses inconsistent fibre volumes for different parts of its shortfall estimate. To estimate the shortfall, the build and connection costs are based (correctly) on 3.2 million homes passed, but in its estimation of the incremental revenue from the FTTP premium Ofcom assumes, up to 2031, that Openreach would be selling FTTP to 4.8 million homes; and, from 2031, 8.8 million homes. Correcting this reduces the incremental revenue from FTTP services by about £85m.

- **Efficiency assumptions**. Ofcom assumes that 4.8% efficiency in operating costs can be achieved year on year for 20 years.[46] As Openreach set out in its response, this would amount to a total unit operating cost reduction of over 70% over the period. It is unrealistic to assume that such a high level of efficiency can be achieved over such a prolonged period. Estimating such ambitious operating cost efficiencies over such a long time appears unjustified (given overall productivity trends in the economy) and poorly aligned with the consumer interest in the context of the productivity increases the telecoms sector is achieving by virtue of continuing investment in new technology (which would suggest Ofcom should err on the side of caution).[47] To the extent that such long-term cost efficiency assumptions are required to underpin Ofcom's regulatory approach, these should at least reflect the long-term trends seen generally in the market economy.[48]

3.8. With the errors and assumptions amended, Openreach finds that an extension of the proposed pricing regime from Area 2 to Area 3 (including at a minimum of two periods of indexation of legacy services and the fibre anchor is warranted to provide Openreach a fair opportunity to recover its cost over the lifetime of the investment. As noted above that is on the basis of Ofcom's estimated cost of capital and without taking into account the need for sufficient upside potential (consistent with the fair bet) as explained in the section below.

[44] Although this appears to be offset by another error in Ofcom's modelling which results in overstating cost-based charges hence underestimating the value of indexation. Area 3 Clarifications, question 7.
[45] Area 3 Clarifications, question 4.
[46] Area 3 Consultation, Table A2.3 & paragraph A2.27 and Area 3 Clarifications, question 13.
[47] ONS, July 2020. Improvements to the measurement of UK GDP: an update on progress.
[48] Openreach response to Ofcom's Area 3 Consultation, pages 24-25.

To invest we need assurances on how the forecast RAB will fairly treat our commercial bet

3.9. We support Ofcom's proposed regulatory approach for Area 2 which, with more clarity on the fair bet, can effectively support ultrafast investment at scale and at pace. It works particularly well where several firms have investment plans, but outcomes are uncertain (which is also the case for Area 3, as set out in section 2).

3.10. Customers are well served by this approach. They see the benefits of investment in enhanced products and services, which are efficiently and innovatively delivered through the process of rivalry. If demand doesn't materialise or a firm doesn't compete successfully, then shareholders, and not customers, bear the risk of poor returns (but with the prospect of a reasonable reward for bearing this risk through the fair bet).

3.11. As we said in our WFTMR response, a regulatory asset base ('RAB') model, as typically used in sectors with little demand risk and little competition, is very different.[49] Regulated prices set in accordance with a RAB model to recover investment costs will usually provide a reliable source of revenue (provided outcomes are delivered and the efficiency challenge is met) as volumes will not be subject to competition. Customers, rather than shareholders, bear the risk of cost recovery - lower volumes implying higher regulated prices to achieve cost recovery - but with some risks shared through incentive mechanisms. These mechanisms are used to encourage efficiency, mimicking competitive drivers for efficiency which are presumed to be largely absent.

3.12. RABs can be very effective in supporting new investment but are not common in telecoms markets which are typically more competitive and (for new products and services which are more discretionary) feature more generally greater demand risk (including potential future constraints from new technologies and customer willingness to pay for enhanced services). Supporting investment using a RAB where there is competition and demand risk raises some complicated design issues, which have not yet been addressed by Ofcom in relation to the proposed 'forecast RAB'.

3.13. We note that Ofcom's forecast RAB approach will deliver the same regulatory price levels as in Area 2 and the same pricing flexibility for higher speed products in the first review period. On its face, therefore, it provides the same regulatory enablers as in Area 2, at least between 2021 and 2026, which we welcome. But beyond 2026, we don't know how the model will work to deliver a reasonable expectation of cost recovery and the possibility of upside to compensate for risk. This is a major obstacle given the long-term nature of the investment (which according to Ofcom's model as corrected by Openreach, sees around one fifth of the shortfall recovered after five years and about half still remaining to be recovered after year 10) and the risks involved (including in Area 3).

