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Dear Ofcom,

Thank you for giving INCA the chance to respond to the WLA consultation and for allowing us to submit this response late.

INCA represents a broad range of companies building new fixed and wireless digital infrastructure. In this response we address some higher-level issues discussed with INCA members in our Policy & Regulatory Special Interest Group. Others will respond to the more specific questions in the consultation.

### **1. Promoting Network Competition – the Mysterious Absence of the Altnets**

Promoting competitive investment is an aim fully supported by INCA members. In general they are smaller companies building new digital infrastructure. The consultation document makes few references to the altnets, despite the fact that many of them are well known in the industry, in policy circles and increasingly the wider community. For a market review whose first principal is to promote network competition, this absence is remarkable.

It could be argued with some justification that the altnets do not yet have sufficient coverage to warrant serious attention in the WLA Review. However when we surveyed INCA's members in summer 2016 they reported that they passed more than 660,000 premises with full fibre connections, about twice as many as BT/Openreach passed at that time. Furthermore they have significant ambitions and aim to reach around 5m premises by 2020/21. Taking INCA members' ambitions into account alongside Virgin Media's substantial efforts, para 4.20 (*'we do not expect to see competitive fibre investment across a significant proportion of the country in the period of this review'*) may come to be seen as rather pessimistic and certainly lacking in ambition given the strategic policy drive towards new digital infrastructure.



Our contention in the report [Building Gigabit Britain](#) is that the altnets are becoming a collective third competitor to BT and Virgin Media. Government is supporting INCA's recommendations and putting into place the measures that will help make this a reality.

The way the consultation document seems to see the altnets is through the prism of PIA. In reality, PIA has not been used to any great extent because of the onerous restrictions and barriers to its use. We hope this will change significantly and that PIA will become more useful, lowering the cost of altnet investment in new networks. However for Ofcom to base its whole analysis of the new sector of digital infrastructure builders on PIA is ... odd. Paragraph A10.53 gives some estimates and assumes that at maximum 400,000 premises (in our view the analysis should include residential and small businesses) will take services over new access networks, built using PIA. The conservative estimates are between 40,000 and 150,000. Given the uncertainty over PIA and how useful it will really be (and please don't be under any illusions, INCA members will give it a really good try), these assumptions may well be right. But they vastly underestimate the number of homes and businesses that the altnets will reach in a genuinely competitive environment. Just because PIA is a regulated product, it doesn't mean that it's the only way that new networks will get built.

## **2. Promoting Investment by BT**

We agree that BT, through Openreach, needs to invest more in full fibre connections. We argue that the principal means of achieving this is by encouraging a competitive market in digital infrastructure provision – in this regard we agree with many of the elements of the DCR. It is less clear to us that price regulation per se encourages (or discourages) BT investment and in particular around the notion of the 'fair bet' on BT's 'risky' investments, for which it is very hard to find any clear definition (or indeed *any* definition, though we are happy to be corrected on this). Openreach itself is putting effort into dialogue with service providers about co-investment models which will focus on reducing investment risks, we assume through demand measures, possibly JVs, or other projects. At some point the issue of copper switch off will have to be seriously considered and it is worth noting that this is now [under discussion](#) in KCOM's geographic market.

## **3. Price Controls on BT's VULA Service**

Whilst at a superficial level it seems plausible that reducing BT's prices for a 40/10 product whilst maintaining pricing freedom for higher speed services can benefit consumers yet still encourage BT to invest in new fibre infrastructure, in practice it is likely to have little effect other than dampening investor enthusiasm for new networks.



Companies in INCA's membership are investing substantial sums to build new fixed and wireless networks to serve various geographies and sectors. These are long term investments backed by a wide range of investors – private, public and communities themselves. They operate in a competitive market where consumers are sensitive to prices. Signalling that higher speed services, based on brand new infrastructure, will rapidly become commoditised does not help investor confidence. For those companies building on a wholesale model we anticipate that where retail service providers are interested in adopting new networks, they will simply demand matching, lower prices, whatever the perceptions of better quality, speed and operational efficiency. From discussions with INCA members we are not clear how serious this issue is, but it is certainly not sending a positive signal to investors.

