
County Broadband

Response to Consultation:

Copper retirement – conditions under which copper regulation could be completely withdrawn in ultrafast exchanges



County Broadband Limited
Old Burchiers Hall, New Road, Aldham CO6 3QU
Tel: 01376 562002 www.countybroadband.co.uk
Registered in England No. 04666043



Contents

INTRODUCTION AND BACKGROUND.....	3
INTRODUCING CBL	3
ISSUES FOR COMPETING FIBRE NETWORK OPERATORS	4
Tactical part-deployment by Openreach.....	4
FTTP coverage in an exchange area	4
Copper retirement and fibre migration communications to consumers.....	5
Openreach arrangement with downstream CPs to encourage migration.....	6
End customer lock-in through migration offers	6



Introduction and background

- County Broadband Limited (“CBL”) is pleased to present its response to the Copper Retirement – conditions under which copper regulation could be completely withdrawn in ultrafast exchanges consultation (the Copper Retirement Consultation), which is a follow-on consultation to the wholesale fixed telecoms market review (WFTMR) issued in January 2020 and, to the “Copper Retirement - process for determining when copper regulation can be removed Consultation”, which closed on September 3rd 2020. The WFTMR and its associated consultations are of critical importance to CBL and the conditions on which Openreach could retire its copper network and the communications to support that process are of particular concern.
- In the January WFTMR consultation (and the subsequent first copper retirement consultation launched in July this year), Ofcom’s working assumption was that Openreach would not commence the actual withdrawal of copper services (and the physical copper network) until during the next market review period, starting April 2026.
- Since then, Openreach has stated that it believes it could start the copper retirement process earlier and has proposed amendments to the previously proposed copper retirement schedule and process to enable it to give 2 years notice of copper withdrawal at the time price regulation is removed from copper-based products and services.
- Ofcom now proposes to partially accommodate Openreach’s request, with the addition of some safeguards to ensure that Openreach cannot issue the notice to withdraw copper-based services in an exchange areas unless only 10% or less of customers in that exchange area remain on copper-based services.
- CBL understands the need for a transparent process for Openreach to retire its copper services and physical assets, and, on the face of it, it seems that Ofcom’s proposed processes and timeframes are reasonable. CBL has no intention to in any way obstruct the efficient migration to fibre for Openreach.
- Our main concern, however, is that almost all of Ofcom’s measures to prevent Openreach from using the copper retirement process to harm competition or end users is focused on the protection of downstream operators that use the Openreach platform to deliver their services to customers, and on protecting vulnerable customers, to the exclusion of protecting Openreach’s infrastructure-based competitors from harm caused by Openreach behaviour during the copper retirement process.
- This response therefore focuses on issues that may be faced by investors in and operators of competitive fibre networks.

Introducing CBL

- The Company was started in 2003 as a Wireless Internet Service Provider and more recently has been deploying Fibre to the Premises networks using a mix of Overhead and Underground new build and PIA infrastructure.
- CBL is based near Colchester, North Essex, close to the Suffolk Border and is actively engaged in building FTTP networks in Essex, Norfolk and Cambridgeshire and plans to further expand this footprint into Suffolk in 2021.
- The Company has 97 direct employees (updated from our previous submission). As well as its in-house resource, the Company is engaged with three civils contractors all of which have CBL dedicated administrative and project management resources allocated and use multiple gangs in-field to complete the build plan in place.



- [X]
- CBL has experienced direct competition with BT for first mover advantage to deploy in these small towns and villages. These areas cannot support more than a single network and there is effectively a race to deploy first. We believe this to be to substantial benefit to consumers who would likely be served a lot later if there was no competitive pressure on BT to deploy quickly.

Issues for competing fibre network operators

Tactical part-deployment by Openreach

- Ofcom mentions that it has concerns that Openreach could tactically deploy to a limited extent in locations where it believes altnets may plan to deploy competing fibre networks, with the objective of deterring competitor investment.¹ Ofcom appears to be of the opinion that an obligation for a 75% FTTP coverage for a stop sell to be implemented will act as a deterrent to Openreach undertaking such tactical part deployment, but does not explain why this should be the case.
- Tactical part-deployment is a real issue, which has been experienced by several altnets in the UK, so CBL agrees with Ofcom that this is an issue that should be addressed, but we do not believe that the stop sell 75% coverage threshold would be an affective remedy for that behaviour.
- CBL is confident that the benefits to Openreach of deterring competitive fibre deployment would significantly higher than any costs to BT of having to continue offering copper services in the relatively small areas it has covered as a tactical deterrent.