3.14. As noted, a traditional RAB would see customers bearing cost recovery risk. Subject to some risk sharing through incentive mechanisms, regulated prices adjust upwards if (efficiently incurred) costs turn out to be higher than projected, and downwards if they turn out to be lower. Ofcom seems to envisage precisely such an adjustment. It indicates that Ofcom will *"have the ability to adjust pricing*

[49] BT Group response to WFTMR Consultation, chapter 5.

trajectories in future charge controls should it emerge that there will be a material risk of over- or under-recovery."[50] Ofcom also envisages incentive mechanisms "*allowing BT to keep any profits that it earns by reducing its costs over and above the savings envisaged when the charge control is set.*"[51]

3.15. Achieving cost recovery for our 3.2 million premises committed build will depend on the value we can generate from fibre services relative to our build costs; as well as the evolution of our copper costs and volumes, which creates the opportunity for a revenue contribution from legacy services. Taking a reasonable view on these parameters (fibre value; fibre costs and copper costs and volumes) we agree with Openreach that at the very least two periods of indexed legacy prices will be required to provide a reasonable expectation of cost recovery over 20 years.

3.16. Mechanisms could, then, be created to drive efficiency incentives for fibre by re-basing forecasts with an appropriate lag. The use of forecasts and not actuals in calculating the shortfall, for example, should encourage productive efficiency and (as for traditional CPI-X price controls which have always included comparable incentives) ensures that Openreach is fully motivated to expand demand.

3.17. Such a model would aim to give BT the ability the recover costs (and a reasonable return) over 20 years with scope for higher or lower than the WACC as allowed through the incentive mechanisms (but allowing an expectation of WACC, on average, assuming symmetric opportunities/risks).

3.18. What remains unclear, however, is how such a model can deal with residual risk – i.e. risks which regulation (and ultimately customers) cannot mitigate, especially if Ofcom wishes to support competitive build where it is possible in Area 3 (through DPA and pricing restrictions). For example, if copper lines are over-built by rivals more rapidly and extensively than envisaged, the opportunity for legacy revenue to contribute to our fibre build is eroded (and cannot be regained).[52] Equally, the scope to rectify cost under-recovery by allowing us to charge more for fibre services may be limited if demand is weak, or alternative (and more cost efficient) technologies to full fibre restrain prices in future. We have set these risks out further in section 2 above.

3.19. Taken together, these factors create an asymmetric commercial case giving an expected return at less than the cost of capital. This would not be in line with Ofcom's intention to "*set any charge controls by giving regard to allowing the fair-bet on BT's investments*".[53]

3.20. We explain in section 2 how this can be resolved should Ofcom decide to extend the Area 2 approach to the entirety of the country. If, however, Ofcom proceeds with the forecast RAB, then an explicit allowance must be made for uncertainties

[50] "We are satisfied that the magnitude of this range [for the extra revenue from indexation over prices decreasing in the counterfactual] is consistent with our fibre shortfall estimates [the negative return on the investment] and we note that we will have the ability to adjust pricing trajectories in future charge controls should it emerge that there will be a material risk of over- or under-recovery", Area 3 Consultation, paragraph 3.57.
[51] Area 3 Consultation, paragraph 3.57.
[52] Assuming a shortfall of £1.5bn to be recovered over 20 years and 7.9 million customers, the contribution to the shortfall per copper customer might need to be around £24 per year. If 3 million premises are lost to altnets, or through government schemes, then the contribution per customer would need to increase further by about £15 a year. These estimates are based on the Ofcom model and value of indexation at year 10 spread across 4.9 million instead of 7.9 million lines.
[53] Area 3 Consultation, paragraph 3.47.

that are exogenous to Openreach and outside Ofcom's control to rectify. This would require Ofcom to set charge controls in such a way to target a return (the cost of capital) plus a risk premium allowing investors to expect, on average, to earn the WACC.

3.21. In line with this, such a risk premium would also need to reflect the possibility that Ofcom mitigations cannot ensure Openreach is kept on a pricing trajectory which provides for cost recovery even allowing for a contribution from legacy services which might be front-loaded to mitigate line loss risk.