#### **4. The Need for Easy Switching**

As noted above, BT has started its process of 1-1 conversations with key CPs about the conditions under which 10m homes can be reached with FTTP. One obvious approach, (pioneered by CityFibre) is to encourage service providers to shift substantial groups of customers en masse from the old to the new infrastructure as it gets built. This helps to manage demand risk, a key factor in investment decisions. BT already operates the main industry platform allowing multiple service providers to connect to Openreach infrastructure and consequently is in pole position to do deals with CPs. Despite good work by FluidOne and some other providers, there is no equivalent platform of similar scale available to alternative networks. This means that end consumers switching from Openreach infrastructure to a new network provider do not have an easy switching process and can incur termination fees which may act as a barrier as the market develops. Equally, service providers that plan to switch significant numbers of customers from Openreach either to new infrastructure they have built themselves, or to an alternative open access fibre infrastructure, currently do not have a supporting platform. We understand that there is discussion of switching between Openreach and Virgin Media, but as far as we are aware this does not involve INCA members. The absence of any discussion in the WLA review about switching mechanisms is a serious gap.

#### **5. Rural LLU**

To facilitate deployment of LR-VDSL the consultation envisages releasing BT from its LLU and SLU obligations in a '*small number of geographic areas where this is appropriate.*' Concerns about this have been raised with INCA by at least one member offering fixed wireless services in rural areas of Scotland. We would urge Ofcom to consider very carefully whether this proposal could inadvertently stifle competition in rural broadband and how to mitigate any negative effects.

## **6. Failing to See the Wood for the Trees**

There is a huge amount of complex, undoubtedly useful and detailed thinking that has gone into the WLA review. However in our view, it fails to properly align with the overall strategic policy to encourage a shift towards ‘full fibre’ and wireless (ultimately 5G) networks that will underpin much of the UK’s future prosperity. Thus it is in danger of failing to see the wood for the trees. Ofcom remains fixed in a world of silo reviews in which the residential market is segregated from the business market. In terms of connectivity these distinctions are blurred now and will become even more blurred as new pure fibre networks are built offering affordable, symmetric gigabit services to consumers and businesses. The market for leased lines will change, becoming more firmly based on the terms of a service levels, rather than raw bandwidth.

This silo thinking is reflected in the PIA Review which remains rooted in consumer versus business connectivity thinking. Whilst Ofcom proposes to relax the restrictions on use of BT’s ducts and poles for business grade services (a good thing – recognising the fact that new network builders need to address the widest possible market and in some cases seek anchor tenancy arrangements to justify their investments) the ‘mixed use’ approach is likely to be a source of endless dispute with Openreach about what really constitutes a network primarily aimed at residential consumers versus one aimed at businesses. The distinctions break down entirely with those INCA members focused on providing services to SMEs on business and science parks, some of whom seek to use the potential efficiencies of PIA to deliver services that are badly needed and hugely valued. Indeed INCA has recently received an updated list of business parks and enterprise zones that need new network investment from BDUK. It is a nationally recognised problem that INCA members are solving, despite the way that Ofcom aims to regulate the market.

If the aims of the DCR and recent Government policy are to be realised Ofcom needs to open up its thinking and develop strategies whereby regulation really can act as a spur to competitive investment in all new networks, delivered by BT, Virgin Media and a range of alternative network providers. If we get the overall approach right the UK will exceed the goals for full fibre connections outlined in the Strategic Review and encourage more investors to get behind the people building the digital infrastructure we need for the future.

**INCA's Mission**

*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. They are working together to create cohesive interconnected next generation networks.*

**INCA's role is to:**

- Promote the development and adoption of common technical & business standards amongst local projects
- Underpin the development of next generation networks by developing joint purchasing and marketing approaches
- Act as a unified voice for local projects to government and industry
- Promote the sector and explain why next generation broadband is important
- Support the development of next generation broadband projects by sharing expertise and information
- Work with other agencies to promote and support local project opportunities
- Encourage partnerships with public, private and community sector organisations to facilitate investment and faster roll out of next generation broadband infrastructure, particularly in under-served areas.