



**Ofcom supplementary consultation to the Wholesale Fixed  
Telecoms Market Review**

**Copper retirement – process for determining when copper  
regulation can be removed**

*TalkTalk submission*

**September 2020**

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This is TalkTalk Group's response to Ofcom's supplementary consultation to the Wholesale Fixed Telecom Market Review (WFTMR) on the process for determining when copper regulation can be removed, published on 25 June 2020.

## 1 Overview

- 1.1 Retail customers must be central to Ofcom's approach to adapting regulation to support FTTP roll-out and migration to new services. As we explained in our response to the January WFTMR consultation proposals on copper retirement, Ofcom must ensure that any regulation protects retail customers from harm and that Openreach's wholesale customers (who will incur significant costs from migration) do not face unreasonable burdens. We therefore proposed some changes to Ofcom's approach to copper retirement which we consider would strike a better balance between incentivising FTTP investment and protecting retail customers during the migration.
- 1.2 We support Ofcom's proposal in this supplementary consultation to delay consultation on how it will define the circumstances in which premises can be excluded from the calculation of 'complete coverage' of an exchange area until after the WFTMR statement. We maintain, as set out in our January WFTMR consultation response, that contrary to its proposals, Ofcom should not include G.fast connections above 300Mbps in the calculation of 'complete' coverage. Only FTTP connections should be included.

## 2 Ofcom's approach to defining 'complete coverage'

- 2.1 Ofcom proposed in its January WFTMR consultation that the charge control on MPF/FTTC will be removed at premises where FTTP is available after a minimum of two years from the stop sell and when ultrafast coverage is completed in an exchange, and be replaced by a charge control on FTTP 40/10 services. It said it would consult further on the process for excluding premises from the 'complete coverage' measure for the purposes of triggering the change in regulation.
- 2.2 As noted above, we support Ofcom's proposal to delay consulting on how it will define the circumstances in which premises can be excluded from the calculation of 'complete coverage' of an exchange area until after the WFTMR statement. We therefore agree with its proposal to define the approach to any limited exclusions by giving a direction under the future WFTMR SMP conditions following consultation.
- 2.3 Ofcom must ensure that Openreach is fully incentivised to complete FTTP coverage to homes and businesses in an area to the greatest extent possible before the charge control on MPF/FTTC is replaced. As Ofcom notes, it is important that Openreach is not able to selectively deploy FTTP to deter competition and leave areas with partial coverage. The circumstances in which any premises are excluded from the coverage calculation that triggers the removal of the charge control must therefore be strictly limited.
- 2.4 In addition, we consider it is important to maximise FTTP coverage to minimise the number of premises stranded without FTTP. We do not want end users to be left behind on inferior connections. As highlighted in our January WFTMR response, Openreach, industry and Ofcom need to work together on the roadmap for the limited proportion of premises that cannot be connected to FTTP due to insurmountable barriers. Collectively we must ensure

## NON-CONFIDENTIAL RESPONSE

suitable options are available to these retail customers as bandwidth demands continue to increase and to address the risk of widening the digital divide.

- 2.5 It seems prudent for Ofcom to wait to consult on circumstances when premises may be legitimately excluded from the assessment of 'complete coverage' until FTTP roll-out is further advanced and more information on possible exclusions is available. Under Ofcom's WFTMR proposals for copper retirement, we note it considers the earliest date when Openreach may reach complete coverage in an exchange and trigger removal of the charge control will be December 2022 in Salisbury and June 2023 in the further 117 exchange areas (where Openreach has notified its intention to implement the stop-sell on reaching the 75% coverage threshold by June 2021).
- 2.6 To aid transparency, we think Ofcom should set out the following in its WFTMR statement:
- The terms on which premises will be included in the coverage total. As set out in our response to the January WFTMR consultation, for premises to be counted within the coverage total, a service should be available to order subject to the normal service level agreements and quality of service standards. It should also be specified that premises counted within the coverage total should not be subject to any Excess Construction Charges.
  - The timetable for consultation and implementation of the approach to the circumstances in which premises could be excluded from 'complete coverage' – this should allow for the Direction to be made no later than 12 months before the copper charge control may be removed in any exchange.
  - The information it will be requesting from Openreach on roll-out progress under its statutory powers (as set out at §3.20) and on what frequency. It should also set out its approach to auditing the information provided by Openreach.
- 2.7 In addition, we consider that a process should be established for sharing the roll-out and proposed exclusions information with CPs (who are customers of Openreach) to ensure they are fully included at all stages of the process.
- 2.8 The following matters should be considered as part of the subsequent consultation:
- Defining the limited set of circumstances in which exclusions may apply and ensuring this is limited to genuine barriers to build such as wayleaves, no listed building consent or environmental protection. No premises should be excluded solely on the basis it would be costly to serve them.
  - If premises are exempted due to wayleaves issues, or other issues that may not be permanent barriers to connection, there should be an obligation on Openreach to continue to attempt to overcome these issues to connect the premises in due course. Wayleaves barriers may not be permanent, particularly in the context of legislative reform.
  - In addition to defining a limited set of circumstances in which exclusions may apply, the possibility of applying a cap on the proportion of excluded premises allowed in any given exchange area and/or under any particular category of exclusion.
  - The process for determining whether legitimate exemptions apply. The burden of proof should be on Openreach to demonstrate that it is unable to connect premises it proposes to exclude due to insurmountable barriers to connection. While it might self-certify in the first instance, a robust process for audit must be established given the incentives for Openreach to game the regulation.