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nexfibre response to Ofcom's Call for Inputs: Openreach's proposed commercial offers

nexfibre welcomes the opportunity to provide this response to Ofcom's Call for Inputs on Openreach's proposed commercial offers.

About nexfibre

nexfibre is a wholesale fibre network operator in the UK, focussed on building and maintaining a high-quality, technologically advanced full-fibre infrastructure platform. It is a joint venture between InfraVia Capital Partners, Liberty Global and Telefónica and is financed with £4.5 billion of equity and debt investment, and is well-positioned to become a long-term, national scale, sustainable competitor to Openreach. Today nexfibre's network passes approximately 2.6 million premises ready for service (RFS).

Concerns with the offers

We have four primary concerns with the offers from Openreach that are the subject of the CFI.

1. **The offers are not compatible with the government's and Ofcom's policy objectives** of promoting growth, investment and competition. Since the introduction of Equinox 2, the constant drip feeding of price reductions by Openreach is causing uncertainty amongst investors, putting at risk continued competitive investment in the market. This offer is a continuation of this trend and appears to be designed to prevent the emergence of sustainable wholesale competition at a time when Openreach is relatively unchallenged and the altnet market is in a fragile state. At a moment when we have announced but not completed the acquisition of Netomnia, with a short term path to reaching 8 million premises, the offers appear timed and designed to prevent the emergence of a significant challenger in the wholesale market. If these price offers are permitted, the result will be the reinforcement of BT's position of Significant Market Power (SMP) as challengers to BT exit the market.

2. **The low prices of uncertain duration are neither fair nor reasonable** and raise competition concerns that require *ex ante* intervention. The proposed New to Openreach monthly rental discount and connection charge rebates result in prices that are unreasonably low and will result in a margin squeeze between Physical Infrastructure Access (PIA) and Wholesale Local Access (WLA). At this level of discount, the business case for investment by any

Reasonably Efficient Operator, including ourselves, ceases to add up. We estimate that unless we match this offer, around one third of our forecast revenue will be impacted. The offer has been designed by Openreach to apply to incremental New to Network orders above a baseline run rate. For Openreach, with its dominant incumbent customer base, this will represent a small proportion of its customers. However, the effect will land disproportionately on altnets for whom new customer acquisitions are a much greater proportion of their customer base. Therefore Openreach is leveraging its dominant position to the disadvantage of emerging competitors. Moreover, the uncertain duration of these offers means altnets and investors are unable to make clear assumptions in their business plans which form the basis of investment decisions. This behaviour can only be addressed by *ex ante* regulation.

3. **The offers raise concerns about undue discrimination.** There is no objective justification for the proposed geographic discounts in what Openreach call "VMO2 areas". This is not a separate geographic market as defined by Ofcom where competitive conditions are sufficiently different from the rest of Area 2. These prices are therefore discriminatory by charging unjustifiably different prices between areas within Area 2.

4. **The offers are problematic on a cumulative basis**. The overall harmful effect of these offers acting together cannot be ignored. In our view it would be insufficient for Ofcom to review only one offer and not to consider how they interact to have a cumulative harmful effect on competition and consumers. We therefore ask that Ofcom reviews all of these offers holistically as a package, which is how they have been presented by Openreach.

Our response to the CFI attached is organised around these four primary concerns. Whilst the Sections are not in the same order as the CFI, they do reflect the issues raised by Ofcom.

1 The offers are not compatible with government and Ofcom policy objectives

1.1 Government and Ofcom Policy

1. The current state of the telecoms access market was described in Ofcom's March 2026 Statement following the TAR (the TAR Statement). Ofcom defined three geographic markets in the UK (excluding Hull): Areas 1, 2 and 3. Crucially Ofcom found that Area 1, where there would be at least two established rivals to Openreach, did not yet exist. This is despite the increase in the number of fibre access lines built by Openreach's rivals over the period covered by the WFTMR. Competition is not therefore sufficiently established in any part of the UK to justify deregulation of Openreach and BT remains the operator with SMP across the whole country (again excluding Hull).

