

CWU and Connect Response to Ofcom's Draft Annual Plan 2009/2010

This response has been jointly drafted by the Communication Workers Union and Connect who, between them, represent more than 90,000 members working at all levels across the UK telecommunications industry in more than thirty separate companies.

The CWU and Connect believe that Ofcom's three year strategic framework remains an adequate basis for its work programme, particularly in relation to the delivery of public interest objectives and ensuring a regulatory framework to empower citizens and consumers. However, as we have argued in our responses to Ofcom's annual plan for the last three years, some important issues need to be more specifically addressed, especially in relation to workforce training and telecommunications universal service provision. These are issues which we feel are becoming ever more critical given the gathering speed and importance of the convergence process.

Given recent developments in the economy, unprecedented in the period in which the current regulatory model has been in place, the CWU and Connect also believe that the circumstances make the case for greater intervention to ensure certain public interest objectives, such as eliminating the digital divide and ensuring access to converged communication services to disadvantaged groups, all the more compelling. Moreover, the case for public intervention to develop nationwide NGA networks to enable super fast broadband is now clearer, both as a means of addressing the digital divide, and as part of a programme of public infrastructure work to boost demand in the economy and better prepare the UK economy for the challenges ahead.

1) What are your views on the continued relevance of Ofcom's three year strategic framework for the proposed work programme in 2009/10?

The CWU and Connect continue to find the three year strategic framework for Ofcom's work programme relevant, particularly in terms of its acknowledgement of its role in ensuring the delivery of public interest objectives and providing a regulatory framework to empower citizens and consumers, and in the light of the challenges posed by

convergence and the need to regulate for it. In our view, Ofcom gives a sound analysis of the changing communications landscape.

In terms of cross cutting themes, we agree on the need to maximise the UK's impact on international policy development and prepare for Ofcom's new strategic framework.

While we agree that excessive recourse to regulation should be avoided and administrative burdens minimised, at the same time we believe that intervention is essential to ensure certain public interest outcomes and protect consumers and citizens.

We note the accelerating process of convergence in communication services and, in this regard, have followed the work of the Convergence Think Tank (CTT) with interest. As the CWU and Connect have stressed in our own joint submission to the CTT, and in previous submissions to Ofcom, convergence clearly raises challenges for delivering broader public interest objectives, especially with respect to access to new digital platforms, and delivery of suitable content over those platforms. Consequently, Ofcom's objectives of encouraging innovation and investment, and promoting access to high quality communications services in all parts of the UK and to all user groups, remain important areas of focus. We welcome the attention given in the draft plan to the need for further steps to be taken to address the question of digital inclusion, for example in promoting take up of services by older people, the disabled and those on lower incomes, addressing the problems of geographic availability, and improving media literacy.

The CWU and Connect's view is that providing access to converged services for all UK citizens and consumers should be a priority for Ofcom, particularly vulnerable groups with less market power such as those living in remote rural areas, those on low incomes and those with disabilities. In this respect, we also look forward to the forthcoming publication of the findings of the government's Digital Britain review, and Ofcom's response to this, which we hope will prioritise action to address the digital divide.

As noted, convergence continues to accelerate and an increasing number of consumers are using converged communications services. However, it is important to reflect that around 40% of all UK households still do not have a broadband connection and many broadband subscribers do not receive their service at sufficient speed to support quality converged services, such as live television streaming. In this regard we welcome the

work of Ofcom in tackling discrepancies between advertised and actual broadband speeds.

The CWU and Connect have argued for several years now that broadband should be included within the scope of the USO, and that public intervention is required to enable this to happen. As broadband is delivered at ever greater speeds and becomes more pervasive, this aspiration becomes increasingly compelling and hard to ignore. Access to broadband communications services is now a prerequisite for full participation in the information society and broad engagement in economic activity. We note that the draft plan refers to the need to perform 'a clear re-examination of the public outcomes we want to achieve' as regards models for delivering public interests, in the light of serious challenges being faced, and gives the example of universal service obligations. More specific language here would be helpful.

We understand that progress in the establishment of a USO for broadband is linked to discussions at the EU level. We note that the draft plan states Ofcom's intention to maximise its impact on international policy discussion, working with the UK government in shaping EU regulation in particular. We would urge Ofcom to restate the case for a broadband USO in these discussions. At the same time, we trust that Ofcom will do its utmost to support efforts from the UK government to fund wider access to broadband, irrespective of the USO issue.

