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Zen submission to Ofcom's TAR26 Consultation October 2025

Dear Ben,

This letter is Zen's submission to the Telecoms Access Review 2026-31: Further consultation on WLA pricing remedies (we refer to this as the "consultation"). We summarise our views on Ofcom's overall approach to pricing and Equinix discounts which provides context for the response to the three pricing related questions asked in the consultation. Before this we provide a little background on Zen.

Background on Zen

Zen plays an important role in the UK broadband market – arguably far larger than its 227,000 connections, 600 employees and £127m turnover might indicate. I founded Zen 30 years ago, and we are now the UK's oldest ISP that still exists in its original form. Zen's heritage is as an ISP providing high quality and highly valued services. This is well demonstrated by Zen winning Which? Recommended broadband provider for five years, being named Best Broadband ISP 22 years in a row by PC Pro, and being the 2025 Which? Utilities Brand of the Year. Zen also provides a range of business services including leased lines, SD-WAN, cloud, cloud comms, hosting and security.

Over the last three years, Zen has invested heavily to become an aggregator of altnet FTTP services, taking connections from leading altnets (alongside connections from Openreach) and providing these both to its own retail customers and to wholesale customers/channel partners. Zen currently partners with CityFibre, ITS, Freedom Fibre, Trooli, and MS3, has agreed heads of terms and begun integration with another altnet, and is in discussions/ negotiations with several others. Altnets account for 16% of current connections and 40% of new orders. Altnets are critical for Zen's success as a high quality connectivity provider, and similarly Zen provides a critical route to market for altnets.

Another unique aspect of Zen is our purpose: to *Do right for people and planet* (with people encompassing employees, customers, suppliers, community, and wider society). Zen believes that business should be a force for good. It's proud to be carbon neutral, a certified B Corp, and committed to reaching Net Zero by 2040. The comments in this submission are shaped by this purpose – to do right for customers in the long term.

Ofcom's overall approach to pricing and discounts

Zen strongly supports Ofcom objectives to meet consumer interests by incentivising investment and promoting network competition in full fibre networks. As Ofcom itself highlights, the specific regulation that will best deliver this objective must reflect “*recent and prospective market developments*” (March Consultation, vol 1 §1.11). We consider that Ofcom’s TAR26 regulation of pricing must reflect the significant change in market conditions, and in particular that altnet build has slowed down, with the focus for many altnets having switched to M&A and growing penetration rather than building further network. We explain our views below.

The Telecoms Strategic Review in 2016 set an objective to promote and stimulate FTTP investment by altnets and Openreach which would provide consumers benefits through higher quality services and keener competition. There has been a range of regulations and initiatives to pursue this including: regulated access to Openreach’s ducts and poles, light regulation of Openreach FTTC/FTTP prices (allowing prices well above cost); restrictions on targeted price reductions by Openreach; changes to streetworks and wayleaves regulations; and reductions in corporation tax and non-domestic rates tax. Combined with increased demand and cost reductions for FTTP, these factors have collectively led to significant investment by both altnets and Openreach, particularly over the last five years. The level of network competition is now the best it has ever been (albeit that markets are still not fully competitive): something that Zen and its customers have benefitted from.

In WFTMR21, high Openreach FTTC/FTTP prices (and restrictions on price reductions) were justified on the premise that this would stimulate significant altnet investment. Ofcom said, “*we believe that there is a significant positive relationship between the level of wholesale prices and competitive network investment*” (WFTMR21, vol 4 §1.65) – in other words Ofcom assumed that high Openreach wholesale prices would cause significantly greater altnet investment. This claim was made in a situation where there was a large amount of potential altnet build from 2021 onwards – forecasts were that altnets would build a further 20–25m homes.

However, today the market context is dramatically different. In particular, future altnet build is much less than what it was – may be between 0.5m and 2m from 2026 compared to 20m+ from 2021.

Altnet build levels have already fallen from a peak 400k–500k a month in late 2023 to around 100k a month and the downward trend could continue. This reflects a number of factors:

- most areas have already been built by an altnet or by Openreach (currently about 26m) and so are unviable for any material (additional) altnet build. This is because the first network will tend to have captured the customers most keen on FTTP (Openreach, for instance, achieves 40% FTTP uptake within 3 years of build) leaving the altnet to compete for customers migrating later or trying to win customers from the first FTTP network which is costly (e.g. cost of additional physical connection) and disruptive for the customer but provide little service improvement. The upshot of this is that building share as a ‘second entrant’ is much slower and so returns much lower.
- many of the remaining areas without FTTP (c.6m) tend to have low population density with high cost to serve and so marginal viability. Further, most of those

that are viable are likely to be built by Openreach first (by virtue of Openreach's higher build rate – currently 350k per month).

- available finance for altnets has reduced significantly and altnets do not generate enough operating cash flow to fund further network investment.

In a world where there is very little possible future altnet build (compared to in 2021) the level of prices cannot possibly have a “*significant*” impact on altnet investment (as Ofcom claimed it would in 2021).

Furthermore, lower Openreach prices are unlikely to have negative impacts on altnet competitiveness (the other leg of Ofcom's objective). For instance, lower Openreach prices:

- will not lead to market exit (i.e. closure of networks) given the high level of sunk costs.
- will not change the competitiveness of existing altnet networks since they are able to adjust their prices downwards to remain competitive without jeopardising their forward looking viability. This is demonstrated by the aggressiveness of altnet pricing currently in the market.
- ISPs and aggregators who purchase wholesale services from altnets are unlikely to reduce their use of altnets – Zen explained in its response to the Equinix 2 consultation that introduction of Equinix 2 discounts would not change Zen's approach to working with altnets or Zen's use of altnets.
- currently, where Zen has a choice of altnet FTTP or Openreach FTTP, it always chooses altnet FTTP, demonstrating the ability of all the altnets that Zen partners with to compete effectively with Openreach, and the scope for Openreach to become more competitive (if it chooses) to promote free market competition.