2. Both the government and Ofcom want to see the emergence of material, sustainable competition to Openreach. The Department of Science, Innovation and Technology (DSIT) could not be clearer about its objective in its Statement of Strategic Priorities (SSP). It states that:

   "The government regards network competition as a crucial driver of broadband roll-out. Competition across the UK (…) is necessary to promote investment as well as foster innovation and will help ensure low prices and more choice for consumers in the long-term."

3. The SSP also says that Ofcom should prioritise investment over short term price reductions:

   "Promoting investment and competition in the fixed telecoms market should continue to be prioritised over regulatory measures to further reduce retail prices in the near term."

4. The TAR Statement also made it clear that Ofcom's objectives were to promote competition and investment:

   We recognise the huge strides made by the industry in rolling out full-fibre networks, and the significant development in the competitive landscape, since 2021. But there is more to do. Further investment is needed to deliver high-quality full-fibre services to more of the UK. In addition, network competition has not yet developed to the point where Openreach no longer has significant market power such that we could remove all wholesale regulation in the broadband market. (TAR Statement, Volume 1, Para 1.8)

5. A corollary of the government's and Ofcom's desire to see network competition develop to a point where Openreach no longer has SMP is that Openreach must lose significant market share, because in the absence of this there cannot be material, sustainable competition. These price proposals are designed to prevent that happening and reversing the relatively small 11% decline in the number of end-user lines Openreach has experienced since its peak in 2022.

6. In the pre-consultation paper we submitted to Ofcom before the TAR[1], we stated that the UK fibre market is at a fork in the road. One fork took the country towards a sustainable competitive market where consumers benefit from lower prices and wider choice and where *ex ante* regulation downstream of physical infrastructure access (PIA) might ultimately no longer be required. The other would see Openreach continuing to have significant market power (SMP) and no benefits of sustainable competition for consumers. As the regulator it was Ofcom's choice which direction the market took. When the TAR Statement was issued it seemed that Ofcom had wisely chosen the direction of investment and competition. In the TAR Statement Ofcom wrote:

   "... we would be concerned if Openreach set its FTTP prices at a level that undermines the opportunity for a reasonably efficient operator to recover its costs. This would harm the development of competition, which would be detrimental to consumers in the long term."[2]

7. But, this is exactly what Openreach is doing. Its proposed offers have the effect of undermining the pro-investment and pro-competition direction set by the government and Ofcom. The ultimate losers from these price proposals will be end consumers who will have less choice of access network and so will not benefit from sustainable competition.

1.2 Effects of Offers on CPs and Investors

8. In our comments on the Equinox 2 price offer from Openreach in 2023, we raised the issue of Openreach pre-announcing repeated price reductions which it drip feeds into the market. We expressed our concern to Ofcom that this was a deliberate policy to destabilise the market by training CPs to expect another price reduction and could only be prevented by *ex ante* regulation.

[1] "UK Fibre: A Fork in the Road" June 2024
[2] Ofcom *TAR Statement* Para. 1.170

9. These proposed offers are another example of Openreach drip feeding price cuts. Openreach is displaying exactly the behaviour we were concerned about in 2023.

10. Further there is no clarity about how long these so-called special offers will last. For example, the 550 Mbps offer has been extended and revised since it was introduced as a time limited offer in 2021. Openreach is not committing pricing to the market; it is giving itself the option of turning pricing on and off. It is not possible for Openreach's rivals to become sustainable competitors with this degree of uncertainty.

11. We continue to think that this behaviour is anti-competitive and would like to see Ofcom investigate the effects of these continuous price reductions on CPs' behaviour.

1.3 Effect on CP Negotiations

12. [x].

1.4 Effect on Investors

13. [x].