We are therefore encouraged by signs from the government that the Digital Britain review will put in place measures towards ensuring that broadband reaches all households, and will support steps taken by Ofcom to ensure the right regulatory framework is in place to support such initiatives.

We support the view that legal and economic frameworks will have to evolve to reflect a converging communications industry, and in this light would draw Ofcom's attention again to the issue of how the requirement for employers to provide training in the broadcasting sector will feed through into the telecommunications sector as the two industries converge. This is an issue of high importance to the CWU and Connect, which we have also raised in our submission to the CTT. We are disappointed that this issue has once again been overlooked in Ofcom's assessment of the challenges raised by convergence, although we acknowledge that this is a question to be resolved by government and through appropriate legislation. While we accept that the issue is

outside Ofcom's powers under the Communications Act, we would ask Ofcom to bring it to the attention of government, especially at a time when future revisions to communications legislation are being considered.

As stated in our response to Ofcom's consultation on Citizens, Communications and Convergence in October 2008, in order to maximise technological fluency and efficiency and thus maximise the benefits of developments in communications technology for society as a whole, the CWU and Connect believe that the requirement for employers to provide training in the broadcasting sector should also now be applied to the telecommunications sector as the two sectors converge. Both consumers of converged services and workers within the industry would benefit from efforts to ensure that the workforce is properly trained to respond to the changing skill requirements of a converged communications environment. This would optimise both service delivery and workplace satisfaction.

More generally, we believe there is a need to promote technological fluency amongst consumers, which will drive demand for and use of communications technologies and optimise benefits for society. As stated in our response to Ofcom's draft annual plan for 2008-09, we believe Ofcom could achieve this by promoting collaboration between telcos and educational establishments to develop e-skills courses and qualifications.

Empowering citizens and consumers is crucial to meeting consumer interest in a converged world and we agree with Ofcom that promoting consumer awareness, the ability to easily switch between services, protecting consumers from scams and harmful content, and encouraging media literacy are all important objectives. We would stress that media literacy involves not just an understanding of the different multiple media and telecommunications packages on the market and the ability to distinguish between them, but also a technological fluency which allows consumers and citizens to maximise to the full the potential benefits that use of these services can bring.

We agree with the suggestion in the draft plan that the economic climate and increased financial pressures on particular providers may create incentives for misconduct, aimed at taking advantage of uninformed consumers. We will therefore support efficient and

stringent measures by Ofcom to address any practices by service providers that result in consumer harm or detriment.

We recognise the importance of maximising the efficiency and value of spectrum for UK citizens and consumers, and we thus continue to support Ofcom's strategy to release and liberalise spectrum. This promises to encourage the development of services that extend broadband to remote areas out of reach of cable and DSL networks. We note in particular, that the digital switchover will free up more spectrum for release, and the potential that the release of this spectrum has for boosting access to high speed broadband. This may be of particular relevance for government plans to ensure universal access to broadband in remoter areas through the use of mobile technology. This could be done by releasing spectrum for free to certain firms in return for investment in and provision of NGA services where the market is unlikely to deliver.

In liberalising and trading spectrum, it is nevertheless important that spectrum resource for the delivery of key public interest objectives, such as communications for the emergency services and public service broadcasting, is not reduced or adversely affected in any way.

2) What are your views on Ofcom's proposed policy work programme and top priorities for 2009/10?

The CWU and Connect are broadly supportive of Ofcom's strategy for fixed telecoms, and we agree with the commitment to ensuring that BT implements its undertakings effectively. In particular, we welcome the reference to the need for clarification of how equivalence of input (EOI) will be applied and possible implications for BT undertakings. However, we would prefer more specific language here, and a commitment to withdraw regulation where agreed and appropriate for BT in return for equivalence. This provision will be of continued importance in incentivising BT's ongoing investment in its 21st Century network which will be essential to supporting the UK's future economic competitiveness and bringing benefits to both the citizen and the consumer.