FTTP coverage in an exchange area

- The Openreach copper retirement process as designed by Ofcom references Openreach FTTP deployment only and does not discuss the scenario of an altnet deploying FTTP in an exchange area either as the only fibre network in that location or in advance of the Openreach deployment.
- Unless the process caters for the possibility that an altnet may be the only FTTP network operator in an exchange area, this would leave Openreach with an obligation to operate its copper network in perpetuity, despite the exchange area potentially being up to 100% covered by altnet FTTP.
- CBL, and other altnets, have in the past argued in WFTMR responses that there needs to be a provision in the copper retirement process that allows Openreach to issue a stop sell notice for when it believes 75% of an exchange areas is covered by FTTP, even if that FTTP deployment is undertaken by another provider than Openreach. We understand that there could be no obligation on Openreach to do so, but it should have the option of doing so.
- Not enabling an altnet FTTP coverage stop sell trigger would be to deny the possibility that an altnet may be the only FTTP provider in an exchange areas, and Ofcom has assured CBL and INCA that it understand that this may be what happens in some locations. For Ofcom to not accommodate that scenario in the copper retirement process suggests that Ofcom wishes to see an outcome where Openreach has full national FTTP coverage, with no possibility that some locations will be served by altnets only.
- A copper retirement process that does not enable an altnet FTTP coverage “stop sell trigger” would effectively force Openreach to overbuild altnet infrastructure in locations that clearly cannot support more than one physical infrastructure and would constitute direct Ofcom intervention against altnet investment in rural locations. CBL is extremely concerned that Ofcom is contemplating this course of

¹ Para 3.34.



action and believes this to be in direct contravention of its duties including its duty to further the interests of consumers (and where appropriate by promoting competition).²

- CBL plans to offer wholesale access to its FTTP networks for all operators wishing to deliver their services across that network (whether wholesale or retail). Some locations where we have deployed and plan to deploy are unlikely to be able to support more than a single fibre infrastructure, so we would expect BT/Openreach to access our network in order to deliver wholesale and retail services in those locations. Other locations may support two networks but, if CBL deploys before BT, BT should have the commercial flexibility to decide whether to overbuild our network or purchase access to our network. The current copper retirement process caters for neither of those scenarios.
- CBL also believes that only allowing Openreach to retire its copper services (and assets) in exchanges areas where it has deployed its own FTTP/H (and not where another operator has made such deployment) would be in direct conflict with the Government's Outside-In programme, which will be issuing lots that operators can bid for to deploy ultrafast infrastructure, covering mostly locations where it is unlikely that even a single fibre infrastructure would be commercially viable.
- The very nature of those locations means that it is very unlikely that Openreach will overbuild the majority of lots won by altnets, as that is extremely unlikely to be commercially viable. At the extreme, Ofcom's proposed approach would force BT to operate its copper services and assets in perpetuity in some parts of the country, or to make unviable investments in overbuilding altnet networks, likely causing those altnets to cease trading as they do not have the national business to cross-subsidise such loss-making locations.
- CBL had intended to participate in the Outside-In programme, to build new fibre infrastructure in non-commercially viable locations, but now has real fears that Openreach will ultimately be forced to overbuild those networks, simply because Ofcom would otherwise force it to continue operating a redundant copper network in those locations.
- We understand that it would be complex to determine what level of altnet coverage could justify Openreach stop sell and withdrawal notices, but Ofcom should have presented this issue in its several consultations and sought industry input. Instead, Ofcom has ignored repeated calls for this, proposing to recognise only Openreach fibre deployment to justify copper retirement.
- We urge Ofcom to urgently consult on the matters discussed above, in order that the overall WFTMR regulatory package is pro-competitive and will not have significant unintended adverse consequences, nor lead to the WFTMR Statement being challenged.
- Like for the stop sell notice, the triggers for any additional notices that Openreach may have to give in order to proceed to withdraw copper-based services and copper assets should be designed to accommodate Openreach giving such notice based on the FTTP coverage by an altnet.