3.22. Put simply, the forecast RAB will need to provide investors with an expectation of earning the cost of capital *on average*. This is addressed in Area 2 by regulation stepping back (beyond the anchor regulation) but with the fair bet creating the potential for upside should further regulation be needed later. Replicating this upside potential with a forecast RAB model is much more complicated and requires a combination of incentive mechanisms and a risk premium.

The proposed extension of the consent regime to FTTP in Area 3 is neither necessary nor proportionate

3.23. Ofcom's reassessment of the likelihood of competitive build in Area 3 in light of stakeholder responses has led it to propose extending the restrictions on geographic pricing for FTTP to Area 3. As we have said in our WFTMR response we consider the proposed restrictions on FTTP (and leased lines) pricing to be unnecessary and disproportionate in Area 2, and the same holds for Area 3.[54]

3.24. We expect Openreach's network competitors to prioritise low cost areas as well as to reflect this in their pricing. They will also have the flexibility to experiment with pricing options to drive take-up, including via localised discounts or long-term partnerships with retail providers.

3.25. Just like new market entrants (and unlike Virgin Media), Openreach is currently building its fibre network. To recover its investment costs it must be able to price innovatively and experiment to attract customers to the new network. As part of this, Openreach will need to reflect local conditions of cost and demand (within the bounds of ex post competition law and Ofcom's existing powers to intervene on an ex ante basis).[55] A requirement that Openreach must seek consent (including where there is no indication that other networks have deployment plans) unduly restricts its commercial agility without justification.

3.26. As we set out in our WFTMR response, the playing field between Openreach and other full fibre providers is much more level than Ofcom set out, a testament to the success of Ofcom's existing measures to reduce barriers to entry and expansion (most notably duct and pole access and the prospect of stable pricing). The market is fully contestable for rival investment with Virgin Media, not

[54] As we set out in our WFTMR response at paragraph 4.5, we think that customers would gain more through investment and keener prices (and smaller players would still be protected) if FTTP and leased lines were excluded entirely from Ofcom's proposed restrictions on geographic discounts; and for existing restrictions (on FTTC and G.Fast) to be limited to preventing the targeting of discounts at new entrants, and be limited to Area 2. For the avoidance of doubt, although we have not set out those arguments in detail here, we refer Ofcom to that submission and repeat those observations.

[55] See Openreach response to WFTMR consultation, chapter 4.

Openreach, being the leading ultrafast provider today, and on a forward-looking basis given its ambition to extend its network to up to 80% of the country.[56]

3.27. By limiting Openreach's options to compete fairly for customers for a network yet to be built, Ofcom will reduce our ability to bring enhanced services to customers in harder to reach areas.

3.28. If Ofcom proceeds with this proposal, Ofcom will need to demonstrate why it is necessary to prevent material harm to competition and – should it find this threshold to be met - provide more detailed guidance explaining in which circumstances geographic pricing would raise concerns. The latter would need to include demonstrating that the benefits of any of its proposed measures to address competitive harm are likely to outweigh the costs.

3.29. To reflect the greater level of competition expected in the timeframe of this market review period, Ofcom should also set a clear end date for the intervention so as to encourage only sustainable entry. Protecting unsustainable entry would result in costs borne by customers, who would pay higher prices for ultrafast services they could otherwise have received at lower cost.

3.30. To mitigate against this risk, entrants need to know upfront that they will need to compete with Openreach without protection at some point (as Ofcom accepted in 2018). They should be told when this is (through a sunset provision or, at least, clarity on criteria and thresholds for lifting the restrictions) so they can develop their business plans. This would help avoid protracted regulatory disputes in which rivals rely on general statements from Ofcom which are mis-interpreted as a guarantee of particular market share outcomes.

3.31. Ofcom should also confirm that the principles established in competition law will form the basis of any assessment as these have been designed to assess (or reliably predict) competition effects. It is only appropriate to limit Openreach's conduct where Ofcom can show that Openreach's pricing has (or will be likely to) materially harm end customers.

Re-opening of the proposed regime mid-review should be avoided

3.32. The Area 3 deployment to 3.2 million premises forms part of our broader ambition which we announced in May 2020 to deploy to 20 million premises by the mid- to late-2020s. Ofcom can be confident in our capability and intention to invest to fulfil this ambition with the right conditions.