This is particularly relevant given the ongoing development of next generation access networks to enable super fast broadband. In order to ensure nationwide development of and broad access to NGA, it is essential that the right regulatory framework and financial incentives are in place. For example, as argued in the joint CWU-Connect submission to the first Ofcom consultation on Openreach Pricing in August 2008, changes to the pricing framework for Openreach need to provide regulatory certainty for Openreach and its customers. This means giving Openreach the opportunity to cover all relevant costs, and at the same time encourage innovation and incentivise timely and efficient investment in new infrastructure deployments such as NGA. This would benefit consumers and citizens in the longer term, with NGA acting as a key driver of economic growth and social cohesion.

In this light, we question the conclusions made by Ofcom in its first and second consultation documents on Openreach Pricing, which are based on projected efficiencies to be made by Openreach, which are not based on a sound analysis of Openreach's running costs and its previous record in achieving efficiencies. We believe that greater awareness is required of the actual and potential risks to the effective and sustainable operation of the business. Careful consideration is required of sustainable efficiency targets, based on the clear evidence of the levels that have historically been achieved, that will continue to facilitate a thriving market in the UK and enable customers of Openreach (i.e. the various CPs) to make investment decisions based on a real understanding of their underlying costs.

We note that in providing assessment of its own budget, Ofcom's draft plan (para. 7.2) refers to itself as an 'established organisation with more stable budget requirements' following several years of major efficiency-enhancing initiatives, meaning that 'the scope for further budgetary reductions may be more limited in the coming years.' We would ask that a similarly realistic assessment of running costs and further efficiency savings be made in relation to Openreach pricing.

In a similar vein we note that Ofcom's own financial framework as set out in its annual report for 2007-08 takes into account its pension liabilities inherited from the legacy regulators (including a previous regulator outside of the telecommunications sector). However, in its second consultation document on Openreach pricing, Ofcom discounts

Openreach's liabilities as part of the BT Group. This rejection by Ofcom of Openreach's inherited pension liabilities is not acceptable when Ofcom is applying the opposite logic in its own interests as regards its own pension liabilities.

With regard to the general question of regulation of NGA, the debate has moved on considerably over the last year, with BT and Virgin Media among others announcing detailed plans for deployment and investment in networks, the conclusions of the Caio review, Ofcom's own consultation on Delivering Superfast Broadband and the launch of the government's Digital Britain review. This comes in the context of the onset of recession and signals from government that investment in a national NGA network may be part of strategy to boost demand in the economy through major public infrastructure projects.

As stated in our joint submission to the Ofcom consultation on Delivering Superfast Broadband in December 2008, we believe that the priorities for the regulatory framework for NGA are firstly to ensure that deployment takes place on an equitable basis throughout the nations and regions of the UK; and secondly, to ensure regulatory certainty at the earliest opportunity on the basis of which those charged with the investment responsibility and risk of NGA deployment can make their decisions without fear. We feel it is important not to over-state the potential of competitive solutions to fibre deployment and that an over-reliance on competition is likely to lead to a deployment division between areas that are well-served by NGA network investment and areas that are not served at all. Ofcom has, we believe, focused on the first of these almost exclusively and that this has been to the detriment of a serious examination of how areas that are likely to be under-served by NGA deployment can also gain access to super-fast broadband technologies.

It is clear that the current economic situation will introduce uncertainties into investment models, as well as to investors' deployment plans. Assuming that this is a relatively short-term development, then the achievement of the first of these priorities for the regulatory framework seems to us to require a planned approach, not to say a national strategy and plan for fibre roll-out in which government and regulatory institutions must take proactive responsibility; while achievement of the second clearly requires the quickest possible establishment of a regulatory framework once consensus has been

established as to what that looks like. We continue to believe that there is a central role for the public sector both in planning terms and in leading the debate on NGA itself, as well as in co-ordinating and driving demand, not least in areas that are likely to be under-served.

It is essential that the deployment of super fast broadband does not itself exacerbate the digital divide, and we believe that public intervention, based around a sound regulatory model, will be necessary to ensure access in remote areas, and for vulnerable groups such as the disabled, those on low incomes and the unemployed. We hope that the government's Digital Britain review will address this need, and believe that Ofcom should give support to such an approach.

