

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

UKCTA Response to the Consultation

August 2023

1. This submission is the UK Competitive Telecommunications Association's (UKCTA) response to Ofcom's consultation regarding proposed modifications to quality of service directions and related key performance indicators for Ethernet and dark fibre repairs.
2. UKCTA is a trade association promoting the interests of fixed line telecommunications companies competing against BT as well as each other, in the residential and business markets. Its role is to develop and promote the interest of its members to Ofcom and the Government. Details of membership can be found at www.ukcta.org.uk. Its members serve millions of UK consumers.
3. 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.
4. We comment on one aspect of Ofcom's proposals: to set a more lenient QoS standard to reflect changes in fault mix and increase in DFA that (according to Openreach) will, all else equal, lengthen repair times and make achieving the QoS standard more difficult. In the case where an on time repair (OTR) metric continues to apply, Ofcom propose (§2.8) to make the OTR standard more lenient to reflect changes in fault mix since WFTMR21.
5. Ofcom also propose to amend the QoS standard to a more lenient level in the case where the repair standard is changed to a mean time to repair (MTTR) metric. Here Ofcom has proposed that the MTTR standard is 3:50 hours based on recent actual performance and that an upwards adjustment to reflect future 'adverse events' such as changes in fault mix and increased DFA. This approach means that the proposed standard reflects change since WFTMR21 (both past and future).
6. Ofcom's proposals would in effect modify regulation mid-market review. This would have significant detrimental effects.
7. First, it undermines regulatory stability. As Ofcom said recently in the Equinox 2 statement (§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-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.

8. Second, it creates a dangerous bias in the regulatory system since it allows Openreach/BT to submit proposals for changes in regulation but only when they will result in more lenient regulation for them. This is exactly what Openreach have done here. In fact their request was for an even more lenient standard than Ofcom has proposed: Openreach requested that the MTTR standard (for all faults excluding customer faults and MBORC faults) was 5 hours whereas the standard consistent with the existing 94% OTR is about 2:30 hours.
9. Ofcom must not amend the standard mid-market review. If Ofcom decides that the metric should be changed to MTTR (which obviously requires the setting of a new standard) then the standard should be set to be consistent with the 94% OTR standard set in WFTMR21 and not reflect any changes since the market review. In fact, Ofcom (§2.23) said that this was the right approach but inexplicably failed to follow its own principle: *“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 ...”*.
10. We are aware that Ofcom have previously suggested that a change of this nature does not amount to amending the market review because this standard was set under a direction rather than a condition. This appears to us as sophistry. This change will undermine regulatory stability irrespective of legal instrument used to set the original regulation. Similarly, the bias that this change will cause is not avoided because a direction was used to set the regulation.

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