INCA’s response to Ofcom’s consultation: Approach to the copper retirement second threshold calculation.

May 2026

Table of Contents

1 Executive Summary

1 INCA is pleased to respond to Ofcom's consultation on how to implement Threshold 2 of the copper retirement framework set out in the WFTMR and the TAR.

2 It is right that Ofcom should support Openreach's ability to phase out its copper network. The benefits of fibre connectivity and the inefficiencies associated with the long-term operation of two different access networks are clear.

3 Ofcom's primary objective for the copper retirement framework should, however, be to maximise long-term consumer benefits, not simply to support Openreach's ability to retire its copper network. To deliver on that objective, Ofcom must consider more carefully the potential consequences of its regulatory interventions and, even at the cost of a short-term increased administrative burden, be willing to entertain relatively more complex solutions than those proposed in this consultation.

4 Although the introduction of a 'pure' Defined Exclusions Approach (DEA) may appear complex, the Fixed Percentage Approach (FPA) is unnecessarily crude and arbitrary and risks material harm both to consumers and to the viability of network competition.

5 A hybrid DEA/FPA solution that counts government ratified BDUK-funded Altnet FTTP deployments together with a low FPA (INCA proposes 3%) would more accurately reflect the characteristics of individual exchange areas and not unduly add to the administrative complexity for either Openreach or Ofcom.

6 Ofcom's statutory role is to further the interests of citizens and consumers, including by promoting competition where appropriate. It would be inconsistent with that role for Ofcom to design a Threshold 2 framework that incentivises or effectively compels Openreach to overbuild existing or planned Altnet networks for regulatory reasons rather than because of normal competitive market forces.

2 About INCA

7 The members of the Independent Networks Cooperative Association (INCA) are supporting, planning, building and operating sustainable, independent and interconnected networks that advance the economic and social development of the communities they serve and permit the provision of applications and services through open competition, innovation and diversity. We are working together to create cohesive interconnected next generation networks.

3 Introduction

8 Ofcom is consulting on the definition of the 2nd threshold in the already established copper retirement process for the UK. This is a three-step process as follows:

1) When Openreach reaches 75% FTTP coverage (ready for service premises) in the footprint of an exchange, it is allowed to issue a 'stop sell' notice for new copper based (FTTC) connections,

2) When Openreach reaches 100% FTTP coverage in an exchange footprint, Ofcom will remove price regulation on FTTC services in that exchange and Openreach is allowed to increase FTTC prices if it wishes to do so, and

3) Finally, at an as yet unspecified point, Openreach will be allowed to discontinue existing FTTC connections.

9 The scope of this consultation is the definition of what constitutes 100% FTTP coverage of an exchange footprint. It has been generally acknowledged that it is likely to be impossible for Openreach to reach every single premises in all exchanges and that, therefore, it is necessary to establish a framework for the exclusion of premises which Openreach cannot be reasonably expected to reach (at least commercially without subsidies).

10 Because the 2nd threshold would enable Openreach to potentially increase FTTC prices in the relevant exchanges[1], with the likely consequence of accelerating the rate of retail consumers switching from FTTC to FTTP, this threshold is particularly important for INCA's members. If an Altnet is in the process of deploying an FTTP network in a location where Openreach increases the FTTC pricing to accelerate consumer switching to fibre, this could result in many customers, who would otherwise have switched to the Altnet network once it was completed, would switch to the BT FTTP network ahead of the Altnet being able to offer an alternative option.

11 Ofcom has made a number of decisions in the Telecoms Access Review (TAR) directly relevant to this consultation, including:

- That the measurement of the 2nd threshold should be done on a per exchange basis,[2]

[1] For the premises where FTTP is available.
[2] Paragraph 3.4

- That Openreach should not be allowed to count Altnet fibre deployment towards its level of FTTP coverage in the respective exchange areas,[3] and

12 The core question posed by Ofcom in this consultation is how any exclusions from the 100% threshold should be defined and applied for each exchange area across the UK.

3.1 Terminology and overall approach

13 Ofcom often refers to customers 'migrating' from copper to fibre. This suggests a passive process and may imply that customers are simply shifted from the copper network of Openreach to the fibre network of Openreach. INCA would encourage Ofcom to change its terminology to refer to the **switching** by customers from copper to fibre.

14 To switch is an active decision by a customer and it is important that Ofcom recognises that and creates a framework that enables active switching decisions by consumers, not an approach that reflects a presumption of consumers being passively migrated between networks. This migration language is supporting the BT Group narrative and does not promote network competition.