In general, we welcome the attention given by Ofcom in the draft plan to promoting availability and take-up of digital communication services, and to tackling the barriers to digital inclusion. This is essential for ensuring all citizens, across social groups, participate fully in the economy and society. One definition of a perfect market is when all players in the market have access to the same information. Equally, restricted access to information due to an absence of broadband or a lack of higher speed broadband, impedes creation of the ideal conditions for consumers to make informed decisions.

In relation to this, alongside practical steps to maximise broadband coverage, we would urge Ofcom to contribute positively to the upcoming debate on a broadband USO, and state the case for it at both the UK and EU levels of governance.

Access to broadband services is also important for those with disabilities in facilitating social interaction and enabling easier access to goods and services, especially as people with disabilities are more likely to have restricted mobility or to be on a low income. Affordable broadband services are therefore a key tool for those with disabilities to fully participate in society and the economy.

More specifically, it is important that we continue to maintain and develop the universal services that exist for those with disabilities. In this regard we would be interested in hearing more about the previously indicated examination by Ofcom as regards the development of the text relay service, and the extent to which this reflects current

developments in technology. We have been arguing for some time that text relay services should be modernised to reflect the opportunities provided by technological development, for example through the provision of video relay and captioned telephony. Social and digital inclusion relies on the constant improvement of communications services for those with disabilities to keep pace with changes in technology, giving people with disabilities the tools they need to participate fully in the information society on a level equal to the rest of the population.

In relation to this, it is worrying that BT has decided to cut the funding it provides for the promotion and operation of the Typetalk telephone relay service which has put 15 jobs in Typetalk at risk. This decision has been made by BT because its obligation to provide a national telephone relay service does not extend to responsibility for marketing the service, and this is just the sort of development that will have a negative impact on digital inclusion. We urge Ofcom to ensure that this service, and promotion of it among all potential users, is adequately funded, and that providers properly interpret their obligations in relation to its availability and marketing,

We welcome Ofcom's Statement of Priorities for the Promotion of Media Literacy and its work in general to promote media literacy, in terms of both giving people the opportunity to develop competence and confidence to participate in digital society and informing and empowering people to manage their own media activity. As already stated, we believe there is a need to promote technological fluency amongst consumers, which will drive demand for and use of communications technologies and optimise benefits for society.

In addition, we re-state our support for Ofcom's work on protecting citizens from harmful and offensive content, and protecting citizens and consumers from mis-selling and scams, and welcome Ofcom's increased vigilance in the current economic climate given the possibility that certain firms may seek to respond to financial pressures by taking advantage of uninformed consumers.

3) What are your views on the elements which should be contained within Ofcom's new strategic framework?

We believe that the new strategic framework should continue to put public interest objectives at the forefront. This involves continued guarantees for the fixed telecoms USO and development of a USO for broadband, as well as vigorous action to tackle barriers to digital inclusion and ensure all vulnerable groups, including the disabled and those on low incomes have access to converged services, as well as addressing the problems of geographic availability. More specifically, specific services aimed at vulnerable groups such as the disabled need to be maintained and developed further.

At the same time, steps to develop high levels of technological fluency and media literacy among all citizens should remain at the forefront of Ofcom's work. In relation to this, we continue to argue that the requirement for employers to provide training in the broadcasting sector should also now be applied to the telecommunications sector as the two sectors converge. Guaranteeing a well trained and highly skilled workforce would optimise both service delivery and workplace satisfaction and contribute to a more media literate society.

As we stressed in our submission to Ofcom consultation on Citizens, Convergence and Convergence in October 2008, there are sometimes tensions between citizens' and consumers' interests. For example, making services available more widely for the benefit of society as a whole may mean that some consumers have to pay more for those services than might otherwise have been the case. This may be the case in relation to ensuring universal access to some converged services. We acknowledge that difficult choices have to be made, but believe that in the long term the benefits to economic competitiveness as well as societal well-being, will outweigh the costs.

In relation to this, we stress the importance of achieving regulatory certainty for BT and other CPs, and Openreach in particular, involving a realistic pricing framework which facilitates a thriving market in the UK and enable customers of Openreach (i.e. the various CPs) to make investment decisions based on a real understanding of their underlying costs.

Finally, we note that the recent government commissioned independent Hooper review of the UK postal services sector recommended that regulation of the postal sector in the UK be transferred to Ofcom. The CWU also represents 160,000 workers in the UK postal sector, and will therefore be monitoring developments in this regard with keen interest.

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