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### **Delivering a more independent Openreach: UKCTA Response**

1. UKCTA members submitted separately, and at length, a number of different views as to the merits of Ofcom's overall policy proposals contained in the Strategic Review of Digital Communications, which led to Ofcom's published policy position on the future of Openreach in November 2016.
2. UKCTA members are fully aligned in our view that it has to be given effect by a robust process and be enforceable. Unfortunately, the most recent consultation does not give us that reassurance for the following reasons:
  - a) Ofcom has offered no opportunity for public scrutiny of BT's Commitments (and associated Governance Protocol and Agency and Services Agreement) and how they compare to Ofcom's established policy position. For example, there is a mismatch between Ofcom's position on branding and Commitment 16<sup>1</sup> that is not explained. The very short period for industry response, plus lack of consultation on the Commitments, makes it appear that Ofcom has predetermined that they address its competition concerns without considering industry views. Further we are also concerned by the apparent lack of an impact assessment, especially given the scale of the changes proposed to BT's status.

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<sup>1</sup> Specifically, Ofcom talk about "branding" in their policy position, but the Commitments only say that "BT" and "British Telecom" won't be used, leaving BT free to co-brand Openreach with BT Group marques and logos etc.

- b) Where Ofcom accepts that the Commitments don't have to go as far as meeting Ofcom's stated policy position on the future of Openreach (which, *prima facie*, on a number of points they don't, such as ownership of assets), then there must be a reasoned explanation, in consideration of all consultation responses to that point, of the decision to depart from that policy position. This is not presently the case.
  - c) The current regime is underpinned by the Enterprise Act 2002; Ofcom are consulting on removing this but not replacing it with any similar statutory underpinning save any future finding of Significant Market Power which may be implemented. Ofcom appears to want to conduct these SMP assessments in accordance with the normal market review cycles, so any perceived need for change may be some years in coming depending on the market. BT can withdraw from the Commitments unilaterally on 12 months' notice, arbitrarily vary the Agency and Services Agreement (and/or terminate it on one months' notice in any event) – Ofcom have not given any indication of how the current (or future, noting the situation with Article 50 of the Treaty of Lisbon) regulatory regime would handle such eventualities.
3. Regardless of the merits of Ofcom's policy position our members perceive, Ofcom's rapid implementation of a new regime with neither proper scrutiny nor security is a worry for them all.
  4. We therefore call upon Ofcom to withdraw its proposed removal of the undertakings and consult formally on BT's Commitments, in doing so explaining how they align with its established policy position and set out, clearly, how it will enforce any Commitments not embodied in any *ex-ante* obligations.
  5. UKCTA would be happy to meet with Ofcom to discuss the points raised in this response.

**End**