2 The low prices are neither fair nor reasonable and require *ex ante* regulation

14. The actual prices contained in the Openreach proposed offers are of major concern to nexfibre. We consider that they are below the cost of REO and will create a margin squeeze between PIA and VULA. Openreach's rivals will not be able match these prices on a sustained basis and so risk being excluded from the market. The prices are therefore anti-competitive.

15. The table below shows the cumulative effect of the elements of the Openreach's proposed offer. The starting price is the current Equinox 2 price. We have assumed that the £35 connection charge New to Openreach (NTO) rebate in Area 2 and £50 connection charge NTO rebate in the VMO2 area are amortised over a 24 month contract at £1.46 and £2.08 per month respectively.

Bandwidth (Mbps download)	Current Equinox 2 Price	Less £9.50 monthly rental discount	Less £1.46 per month Area 2 Connection Discount	Less £2.08 per month VMO2 Area Connection Discount	Discount percent
80	£ 17.18	£ 7.68	£ 6.26	£ 4.18	76%
115	£ 17.50	£ 8.00	£ 6.58	£ 4.50	74%

160	£ 17.94	£ 8.44	£ 7.02	£ 4.94	72%
220	£ 19.17	£ 9.67	£ 8.25	£ 6.17	68%
330	£ 20.28	£ 10.78	£ 9.36	£ 7.28	64%
550	£ 20.61	£ 11.11	£ 9.69	£ 7.61	63%
1000	£ 22.76	£ 13.26	£ 11.84	£ 9.76	57%
1800	£ 23.83	£ 14.33	£ 12.91	£ 10.83	55%
ARPU Cap	£ 19.32	£ 9.82	£ 8.36	£ 6.28	67%

16. If allowed, the monthly discount of £9.50 with be available for six months with a possible extension of a further six months. The discount will apply to New to Openreach customers signing up in that six or twelve month window for a period of 30 months.

17. A critical feature of the ACCNs is that they apply cumulatively. Thus, a CP wishing to connect a New to Openreach customer in the that part of Area 2 that is served by VMO2 will receive the ARPU share and the £9.50 per month rental discount and the £35 Area 2 connection rebate and £50 VMO2 area connection rebate. The total cumulative discount would result in CPs paying between £4.18 and £10.83 per month for each eligible customer, which is a discount varying between 76% and £55% off the Equinox 2 price.

18. It should also be noted that the Area 2 rebate alone is greater than the current connection fee under Equinox 2 and so the CP will be paid by Openreach to connect customers.

19. Our expectation is that CPs will qualify for the capped ARPU of £19.32 under ACCN OR1106 and will therefore pay £19.32 per access line regardless of the bandwidth. The ARPU cap is applied to the "Frontbook" which is defined by Openreach to include new customer acquistions as well as speed upgrades[3]. It is not therefore applied only to "Frontbook" end users and its name is deliberately misleading with the intent of suggesting that the size and scope of the offer is smaller than it actually is.

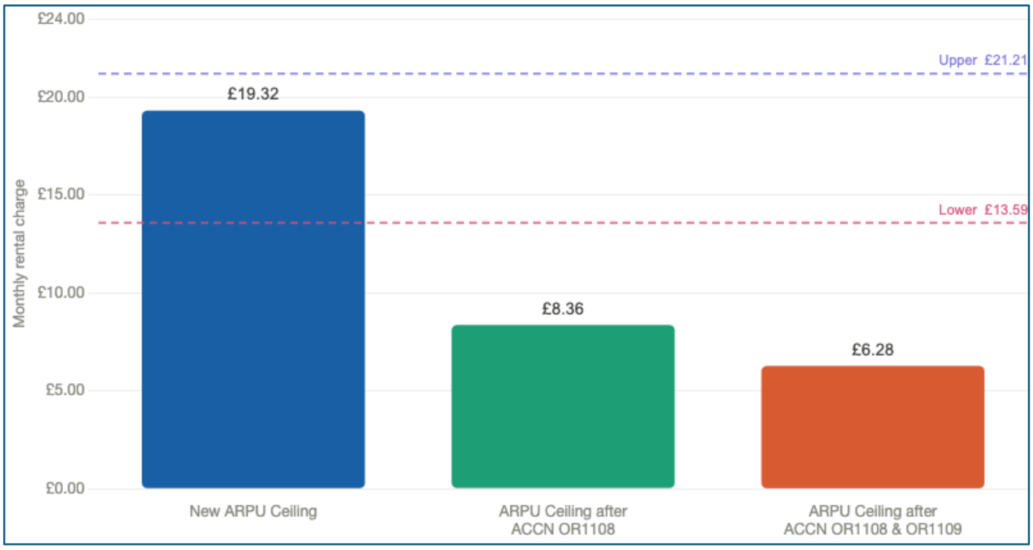
20. Further, the Frontbook ARPU offer will be subject to a new rate of indexation of CPI – 1.25% and so the cap will fall in real terms. The current ARPU offer has a price cap of CPI – 0% and so maintains the same value in real terms.

