Quality of Service for Ethernet and Dark Fibre
Proposed modifications to Quality of Service Directions and related Key Performance Indicators for Ethernet and Dark Fibre repairs

TalkTalk submission

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NON-CONFIDENTIAL VERSION

1   Summary

1.1   This is TalkTalk's response to Ofcom's consultation regarding proposed modifications to quality of service directions and related key performance indicators for Ethernet and dark fibre repairs.   Ofcom's consultation follows from Openreach's request to amend the minimum QoS standard for Ethernet and dark fibre repair.

1.2   Ethernet and dark fibre provide connectivity for a wide range of users including government, Critical National Infrastructure organisations, the NHS, businesses, mobile networks and fixed network operators where swift and reliable repair is critical. Given Openreach's significant market power it is therefore essential that strong regulation is in place to ensure Openreach delivers the level of quality that these customers demand. Minimum QoS standards are a vital tool in ensuring this service quality.

1.3   Ofcom must be very cautious about accepting any request from Openreach to amend regulation without looking closely into the customer impacts given their strong incentive to selectively only propose changes which result in more lenient regulation (which in turn harms customers and competition). We expand on our concerns below.

1.4   In this case, Openreach have requested that the quality metric for repair is changed from OTR (on time repair) to MTTR (mean time to repair). They have proposed that the new MTTR minimum standard[1] Openreach proposed is 5:00 hours whereas the MTTR consistent with the current standard (94% OTR) would be about 2:30[2] (i.e. a doubling of the MTTR). Thus the request includes a substantial weakening in the level of the minimum standard that Openreach which it justifies based on changes in fault mix and increase in DFA.

1.5   Conversely, given the incentives highlighted above, it is highly unlikely that Openreach would request a *strengthening* in the level of the minimum standard if the fault mix or other factors changed that made it easier to reach the standard. Instead, Openreach only request amendments to regulation when it is in their commercial interests. For example, in the last few years there have been process changes that have made achieving the minimum standards easier, although Openreach have not proposed strengthening minimum standards to reflect this.

1.6   These risks mean that Ofcom must be very wary of accepting any Openreach proposal for changes.   If Ofcom does accept that change is appropriate, then any new minimum standard (whether a new metric such as MTTR or a newly defined metric e.g. different scope) should be based on what minimum standard would have been set in the original market review and should not reflect changes since the market review (such as in fault mix). Following this principle will avoid the risk of gaming by Openreach as well as providing regulatory stability.

1.7   Our comments on Ofcom's proposals below reflect these concerns and principles. The points we cover are: change of metric to MTTR; scope of standard; level of MTTR minimum standard; standard in first year; and KPIs.

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[1] Excluding customer and excluding MBORC faults

[2] This (2:31) was derived by (1) deriving the MTTR 1:51 consistent with the current 94% OTR by assuming a (negative) linear relationship between OTR and MTTR based on recent data provided by Ofcom and (2) assuming the MTTR for all faults (excluding customer faults and excluding MBOR faults) was 36% longer than the MTTR for all faults based on the recent data provided by Ofcom

2　Change of metric to MTTR

2.1　We agree with Ofcom's proposal to change the standard to one based on MTTR rather than OTR (subject to the points below). As Openreach and Ofcom highlight this will improve overall incentives to reduce repair times for repairs that have taken over five hours.

3　Scope of standard

3.1　Regarding what faults should be included in the new standard (which we refer to as the 'scope') we have the following comments.

3.2　We agree with Ofcom's proposal to change the definition to exclude 'customer faults' but only provided that the definition of what constitutes is agreed by CPs and that the process for categorising individual faults is reliable.

3.3　We also consider that Ofcom should consider imposing a separate minimum standard (possibly temporary) on these faults as well as requiring KPI reporting. We note that for FTTP (which has no minimum standards but KPI reporting obligations) provision quality materially deteriorated during period of industrial action whereas MPF and FTTC (which have minimum standards and KPI reporting obligations) fared relatively better. This implies that a minimum standard is necessary to ensure good quality and that KPI reporting obligations by themselves are insufficient.

3.4　We agree with Ofcom's proposal to continue to include faults during MBORC declarations in any standard – we refer to these as 'MBORC faults'[3]. This is for two reasons:

- It maintains a stronger incentive to repair these faults quickly – if they were excluded there would be little commercial incentive to repair these faults quickly particularly given that no SLG is payable on MBORC faults

- It avoids the incentive to declare MBORCs to improve measured performance against the minimum standard[4]

3.5　We consider that industrial action should not be included within the MBORC definition. Openreach clearly has *some* control over industrial action and allowing Openreach to avoid paying SLGs (one of the consequences of declaring MBORC) weakens its incentives to efficiently avoid or resolve industrial action. We note that during the extended BT-wide industrial action in 2022 an MBORC was not declared on Ethernet fault repair. This implies that Openreach can maintain Ethernet repair standards even during extended periods of industrial action and therefore it is not necessary to include industrial action within the MBORC definition.