Copper retirement and fibre migration communications to consumers

- CBL understands that it will be necessary and important that consumers are informed about the changes to their services resulting from fibre deployment and by the subsequent retirement of copper, our concerns relate to ensuring that such communications are undertaken within clear parameters to ensure that they are not used in a manner that would have an unduly negative impact on the business case for competitive fibre deployment, by causing effective market foreclosure.
- We recommend that Ofcom oversee the development of a code of conduct to govern consumer communications relating to copper retirement and copper to fibre migration. This could, for example, include the specification of terminology to describe the new services and the number and types of

² Section 3.1 through 3.4; section 4.3 (a); and 4.6 of the Communications Act 2003. CBL also believes that Ofcom's approach would be in conflict with several provisions found in the European Electronic Communications Code, due to be transposed into UK legislation later this year.



communications that can be issued.

- CBL considers it essential that there is oversight of the customer communications throughout the migration period. The harm resulting from inappropriate communications would be irreversible and could significantly impact the viability of otherwise well run and well-funded alternative fibre network providers, potentially resulting in default and a reversion to Openreach monopoly infrastructure provision in locations where the economics could support competing infrastructures.
- There is precedent for Ofcom engaging in similar communications processes in relation to restrictions on win-back activities associated with number portability which is also a communications process that could be used to anticompetitive effect. We urge Ofcom to not underestimate the potential harm caused by inappropriate communications sent in volume to support the copper retirement and customer migration processes.
- We do not believe it is appropriate to make specific proposals here in terms of what rules and restrictions should be applied to migration-related customer communications, such rules would be best developed in industry fora with the oversight of Ofcom or perhaps the OTA2 to ensure that outcomes are produced within a timeframe to be useful from the onset of migration communications programmes by Openreach and its downstream customers.

Openreach arrangement with downstream CPs to encourage migration

- The WFTMR consultation (in particular Annex 15) also addressed the potential risks to competition and competitive investment incentives arising from Openreach engaging in commercial and/or contractual arrangements that could result in market foreclosure for competing network operators.
- We note that Openreach in its response to the previous copper retirement consultation stated that it looks to “agree appropriate commercial constructs with our customers to drive migration from copper to fibre-based services”.³
- It is important that the WFTMR remedies and/or the copper retirement regulations set appropriate frameworks to prevent the above mentioned from having an anticompetitive impact on the market, potentially incentivising downstream retail providers to use the Openreach fibre connections in favour of those offered by competing network providers and tying them in to such use through incentive structures that make it impossible or very difficult for alternative providers to compete for those connections.
- CBL and other altnets have commented previously on Ofcom’s proposals to reduce the risk of anticompetitive pricing, commercial and contractual practices by Openreach, explaining why we consider that those proposals are too weak and that the risk of over-regulation in this instance is substantially lower than the risk of under-regulation.

End customer lock-in through migration offers

- The process of migrating from copper to fibre is also a significant opportunity for customers to change supplier if they are well informed and are aware of all their options. CBL notes that Ofcom recently consulted on Open Communications proposals that focus on ensuring that consumers are informed and can make fact-based informed choices when contracting for electronic communications services.
- CBL is concerned that retail providers on the Openreach platform could use the migration process to offer existing customers the possibility to migrate mid-contract, but entering the customers into new

³ Openreach, 7 September 2020. Response to Copper retirement – process for determining when copper regulation can be removed, – paragraph 4. https://www.ofcom.org.uk/data/assets/pdf_file/0024/204567/openreach.pdf.



contracts and thus locking their existing customers in for a full contract term, regardless where those customers are in their existing contract period.

- Customers that are in the fixed contract period cannot (without financial consequences) switch supplier, so it is important that their existing supplier cannot use the migration process to extend the period during which alternative providers cannot compete for those customers. It would seem clear that it would be much harder for competitors to attract customers that have already migrated to fibre with their existing provider than if the competing provider had equal opportunity to access the customers before the migration.
- CBL urges Ofcom to engage proactively on preventing the customer migration journey from becoming a tool to lock out competition for an extended period by migrating customers over to new contracts without the option to move to alternative providers on alternative networks at that time.