21. The table below shows that a CP to whom the Frontbook ARPU share offer applies would benefit from the £9.50 monthly discount, the Area 2

[3] The formal definition by Openreach is "… all completed provision orders (recognised in our systems as one of the following journeys – New To Openreach Network, Acquisitions, CP to CP migrations, Subsequent Provides and same CP migrations) and bandwidth modify orders (upgrades) completed during the offer period for applicable bandwidths as set out in the price list entry."

connection rebate and the VMO2 area connection rebate all applied to the ARPU. This would result in CPs actually enjoying an ARPU of £8.36 per month in Area 2 and £6.28 in those parts of Area 2 that are also VMO2 areas.

22. In the Fibre Cost Model, Ofcom calculated that the cost a reasonably efficient altnet would need to recover would be between £13.59 and £21.21 per month. Whilst the undiscounted ARPU is between these levels, once the discount is applied it clearly falls below the lower level on eligible lines, as shown in the figure below.



23. These prices are simply unsustainable for altnets and represent a margin squeeze. Pricing below the level of the REO, at the most some 54% below even the lower level of Ofcom's calculation of its costs, is obviously not financially feasible on any sustained basis. At time when Ofcom recognises that its goal of effective competition in the WLA market has not been achieved this will just make that goal harder to achieve.

24. We anticipate that Openreach will respond to our argumentation by claiming that this discount package applies only to NTO lines above a baseline run rate and these would only end up representing a small proportion of Openreach's customer base. The average reduction across all Openreach customers will be substantially less. We expect that they will argue that the average price is what matters and that its rivals only have to compete with the average price.

25. However, such an argument fundamentally misrepresents the true nature of competition in the market. nexfibre, and other altnets, do not compete with the average WLA price of Openreach's substantial customer base but

with the prices charged to by Openreach for the connection of new end-user customers in the relevant market.

26. A downstream CP that uses Openreach Wholesale Local Access (WLA) and is looking to expand its full fibre customer base can be considered for the purposes of this paper to have two target customer segments[4]:

    Segment A: end-users that are currently customers of another downstream CP that also uses Openreach whether for full fibre or FTTC-based WLA; and

    Segment B: end-users that are currently customers of another downstream CP that uses an altnet WLA (predominantly VMO2, retail altnets or Cityfibre) or are not currently connected to the Internet.

27. When the wholesale connection and rental prices that would be charged by Openreach are the same for both sets of potential customers, the downstream CP is indifferent as to whether its new customers come from Segment A or B ($P_A = P_B$). However, if the currently proposed Openreach prices were allowed to be charged, there will be much lower wholesale prices available for potential customers in Segment B ($P_B < P_A$) which would be strongly favoured as the source of new customers for the downstream CP. It would retain the full discount itself or pass on some proportion of the discount to the retail customer.