15 The recently published 2026 Statement of Strategic Priorities (SSP) makes it clear that government expects Ofcom to create an environment where the gradual move from copper to fibre presents the opportunity for consumers to make informed decisions. The SSP specifically says: "*Consumers being switched from copper to fibre need the appropriate level of information regarding the technology available to them, what their options are, and their ability to switch provider*".

16 The absence in this consultation of any initiatives or recommendations in this respect is disappointing. Although Ofcom is focusing on the definition of premises to be excluded from the 100% threshold, INCA considers it critical that all copper retirement discussions are done in the context of empowering consumers and promoting network competition.

4 Ofcom's proposals

17 Ofcom considers two different approaches to defining which premises should be excluded from the 100% FTTP coverage threshold.

- A defined exclusions approach (DEA), and
- A fixed percentage approach (FPA).

18 These options were also discussed in principle in the TAR consultation and, despite the responses received to these two options in the TAR consultation being overwhelmingly in favour of the DEA, and the vast majority of respondents setting out specific and material concerns with the application of the FPA, Ofcom, in this consultation, now proposed to implement the FPA.

19 Ofcom is proposing to set a 10% exclusions allowance, effectively resulting in Openreach having to demonstrate 90% FTTP coverage in an exchange area in order to issue the second threshold notification.

20 Ofcom's main rationale for proposing the use of the FPA appears to be that a DEA would be more complex to administer.

21 INCA does not consider administrative convenience, by itself, to be a sufficient basis for regulatory design. Ofcom's role is to implement a proportionate framework that protects long-term consumer interests and promotes effective network competition. If a Fixed Percentage Approach is materially cruder, more arbitrary and more distortive of competitive investment than a more targeted exclusions framework, its relative simplicity cannot justify its adoption

4.1 Comments received in the TAR process

22 In this consultation, Ofcom summarises the responses received to the copper retirement section of the TAR.

- Most respondents did not support the FPA,[4]
- Openreach and several other stakeholders strongly favoured DEA,[5]
- Several stakeholders expressed strong concerns that Openreach would be able to 'game' the FPA,[6]
- Several respondents expressed concern that the Threshold 2 must not cause additional overbuild of Altnet networks, beyond what Openreach choses to do commercially.[7]

---

[4] Paragraph 3.24.
[5] Paragraph 3.26.
[6] Paragraph 3.36 and 3.27.

- Those that did not openly support DEA or oppose FPA expressed a strong preference for the percentage exclusion to be set to near-zero.[8]

23 INCA would like to draw Ofcom's attention to Ofcom's characterisation of INCA's copper retirement response in the TAR consultation process, as correctly summarised in the TAR statement by Ofcom, and to highlight that the characterisation set out by Ofcom in paragraph 3.30 of this consultation is incorrect. INCA did not simply support the FPA and argue for a level of near to 100%, INCA argued for allowing Openreach to take into account Altnet build where that Altnet build was sufficiently established to not suffer significant risk from Openreach being allowed to increase its FTTC pricing with the objective of accelerating the switching by consumers from FTTC to FTTP.

5 INCA's assessment of Ofcom's proposals

24 INCA understands that the DEA would, almost inevitably, be more complex than the FPA for Ofcom and Openreach to implement and manage but believes that there are likely to be versions of the DEA that would not present operational obstacles of the materiality that should cause Ofcom to disregard the approach entirely. INCA believes that Ofcom has erred by making a binary choice based on the worst-case (in respect of operational practicality) option of DEA and an over-simplistic version of FPA.

5.1 Shortcomings of the FPA

25 Whilst superficially attractive the FPA is alarmingly crude and arbitrary, and INCA cannot see how Ofcom considers that consumers are best served by the adoption of this approach. Any single percentage level would, inevitably, be either too high or too low for the vast majority of exchanges.

26 For exchanges where the chosen percentage exclusion is too low, there are two potential consequences:

- Openreach will wait and see what accommodation Ofcom will make for these locations in the next market review, or

- In order to accelerate the move from copper to fibre, Openreach will push its FTTP deployment beyond its commercial plans – either building to premises at a higher cost level and/or overbuilding Altnet premises it had originally not planned to cover.

27 If Openreach choses the 'wait and see' approach, it will likely delay FTTP deployment in those areas (unless it is subject to Altnet competition). This would result in consumers not having access to fibre connectivity simply because an arbitrary threshold was set by the regulator. In the alternative, if Openreach choses to build beyond its general commercial parameters and thresholds, this could result in unviable overbuild of Altnet networks, to the detriment of network competition and long-term consumer benefits.