4　Level of MTTR minimum standard

4.1　Ofcom appears to have set the proposed minimum MTTR standard of 3:50 hours (including MBORC faults but excluding customer faults) to reflect recent and future fault mix changes and future increase in DFA. This is we believe fundamentally wrong. We discuss below

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[3] Ofcom refer to 'inclusion of MBORC' and 'including MBORC in the QoS measure'. These are misleading and unclear descriptions. At a minimum Ofcom should define what it means

[4] This incentive arises because MBORC faults tend to have longer repair times

Ofcom's approach, why it is wrong (and also inconsistent with Ofcom's own stated principle) and the approach that Ofcom should take.

4.2   Ofcom propose (§2.8) revising the OTR standard (in the case where there's no change to using a MTTR metric) to reflect a change in fault mix[5].

> *We accept that the* [fault mix change] *data would appear to support the rationale that there have been improvements to the customer repair experience, and because these improvements have lowered the number and weighting of easier to fix faults, this will make the current metric more difficult to meet. Consequently, our provisional view is that it would be appropriate to make a change to the OTR minimum standard in relevant markets to address this*

4.3   In the case where an MTTR metric is introduced, Ofcom do not explicitly state that the MTTR minimum standard reflects recent and future mix changes: however, its approach implies that it does. Ofcom's proposed standard (§2.26) of 3:50 is based on the current actual performance (of 3:33) plus 10%.   There is no explanation or justification for using either the current performance as the starting point for setting the minimum standard or the 10% uplift (which seems an arbitrary figure plucked out of the air). Ofcom indicates that their approach has reflected longer repair times due to 'adverse events' (§2.26) such as more DFA (which has longer repair times) and relatively fewer electronic faults (which have shorter repair times): presumably these adverse events are the basis for the 10% uplift.

4.4   Ofcom's proposed approach of setting the standard to reflect recent fault mix changes and the impact of DFA is wrong. Ofcom itself states (§2.23) that:

> *In determining what a new mean time to repair standard should be, we consider that a reasonable starting point should be to approximate the existing standard at the time that standard was imposed …*

4.5   This principle that any new standard should be consistent with the existing standard, means in practical terms that the minimum MTTR standard should be consistent with the original OTR minimum standard set in WFTMR21. Ofcom must not adjust standards to reflect recent or future mix changes or increases in DFA[6] even if these were not anticipated in the original market review.   The new standard should though be adjusted to reflect changes in scope (i.e. types of fault included).

4.6   To adjust the minimum standard to reflect mix changes or increases in DFA would effectively be amending regulation to reflect actual market changes since the 2021 market review. Elsewhere Ofcom has been clear that amending regulation mid-market review is inappropriate – for instance, in recent Equinox 2 decision Ofcom said (§4.17):

> *Ofcom recognises the importance of providing a predictable, stable regulatory environment. We would generally expect the next market review to be the place to re-*

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[5] We note that, if as Ofcom proposes, customer faults are excluded from the MTTR minimum standard (and the MTTR minimum standard is set to reflect this) then the impact of adjusting for any fault mix change (excluding customer faults) will be small

[6] Even if it were appropriate to reflect more DFA in the minimum standard (which it is not) then it should be based on forecast future DFA compared to the forecast in 2021, not on forecast future DFA versus current DFA (in 2023) which is what Openreach/Ofcom have proposed. We note in this respect that the level of DFA appears below that anticipated in 2021. In WFTMR2021 Ofcom said: *"we expect over time DFA to become the primary access remedy in Area 3 of the LL Access market"* (WFTMR Vol 5 §4.67). Yet in FY23 (average) DFA circuits were 188 of about 40,000 in Area 3 (less than 0.5%) (2023 RFS 8.2.1).

evaluate our approach to regulation, in the light of developments since March 2021. Potentially revisiting the decisions taken in the WFTMR Statement at an earlier stage is not something we would do lightly.

4.7   There is no justification in this case for amending regulation mid-market review – the fact that the metric is changing provides no reason to justify a more lenient standard.

4.8   Changing regulation will both undermine regulatory stability and create a dangerous bias in the regulatory system by allowing and encouraging Openreach to selectively request favourable changes in regulation when the outturn 'justifies' it.

4.9   A logical flow to determine the minimum standard in this case is:

- Start with OTR minimum standard set in WFTMR21 which was 94% (for all five years) and included all faults

- Determine MTTR minimum standard (including all faults) that is consistent with 94% OTR (i.e. based on same distribution of fault repair times). Based on recent data the MTTR consistent with 94% OTR is 1:51[7]

- Adjust MTTR minimum standard to exclude customer faults. This is 3:38[8]

4.10   Though the correct level (3:38) is not substantially different from that proposed by Ofcom (3:50) it is important that Ofcom corrects its approach and methodology.

5   First year

5.1   Assuming that the new standard is implemented between November 2023 and March 2024 we agree with Ofcom's proposal that the first year for assessing compliance should be from the implementation date up to Mar 2025. We note that this will include two winter periods.

6   KPIs

6.1   We agree with Ofcom's proposals to require Openreach to report KPIs on MTTR for all faults and MTTR for customer faults. As we describe above we think Ofcom should consider imposing a (possibly temporary) minimum standard on MTTR for customer faults.

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[7] This was derived by assuming a (negative) linear relationship between OTR and MTTR based on recent data provided by Ofcom. The MTTR was provided in Table 2 of the consultation and the OTR data (for the same period) was provided by Ofcom by email

[8] This was derived based on the recent data provided by Ofcom where the MTTR for all faults (excluding customer faults) was 97% longer than the MTTR for all faults