28. The altnet used by the downstream CP in Segment B targeted by the acquiring downstream CP would thus have to respond with its own pricing. Generally, altnets have to offer pricing which is competitive to Openreach's combined discount to incentivise CPs to direct their traffic from Openreach.

29. The anti-competitive effects of these low prices can only be corrected by *ex ante* regulation.

3 The offers raise concerns about undue discrimination.

30. Openreach's proposed offer under ACCN OR1109 "Incremental to Openreach offer in VMO2 areas" offers a £50 connection rebate in addition to the £35 connection rebate offered in the whole of Area 2 (via ACCN OR1108), as defined in the TAR. In our view this incremental offer is blatantly discriminatory and is without objective justification.

[4] There is also, for completeness, a third target market for the downstream CP of migrating its own FTTC-based WLA end customers over to full fibre WLA. However, these could also be considered as part of Market A given that different downstream CPs will no doubt be competing for them also.

31. In Annex 8 of the TAR, Ofcom explains that in assessing whether a geographic discount is discriminatory it will consider:

a. whether there is any objective justification for the differential pricing;

b. if not, whether it is consistent with our overarching policy objectives, including our strategy to promote network competition. In this respect, we would consider whether the differential pricing is capable of harming competition in the long term.

32. This offer fails on point (a) as it is without objective justification. The Area 2 geographic market is defined as "*where there already is, or there is likely to be potential for, material and sustainable competition*"

33. The geographic area specified by Openreach is not defined by conditions that might affect Openreach's installation costs such that a £50 rebate is justified. Rather it is defined solely on the presence of one of its largest competitors and so is targeted at VMO2, with other altnets in the same area who lose CP customers to Openreach treated as collateral damage.

34. In the TAR Statement Ofcom did not find geographic markets based on the presence or otherwise of VMO2. Indeed, it stated:

"Having assessed competitive conditions across candidate Area 2 as a whole (...) we do not find evidence of appreciably different competitive conditions within this area that would remain sufficiently stable over the review period." (TAR Statement , Volume 2. Para. 4.242)

35. Ofcom, therefore, does not consider the competitive conditions resulting from the presence of VMO2 sufficiently different to find a separate geographic market.

36. Although Openreach has been losing CP customers recently, the majority of these customers have not migrated to VMO2, but to altnets. Thus, Openreach cannot justify the calibration of this offer to VMO2 areas as a response to competition. In any event, as the SMP operator Openreach should not be able to compete solely with the intention of removing competition through exclusionary pricing tactics.

37. Given that that there is no objective justification for this element of the offer, the question now arises as to whether it is consistent with Ofcom's overarching policy goals.

38. Here again the answer is that it is not consistent with these goals. The policy goal of Ofcom, and indeed the UK government is to have high levels of

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households on gigabit capable networks, not to help Openreach to migrate households on to their network at the expense of rivals, which is what this incremental rebate is designed to do. Indeed, we would go further and say the discount is designed to have the opposite effect of Ofcom's policy goal and re-entrench Openreach's market power.

39. Overall, therefore, ACCN OR1109 is discriminatory against one specific rival to Openreach as it is not objectively justified and does not support Ofcom's overarching objective of promoting investment and competition. Permission to grant this discount should therefore be withheld.

4 Summary and Conclusion

40. During the course of 2025 in the period leading up to the TAR, Openreach made a series of pricing offers. Now, with the dust having only just settled on the TAR, it has proposed a package of much more aggressive offers. Openreach continues to test and push the boundaries of the current regulatory regime. This was explicitly confirmed in a recent statement by Katie Milligan, CEO of Openreach at the Enders Analysis industry conference where she admitted that these offers are "testing the waters".

41. The altnet market is in the most fragile state it has ever been. Openreach line losses since its peak in 2022 are not significant and in the current context the pressure on Openreach is diminishing. nexfibre has announced a transaction that creates a path to a scaled challenger to Openreach. The market is in a pivotal moment.

42. We ask Ofcom to protect the fragile ecosystem of the wholesale market by preventing these offers from being implemented.