28 For exchanges where the chosen percentage exclusion is too high, Openreach may decide to delay FTTP deployment beyond the threshold required and divert short-term investment to other locations – motivated to make Threshold 2 declarations across as much of the country as possible as soon as possible. In that situation consumers will lose out arbitrarily and could be made to wait considerable periods before their connectivity catches up with that of their neighbours.

5.1.1 Deaveraged FPAs

29 INCA is aware that some stakeholders have argued that the FPA could be improved by setting different percentages for exclusion based on the characteristics of each exchange area and grouping them together in for example 'urban' 'suburban' and 'rural' categories. INCA agrees with Ofcom that this is unlikely to be much better than a general percentage exclusion. In urban areas, Openreach may face problems with the connection of multi-dwelling units (MDUs), whereas in rural areas the problem may be reaching remote and hard to reach premises. It is not clear whether there is a material difference between those groups, nor what the parameters for creating the groupings should be. INCA further notes Ofcom's comment that some exchange areas cover both urban and rural premises.[9]

5.1.2 10% FPA exclusion level

30 Ofcom makes no effort to justify its proposed 10% exclusion level. On the contrary, Ofcom acknowledges that it is an arbitrary number. In the time since the publication of the TAR consultation in March 2025, it is not clear that Ofcom has performed any additional research and analysis of the possible impact of and level of a possible FPA. Given that Ofcom has disregarded the many TAR responses that point out the

[9] Paragraph 3.116.

very obvious problems a FPA would cause, it is disappointing that Ofcom presents no evidence that its proposals will at least seek to minimise those problems.

31 Administrative simplicity does not remove the need for regulatory justification. If Ofcom chooses to replace a more targeted approach with a blunt percentage threshold, the burden on Ofcom is to explain why that blunt instrument is nevertheless proportionate, evidence-based and consistent with the promotion of effective network competition.

5.1.3 Definition of relevant premises

32 In the draft notification of the draft direction set out in the consultation document, Ofcom states that BT may currently publish the Second Threshold Notice :

33 "(a) a First Threshold Notice has been published in relation to that Local Serving Exchange for a minimum period of 2 years; and

(b) Ultrafast network access is available to 100% of <u>Relevant Premises served by that Local Serving Exchange</u> but excluding any premises that Ofcom may from time to time direct."[10] [emphasis added]

34 INCA has sought clarification from Ofcom that this means that, if there are premises in the geographic exchange footprint which are not served by Openreach, then they are not included in the 100%. This could, for example, be new developments where the developer has decided to work with a different operator to provide connectivity and where Openreach has no network. Ofcom has said that that understanding is incorrect, and that ALL premises that were within the geographical exchange footprint at the time of the First Threshold Notice should be included in the 100% threshold, regardless whether Openreach has or had connectivity to those premises.

35 INCA considers that this interpretation is likely incorrect as the draft notification stands in the consultation and that, importantly, it also does not make sense to effectively force Openreach to overbuild such new housing developments in order to reach the Second Threshold. Openreach is naturally free to deploy its network where it wishes to, including in recently built housing developments where another network operator is the initial provider, but it is inappropriate for Ofcom to force or require such overbuild.

5.1.4 FPA assessment conclusion

36 In conclusion, it would appear that the only real benefit of the FPA is its simplicity. The potentially very significant disadvantages of the FPA appear to materially

[10] Annex A paragraph 3 (b).

outweigh the simplicity argument, and INCA urges Ofcom to reassess its recommendation.

5.2 Risks and consequences of forced overbuild

37 INCA has carefully reviewed Ofcom's analysis and conclusions in the TAR Statement and is concerned that Ofcom has dismissed the likelihood of Openreach being directly incentivised to overbuild Altnet networks in order to reach the prescribed percentage FTTP coverage. Both Openreach and INCA make this point as do several other respondents[11] in their TAR responses. INCA is concerned that Ofcom presents no substantial arguments to justify its dismissal of this very significant point. As an evidence-based regulator, INCA asks Ofcom to present its rationale for considering that the definition of the 2nd Threshold exclusions would not influence Openreach's network deployment decisions.

38 On one hand, Ofcom acknowledges that it is important for Openreach to be able to increase copper prices to encourage customers to switch from copper to fibre, but, in the same breath, Ofcom says that the thresholds set by Ofcom for enabling this will not influence Openreach's build decisions. Ofcom's position in this regard is simply untenable and, to the extent INCA understands, not evidence based.