As we explained above, Zen has invested heavily in becoming an altnet aggregator (and will continue to do so) and altnets are a core part of Zen's strategy. Thus Zen wants to see a successful altnet sector. Zen does not believe that lower Openreach prices would materially impact on altnet investment or competitiveness. In fact, we believe that lower Openreach prices would promote healthy free market competition.

Lower Openreach prices would also not reduce Openreach FTTP build. This is because price regulation mostly applies to the FTTC prices: lower FTTC prices would reduce the incentive to sweat the legacy asset and increase the incentive to build FTTP and migrate customers to FTTP. In addition, Openreach CEO Clive Selley confirmed that moving as fast as possible to full fibre is key to Openreach retaining customers¹.

Therefore, today (in comparison to the position when Ofcom set regulation in 2021) there is much less consumer benefit from high Openreach prices. Whereas the consumer harm from high Openreach prices which cause high retail prices remains significant (high prices could also encourage or sustain inefficient altnet investments).

This situation clearly implies that (in comparison to the approach in 2021) Ofcom should be looking at encouraging and allowing lower Openreach prices (but above the REO level). This could be achieved through either:

- a lower price cap

¹ See Full Fibre Wacky Races 5: <https://youtu.be/vSkx3R8h6gI?si=uh4GW654MSb3hNGf&t=1602>

- being more permissive in allowing Openreach discounts

Though network competition has increased, it is insufficient to constrain Openreach's prices to ensure that they are at a level that is in consumers' interests. This is particularly true in Area 3 (where there is/will be very limited competition). It is also the case in Area 2. Area 2 includes many locations where there will not be any competition or any material competition. This is a result of how Ofcom has defined Area 2 – for instance, in defining Area 2 Ofcom counts the prospective (and uncertain) build of small altnets with large aspirations as 'material and sustainable' competition.

Openreach discounts (such as Equinox) will be key to encouraging migration to FTTP particularly of more resistant and vulnerable customers. Rapid migration will accelerate closure of the legacy network and so bring forward cost savings. Accelerated migration to Openreach FTTP will ultimately benefit all network providers, including altnets, by driving greater awareness of FTTP and stimulating free market competition. Thus, Openreach needs to be given a greater opportunity to compete through discounting. There is significant headroom between Openreach's prices and the REO price level, therefore further discounts are possible without Openreach being anti-competitive.

We agree with many of Ofcom's proposals regarding allowing discounts – for instance: using *ex ante* rather than just relying on *ex post* measures, the consent process for other commercial terms and the extension to 120 days.

Ofcom though should avoid overly prescriptive or rigid rules that prevent it from considering the specific circumstances of a particular offer. For instance:

- migration of resistant customers may require novel pricing structures. It is better for Ofcom to wait and see what develops and assess any proposal on its merits rather than set out in advance specifically what is and is not allowed.
- Ofcom explains that commercial terms would "*only be justified ... if the impact on network competition is unlikely to be material*" (v3 §9.74). However, this test might prevent new commercial terms which had a very large consumer benefit but also had a small but material negative impact on network competition. In other words, Ofcom would be prevented from considering the proportionality of an offer.
- Ofcom should resist calls for a 'bright line test' for low prices (i.e. a single, hard and specific test for low prices) and rather allow itself to assess prices based on circumstances.
- there should be no restrictions on the frequency of offers.

Comments on consultation questions

Question 1: Do you agree with our proposals relating to the Contract Focused Approach?

Zen is comfortable that the Contract Focused Approach ('CFA') would be an effective mechanism for delivering the same constraint on Openreach as the previously proposed price cap. However, this comfort is founded in large part because of our trust in Openreach's senior management team. If the senior management changed, there is a risk that Openreach might seek to exploit the CFA against the interests of consumers – for instance raising prices in areas where competition is weaker.

Therefore, we consider that Ofcom should ensure that it has backstop powers to impose price cap regulation in the case that Openreach is not abiding by the *spirit* of the CFA. Also the Openreach Board Audit Risk and Compliance Committee (OBARCC) should monitor how Openreach complies with the CFA.

Question 2: Do you agree with our proposals relating to charge controlling FTTP connections (where copper-based services are not available)?

We have two observations on this question.

First, including the £20 allowance in the connection charge price cap will probably lead to higher consumer prices and not be in consumers interests. As we explain above, long term consumer interests will be better met by lower prices. Therefore, Ofcom should reconsider including the £20.

Second, we note that at §4.24 Ofcom only seems to be concerned about price falls (as a consequence of forecast errors) and price rises are acceptable. However price rises would of course not be in consumer interests.

Question 3: Do you agree with our proposal to amend the proposed geographic discrimination prohibition by introducing a carve-out that would permit geographic differences in connection charges, where such differences reflect the terms of the Equinox 1 or Equinox 2 contracts (as applicable) and also align with WFTMR21 geographic market boundaries?

We agree with the proposed carve-out. As Ofcom notes, absent this carve-out some discounts would have to be removed (pending Openreach requesting consent which may or may not be permitted). Also, as we described above, in order to meet consumer interests, Ofcom should be more permissive of Openreach discounts in this upcoming market review period than the current one, allowing free market competition to run its course.

I hope that these comments have been useful. Please do contact me if you have any questions.

Best regards,



Richard Tang
CEO