

Ofcom's general policy on Information gathering

Independent Networks Cooperative Association

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1 Introduction

- 1 The Independent Networks Cooperative Association (INCA) is the leading UK trade association representing organisations deploying independent digital infrastructure. Founded in 2010, INCA aims to foster a new approach to digital infrastructure, focusing on full fibre (FTTP) and high-quality wireless broadband whilst campaigning for the policy and regulatory support needed to maintain a healthy, competitive market. INCA has over 200 members and represents most of the full fibre infrastructure builders commonly referred to as the Altnets. Members include network owners, operators, suppliers and managers as well as access networks, middle mile networks, network hubs and exchanges and organisations (including public sector) that are developing or promoting independent networks.
- 2 A number of INCA members have recently received numerous S.135 requests from Ofcom as a result of the launch of the Telecoms Access Review (TAR) in March 2024; INCA welcomes the opportunity to respond to this timely consultation.

2 Executive Summary

- 3 INCA supports Ofcom's efforts to increase clarity and improve transparency as to its information gathering powers through the updating of its General Policy on Information Gathering.
- 4 As the existing policy on information gathering was published in March 2005, it is appropriate that the additional information gathering powers attained since 2005 are reflected in this policy.
- 5 However, some elements of the policy are inadequately phrased resulting in clauses which allow Ofcom to deviate from the policy without explanation, undermining the clarity seeking to be achieved.

- 6 INCA would contend that some of Ofcom's information gathering remains confusing, burdensome on smaller telcoms providers, and that the establishment of the Information Registry is inefficient.
- 7 There should be a clear objective of improving Ofcom's centralised data collection and storage and to coordinate through that function before individual s.135 requests are issued.
- 8 INCA is willing to work with Ofcom to improve processes and systems to enable Altnets to contribute constructively to Ofcom's statutory information gathering methods.

3 Proportionality

- 9 To be able to exercise its duties and functions, Ofcom must be able to collect data from industry stakeholders.
- 10 Altnets have grown in size and importance and have been increasingly included in information requests from Ofcom. INCA welcomes that Ofcom is willing to take onboard Altnets' data in their information gathering, however, Altnets come in varying sizes and the information gathering exercises are increasingly burdensome.
- 11 Since the launch of the TAR earlier this year, Altnets have been on the receiving end of numerous statutory requests for information from Ofcom, many for the first time.
- 12 As many Altnets are small businesses with limited regulatory resources, this has been a daunting and time-consuming process for those who have not previously been initiated with the methods employed by Ofcom.
- 13 As outlined further in this response, multiple requests appear to intersect, demonstrating a lack of co-ordination within Ofcom.
- 14 This results in a belief amongst industry stakeholders that the information requests utilise a disproportionate amount of their time.

- 15 Furthermore, INCA believes that Ofcom needs to reevaluate some of its reporting requests in light of modern network infrastructure.
- 16 INCA is aware of some members receiving statutory requests from Ofcom with regards to capital expenditure but are being structured around an old copper network, which is difficult to apply to a modern fibre network.
- 17 INCA would be happy to work with Ofcom to help structure statutory requests which are fit for purpose and reflect modern architecture.

4 Homogenisation of Processes

- 18 INCA considers that the proposed policy is a useful reference document for stakeholders to be able to explain to their own stakeholders why and how Ofcom issue statutory information requests and INCA agrees that it is appropriate that Ofcom's additional information gathering powers obtained since 2005 are reflected in this policy.
- 19 However, any clarity it provides is reduced by the following statement: "*We are required to have regard to this statement of policy when exercising these information gathering powers. We reserve the right to deviate from this policy in appropriate circumstances. Where we consider it appropriate to do so, we will generally explain our reasons.*"¹
- 20 The consultation states that Ofcom considers that the proposals will "*provide further transparency, add clarity and promote certainty for stakeholders*".² Whilst it is certainly an attempt to provide clarity and reduce noncompliance, the clarity is undermined by the contradictions in paragraph A1.4.

¹ Paragraph A1.4 - Consultation: Ofcom's general policy on information gathering

² Para. 3.21

- 21 INCA contends that processes should be homogenised where possible but where Ofcom considers it appropriate to deviate from the policy, it should be compelled to provide the justification for doing so.
- 22 INCA disagrees with the proposal to issue statutory information notices without first engaging with the recipient under a number of scenarios as outlined under paragraph A1.32. Some of the scenarios listed are not appropriate and the list is not exhaustive which leaves open the opportunity for it to be exploited.
- 23 INCA considers not issuing draft requests first to be a regressive step which would allow Ofcom to use this clause without foundation. Ofcom should engage with industry stakeholders to determine a very strict and limited criteria where it is appropriate not to issue a draft request first and it be phrased definitively to not allow Ofcom to deviate from it.

5 Duplication of Information Requests

- 24 Ofcom, as a very large organisation, appears to find it difficult to co-ordinate its interfaces with stakeholders and, as a result, different teams in Ofcom issue multiple s.135 requests to the same operators, asking for very similar data but often in different formats.
- 25 Additionally, much of the data which Altnets have been requested to provide to Ofcom overlaps significantly with data requested by BDUK for the Open Market Reviews. However, the format differs resulting in an increased workload than if the information requests were aligned.
- 26 INCA contends that there should be greater co-ordination between Ofcom and other relevant bodies to streamline processes and reduce regulatory burden on providers.
- 27 INCA welcomes establishment of the Information Registry as a dedicated team to deal with the coordination of Ofcom's information gathering activities.

- 28 However, INCA believes that the Registry is not yet working as anticipated, there remains considerable hurdles to overcome in order for it achieve its objective of co-ordinating, aligning and avoiding duplication of information requests from Ofcom.
- 29 INCA would welcome the opportunity to work with Ofcom to improve the Information Registry.
- 30 Ofcom should consider developing Smart Data methodologies for the collection of industry data aligned with the principles outlined in the Smart Data Roadmap 2024-2025.
- 31 Ofcom should consider standardised data sets of industry metrics to be held by operating companies in a standard format and maintained with periodical reviews.

6 Confidential Information

- 32 Ofcom needs to be able to request sensitive information from stakeholders – INCA recognises this and supports the notion in principle.
- 33 Some of the information which is requested by Ofcom is very sensitive and there can be a hesitancy from employees about whether it is appropriate for Ofcom to be requesting this information – often from people who are less familiar with Ofcom’s approach to regulation.
- 34 INCA understands that respondents to information requests should only redact confidential material but there is concern that sensitive information is being provided without respondents being aware of the confidentiality provisions in place.
- 35 Furthermore, INCA is aware that some members have been unable to use the secure portal and have instead resulted to sending this sensitive and confidential information via email. This is not ideal and does not fill stakeholders with confidence that the information requested and subsequently provided is always treated with the confidentiality it warrants.

- 36 This consultation is very useful in explaining the processes Ofcom should go through to safeguard respondents' sensitive information.³ It would be advantageous for Ofcom to consider replicating or summarising this process within the statutory information requests themselves to aid respondents in explaining to their colleagues and boards why such information is being requested and the consequences of not adhering to such requests.
- 37 The consultation states that Ofcom will "*will normally first explain [their] intention to disclose the information and give that person the opportunity to make representations about the proposed disclosure.*"⁴
- 38 INCA considers this to be a weak, non-committal statement which should be amended in the policy so that Ofcom is compelled to act and **must** explain their intention to disclose the information and give that person the opportunity to representations. It is neither acceptable nor appropriate to do otherwise.

³ Paras. A1.50-A.160

⁴ Para. A1.57