39 INCA is particularly concerned that BDUK-funded deployments are not explicitly included in Ofcom's proposed exclusions. Those premises were identified for public intervention because the market would not deliver fibre coverage on normal commercial terms and government subsidy was required to address that market failure. In those circumstances, it is perverse for Ofcom to create a regulatory incentive for Openreach to overbuild government-funded FTTP deployments merely in order to satisfy Threshold 2. INCA acknowledges that Openreach may in some cases choose to overbuild BDUK-funded Altnet deployments, but that should occur only where Openreach considers that it has a genuine commercial business case to do so, not because the regulatory design has made such overbuild artificially advantageous.

40 A Threshold 2 rule that drives overbuild of publicly funded competitive infrastructure risks reintroducing the very market failure that the subsidy intervention was designed to correct

41 The provision to Openreach by government of data on an annual basis of BDUK deployments for inclusion in Openreach's calculations of FTTP coverage to enable the Threshold 2 notification would not be an overly complicated or operationally

[11] Footnote 88.

burdensome activity,[12] and INCA believes that Ofcom needs to seriously reconsider whether such premises should be part of the exclusions specifically provided for within the Threshold 2 rule set.

5.3 Pragmatic DEA or hybrid DEA/FPA solutions

42 INCA is sympathetic to Ofcom's reluctance to design an exclusion rule that requires inspection and justification at the individual UPRN level. It is right that Ofcom should apply a high-level cost/benefit approach when it considers the level of granularity that would be practicable in a DEA solution.[13]

43 INCA believes, however, that there is more than enough scope in between a 'full DEA' solution and Ofcom's proposed 'full FPA' solution to identify a solution that can recognise some of the material characteristics of individual exchange areas without imposing an undue burden on individual stakeholders, including both Openreach and Ofcom. Ofcom's consultation appears to make no effort to seriously consider hybrid options and INCA considers this to be a flaw in Ofcom's approach.

44 INCA believes that it would be reasonable, practicable and manageable to allow government-verified BDUK funded premises to be added to an FPA exclusion percentage. That FPA exclusion percentage should then be reduced to incentivise Openreach to reach as many premises as possible in each exchange area and deliver the benefits of FTTP connectivity wherever possible – reducing rather than fossilising or even expanding the digital divide.

45 INCA set out in its TAR response the parameters it considers appropriate for the inclusion of Altnet build in the exclusions. It is INCA's understanding that Ofcom has rejected this proposal and that this consultation does not seek further inputs on that matter.

6 Consumer empowerment

46 The SSP requires that:

"Consumers being switched from copper to fibre need the appropriate level of information regarding the technology available to them, what their options are, and their ability to switch provider"

[12] INCA notes that CityFibre has specifically referred Ofcom to the fact that this data is already published by BDUK.
[13] Although INCA understands that Openreach says it generates the relevant data as part of its network planning work, so it would be little or no additional work for Openreach.

47 INCA is deeply concerned that the current consultation makes no reference to any initiatives to ensure that consumers are informed to make active switching choices. Whilst Ofcom is proposing that the Threshold 2 exclusions should not be available until April 2029, Openreach has already notified a handful of exchanges as being compliant with the 100% FTTP coverage threshold, and Ofcom is not signalling its intention to ensure that consumers are sufficiently informed before Openreach can increase the FTTC prices in those exchange areas.

48 Despite the purpose of this consultation being the definition of Threshold 2 exclusions, Ofcom needs to ensure that those exclusions are seen and considered in the context of the wider copper to fibre switching environment.

7 Consumer protection

49 There is real risk that the 10% FPA solution will result in many premises not being served by FTTP connections until much later than would have been the case if a DEA solution was to be implemented. Those premises will in many cases be where the existing broadband service is below the national average in speed and quality and will almost without doubt exacerbate the digital divide for many businesses and individuals.

50 Where it does not harm network competition, INCA considers that Openreach should be obliged to cover as close to 100% FTTP coverage as possible in each individual exchange area. This would achieve the combined objectives of ensuring that as few premises as possible are 'left behind' in Openreach's initial FTTP deployment and allowing Altnets time to deploy their networks and attract customers to those networks before Openreach starts a major push, using increased copper prices, to incentivise customers to switch to its FTTP network.