3.33. Under its forecast RAB approach Ofcom proposes a reconciliation mechanism whereby, should Openreach not build in Area 3 to the level planned by 2026, Ofcom would adjust the charge control for legacy services in the subsequent 2026-2031 charge control period. This mechanism would unwind the benefit of accelerated depreciation of legacy assets brought forward to the 2021-26 charge control period in proportion to the number of premises by which we fell short. Specifically, Ofcom states that it can set lower prices for MPF and FTTC from 2026 to ensure that BT will not over-recover costs if BT falls short in meeting its commitment by up to 1.3 million premises.

[56] See our WFTMR response, chapter 3.

3.34. We acknowledge this is a reasonable mechanism and consider this should, in itself, be sufficient for Ofcom to ensure the prices customers pay will reflect the amount of full fibre deployed over time. We also consider this is a reasonable approach for dealing with possible delays,[57] in particular in the context where the macro-economic environment (and its impact on demand) as well as changes in the availability and cost of inputs in global markets, including labour as well as the wider impact of COVID-19 are uncertain.

3.35. As we have described above, the first five-year period makes only a limited contribution to recovery of the shortfall. Were BT not to achieve the full 3.2 million during the first charge control period, for any reason there is plenty of time for Ofcom to revise its shortfall estimate and adjust prices accordingly in the subsequent charge control period.

3.36. Therefore, we consider that it would not be appropriate to re-open the market review mid-review (or to signal the potential for this today). This would create regulatory uncertainty and instability about pricing expectations, impacting BT but also other providers looking to commit their investment in Area 3 now (including both commercial and deployments with Government funding).

[57] Whereby Ofcom could simply adjust the 2026-2031 charge control so as to ensure we do get the benefits of indexation as originally assumed in our case to build, to the extent of being made NPV neutral, in the 2026-31 charge control period, so as to allow us to finish the 3.2 million build, then.

4. Ofcom's forecast WACC estimate should be revised to reflect the higher systematic risk of full fibre

4.1. The cost of capital for fibre access services which Ofcom estimates today matters greatly as it will determine the future prospects for, and the parameters of, any further fibre pricing interventions Ofcom may decide to make in future (i.e. beyond the existing anchor regulation). It also forms part of Ofcom's assessment of the fibre shortfall in Area 3.

4.2. But, as we set out in our WFTMR response, the cost of capital Ofcom proposed in its WFTMR consultation for FTTP (and is using to estimate the fibre shortfall) is significantly below the cost of capital we estimate as per our FTTP investment case, and does not, therefore, provide the opportunity for returns consistent with it.

4.3. As set out in our WFTMR response, fibre investment will have a magnified level of systematic risk because of: (i) the higher income elasticity of demand for fibre services relative to legacy services; and (ii) the FTTP investment involving a high level of operating leverage (the greater sensitivity of profits to changes in revenues for projects with high fixed costs) than for copper and FTTC assets.[58]

4.4. Both of these factors increase the systematic risk associated with FTTP and should be reflected in the FTTP asset beta. Our estimate of a (pre-tax, nominal) WACC of [✂] % for FTTP reflects our quantification of higher operating leverage associated with our FTTP investment. But without an adjustment for the higher income elasticity of demand for fibre services, our estimate is conservative.

4.5. We see no reasons why income elasticity of demand and operating leverage for FTTP would be any lower in Area 3 than in Area 2. In fact, because of the higher expected build cost in Area 3, a large proportion of which is fixed cost, we would expect the operating leverage in Area 3 to be even higher than in Area 2. Our estimate of the FTTP WACC of [✂] % should be viewed as conservative in this context.

4.6. Ofcom achieves a differential between FTTP and FTTC systematic risk not by increasing the asset beta for FTTP, but by lowering that for FTTC (to align it with Openreach copper assets, thereby lowering its asset beta from 0.65 to 0.57).[59] This proposed change, if confirmed, would represent an unanticipated change to regulation after assets have been sunk creating regulatory uncertainty which we believe is harmful to investment incentives. We are concerned that it is also inconsistent with Ofcom's legal obligation[60] to take account of the extent of BT's investment when setting charge controls; especially given Ofcom imposed a charge control on Openreach's FTTC 40/10Mbps product as part of WLA 2018, it

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[58] For full discussion, see Annex to the BT Group response to the WFTMR Consultation, paragraphs A6.61 to A6.79.
[59] BT Group response to the WFTMR Consultation, paragraphs 3.36 to 3.37; and the Annex to our response, paragraphs A6.50 to A6.60.
[60] See section 88(2) of the Act.

assumed that future regulation would allow Openreach to recover the undepreciated FTTC asset value.[61]

4.7. We do not therefore consider Ofcom's estimate of a FTTP WACC based on a lower asset beta than for the Group average is appropriate. Given the magnitude of the investment commitment that BT is making, it is critical that Ofcom considers this issue further before issuing a policy statement about Area 3.