It is important that the protection of consumer interests is recognised to include the making available of competition-related benefits to those consumers. INCA remains of the view that Ofcom should seek a means of recognising Altnet fibre deployments, when determining the triggers for Openreach's copper retirement threhsolds.

8 Effective date of exclusions

51 INCA agrees with Ofcom that the exclusions from the 100% premises coverage threshold should not be implemented right away. It is important that customers (residential and businesses) are given a sufficient window of time to become familiar with the concept of fibre broadband and its benefits.

52 Vulnerable customers, in particular, need protection. It is not yet clear what the specific challenges will be for vulnerable customers, in addition to those they are currently facing in the PSTN switch-off process. It is important that sufficient time is allowed for operators and organisations representing vulnerable customers to learn what challenges copper retirement could represent and to define and implement the necessary safeguards.

53 Ofcom proposes that exclusions are introduced in April 2029. INCA believes this is the earliest for Ofcom to safely do so. The many issues highlighted in this response, and in the many responses received by Ofcom to the copper retirement questions in the TAR consultation, must cause Ofcom to pause and consider whether, in fact, it should extend the implementation of exclusions until the end of the TAR period in 2031. Ofcom remarks in the consultation that exchanges where Openreach is unable to reach the 90% coverage during this market review period will just have to wait till Ofcom's review in March 2031. It may, in fact, be more appropriate to spend more time getting the rule set right (including consumer protection and consumer information and empowerment) and to introduce the new rules in April 2031 without an interim step just two years earlier.

54 Postponing the introduction of any exclusions to the 100% threshold until 2031 would ensure that Ofcom would have a much larger and tighter data-set on which to base its considered decisions. INCA is concerned that Ofcom's proposal of the 10% FPA solution is an indication that this is a rushed decision, and that insufficient data is available on which to base evidence-based decisions on this subject.

9 INCA's proposals

55 On balance, INCA believes that Ofcom appears to be rushing out a set of rules for which is does not have evidence and to which some very material risks are attached.

56 Ofcom should focus on

- maximising long-term consumer benefits through network competition,
- reducing short-term consumer harm resulting from premises, residents and businesses being excluded from FTTP coverage in Openreach's race to reach 90% coverage in as many exchange areas as possible by April 2029, and
- protecting vulnerable consumers from a risk framework that is as yet unknown.

57 INCA's proposals can be summarised as follows:

- Postpone any exclusions from the 100% Threshold 2 rule until 2031 when sufficient data is available to make evidence-based decisions and use the intervening time to learn about risks to vulnerable consumers and Openreach's actual deployment levels.

If, however, Ofcom proceeds to determine exclusions for implementation before 2031:

- Premises served, or contractually committed to be served, through government-funded Altnet deployment should be excluded from the denominator used for Threshold 2, so that Openreach is not required or incentivised to overbuild them merely to satisfy a regulatory trigger
- Only premises connected by Openreach (copper or fibre) within the individual exchange areas should be included in the 100%, (Ofcom should clarify that the definition of "Relevant Premises" only includes sites with an existing Openreach copper or fibre connection at the time of the First Threshold Notification), and
- The general percentage exclusion threshold should be set at a low level. INCA proposes 3%. Any exchange areas where Openreach cannot reach that percentage coverage (97%), would have to wait until the next market review and a revised rule set to be implemented in 2031.[14]

58 While INCA's primary proposal within this consultation response is the general percentage exclusion being set at 3%, INCA would like to make one final, more practical suggestion. From INCA's discussions across the industry, it is clear that Ofcom's proposed Fixed Percentage Approach is widely seen as the wrong solution. For the reasons set out above, it is too blunt, too arbitrary and too detached from the actual circumstances of individual exchange areas. At the same time, INCA recognises that simply criticising the FPA does not, on its own, help Ofcom reach a better and workable outcome.

59 INCA therefore informally suggests that Ofcom convene a short-life industry working group to identify an alternative approach that is capable of being administered within Ofcom's and Openreach's practical resource constraints, while delivering a materially better outcome for all network operators and consumers than the proposed FPA.

[14] INCA refers Ofcom to its response to the TAR copper retirement questions where INCA sets out parameters where Altnet FTTP deployments could also be counted into the exclusions. Ofcom has, however, rejected those proposals.

60 Such a working group could be chaired either by Ofcom or by an independent industry chair, with a clear remit and a defined timetable set by Ofcom. Its purpose would not be to reopen the wider copper retirement framework, but to develop a more workable and evidence-based alternative to the FPA, including where appropriate a pragmatic hybrid DEA/FPA model.