4.8. We also note Ofcom is yet to update many of the parameters in its WACC calculation since the 2019 BCMR. If Ofcom makes any material changes to its parameter estimates or changes its methodology, we expect to be provided ample opportunity to review and comment on Ofcom's proposals prior to the final WFTMR determination.

4.9. As also described in our WFTMR response, in summary, we find Ofcom's estimates of the total market return, tax rate and cost of debt too low based on our review of the evidence. Together, we estimate a higher WACC than Ofcom for these services:[62]

- For MPF, we estimate a WACC (nominal, pre-tax) of 7.6% compared to Ofcom's estimate of 7.1%
- For FTTC and local access dark fibre, we estimate a WACC of 8.4% compared to Ofcom's estimate of 7.1%
- For FTTP, we estimate a WACC [✂]% compared to Ofcom's estimate of 7.9%

4.10. A WACC for fibre access services estimated at the level proposed by Ofcom creates [✂]. We therefore urge Ofcom to recognise the factors which indicate that the systematic risk associated with FTTP is higher than that for the average of our business, and to reconsider its estimate in light of these factors.

[61] "*The terminal value we have used for the end of March 2019 is based on the undepreciated FTTC asset value in our charge control modelling of VULA, as this is the value on which we would expect to allow a return in the future. We assume that future regulation will allow Openreach to recover this asset value. If future regulation does not deliver this, certain questions re-surface, in particular, whether BT has been allowed a 'fair bet' on its superfast investment.*" Ofcom, 28 March 2018. Wholesale Local Access Market Review: Statement, Annex 6, paragraph A6.39.
[62] Annex to our WFTMR response, Table A6.5 – BT Estimate of the WACC for WFTMR.

5. Financial reporting requirements should align with Ofcom's pricing policy

5.1. As set out in our response to Ofcom's proposed Financial Reporting consultation, we agree with the proposed FTTP reporting schedule for non-subsidised homes passed with FTTP.[63] Similarly, we agree with Ofcom's proposals for us to privately provide information on the number of homes passed with FTTP by exchange area,[64] as well as a schedule detailing how much we have invested in FTTP networks.[65]

5.2. We continue to oppose Ofcom's restated proposals[66] to publicly report FTTP service level costs, revenues, and volumes, for Areas 2 and 3.[67] It would be commercially sensitive to disclose volume information, which combined with publicly available information on homes passed, could be used to determine take-up profiles for FTTP. This could inform our competitors of the viability of their own prospective investments and give them an unfair advantage. Further, because national costs and revenues would merely be allocated between the two areas on the basis of volumes, if cost or revenue information was publicly reported for Areas 2 and/or 3 separately, competitors could use it to derive our volumes. We therefore propose that we report WLA on a national basis.

5.3. As set out above, we welcome Ofcom's proposed flexibility in how we account for the proposed accelerated depreciation of our copper assets.[68] Prescribing the way we account for this depreciation in the Regulatory Financial Statements could have created challenges for stakeholders interpreting costs with reference to our statutory accounts.

5.4. We also support Ofcom's proposals to no longer require us to publish revenue generated from the mark-up above MPF rentals, nor information on the 'K-factor mark-up' as Ofcom are no longer proposing a post-build approach to the RAB.[69]

[63] Area 3 Consultation, "Table 5.3: Note on FTTP rollout in Area 3". With respect to financial reporting, this consultation response supplements our response to Ofcom's Regulatory Financial Reporting Consultation of 6 February 2020.
[64] Area 3 Consultation, paragraph 5.20.
[65] Area 3 Consultation, paragraph 5.22.
[66] BT's response to financial reporting consultation, paragraph 4.23 to 4.28.
[67] Area 3 Consultation, Table 5.2.
[68] Area 3 Consultation, paragraph 5.27.
[69] Area 3 Consultation, paragraphs 5.15 and 5.21.