

Delivering super-fast broadband in the UK

Introduction and general remarks

1. This response has been jointly drafted by Connect – the union for professionals in communications and the Communication Workers Union which, between them, represent more than 90,000 members working at all levels across the UK telecommunications industry in more than thirty separate companies.
2. Building on long-standing experience in both unions with regulatory initiatives, we both made responses to the Ofcom consultation on *Future broadband – Policy approach to next generation access* which took place in autumn 2007; while we made a joint response to the *Promoting higher speed broadband in new build housing developments* consultation launched this April. Connect has produced its own booklet on fast broadband access *Connecting Britain's Future: The Slow Arrival of Fast Broadband* while, earlier on, the CWU's own campaign *Demand Broadband* was instrumental in encouraging the roll-out of current generation broadband networks. Consequently, we are both extremely familiar with the issues at stake and are pleased to respond to this consultation on behalf of all our members.
3. Our approach to this and the other consultations stems from our belief that there are considerable social and economic benefits that are likely to result from NGA deployments, with the potential to drive social inclusion and economic growth. Consequently, we believe that the priorities for the regulatory framework are, if these benefits are to be generated within a suitably early timeframe, 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 have already made it clear that 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.
4. 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

5. We have limited our response in this consultation to what we feel are the main outstanding issues which require the attention of Ofcom within our policy framework and aims. Consequently, we have not addressed all the questions that Ofcom has set out in this consultation document.

Issues arising from the consultation

Sections 3 and 4; and consultation questions 1-4

6. We have no further evidence on applications and services, or consumer benefits, that may encourage NGA networks, but we do have instead the comment that we are pleased to see Ofcom state that it is the interests of citizens and consumers that underpins its work on and approach to NGA. This is welcome – but we do feel that Ofcom is currently neglecting part of the inevitable follow-through of this emphasis: which is to say that citizens and consumers who live in areas that are going to be under-served by NGA deployment, or who live in areas that are going to be non-priority as regards early deployment of NGA networks, clearly do not (yet) occupy the central role in this analysis that we would like to see. It is also likely that the environmental benefits of NGA in reducing employees' travel to work requirements are likely to be realised only to a much smaller degree should NGA deployments be focused in the first place largely on those areas in which their offices are already based rather than on the areas in which they live. Truly imaginative thinking here, if such environmental concerns are – as they should be – at the centre of our aims requires a nations-wide approach to deployment.

7. In terms of the range of migration issues that Ofcom has identified, then there is clearly a role for a wide range of stakeholders to become involved in defining the need for that

8. We agree with the broad thrust of Ofcom's regulatory vision of its own role as set out in para. 4.23 – which might be summarised as focused on a refusal to engage in 'picking winners'. Nevertheless, in consequence of the comments we have just made in our para. 6, we do disagree with Ofcom's comments in its para 4.24. A failure to deliver the nations-wide NGA deployment for which we have called, which Ofcom refers to as the 'case for society to secure widespread availability', must be seen as market failure and, thereafter, as an opportunity for Ofcom and public authorities to intervene to deliver on the displacement objectives. Ofcom has not addressed the externality benefits for those parts of the UK in which, due to a lack of density and volume of demand, there could be regulatory and investment incentive where the market fails. The desired objective here would be to anticipate, in the absence of intervention, the creation of a digital divide and to take early and proportionate action either to prevent such a divide being created or to shorten the period as to how long this may last.

9. On this basis, we believe that the current debate should focus less on how NGA should be regulated in a 'mature' state and more on the circumstances that are right for NGA introduction and the regulatory climate necessary to encourage NGA investment. This should embrace the aims of delivering investment in NGA which is oriented towards the interests of citizens and consumers. It is not thus a 'matter for Government rather than Ofcom' to determine where there is market failure in this respect and we would call on Ofcom to accept responsibility for it. We therefore look forward to seeing Ofcom bringing forward its own initiatives in this area, as well as encouraging and participating in the initiatives of other institutions that are seeking to address the problem of citizens and consumers living in under-served areas. This requires a proactive response from all such institutions and it is clear that Ofcom needs to see itself as being encompassed by this requirement.

10. We welcome the establishment of regulatory certainty as one of Ofcom's five principles for regulation in a next generation access world. We believe, not least in the context of the present economic environment, which is clearly putting a strain on investment, that regulatory certainty will assist those organisations which are in a position to take the risk of investing in NGA deployment to do so in the knowledge that – other things being equal – they will be able to earn a suitable rate of return from that project so as to ensure that they gain growth from that investment. This would act as sufficient encouragement for them to be able to take suitably early decisions on deployment which coincide with the interests of public policy. Consequently, we believe that Ofcom needs to ensure that clarity over how the regulatory environment will apply is there not only in the long-term but also in the medium-term, too.

11. We agree that equivalence needs to remain a key part of the regulatory vision, at least while copper remains such a fundamental part of the delivery of broadband services, and perhaps longer. Nevertheless, we are concerned that Ofcom has avoided setting out a clear view in this consultation on what it means by equivalence with regards to NGA.

12. There appears to be legal uncertainty even within the EU as to aspects of forbearance and regulatory holidays. This uncertainty clouds the predictability that could promote innovative investment and, given the length of the legal process, this could be the picture for the medium-term. In the interim, there is only one suitable alternative, which is a sectoral agreement based on a fair and adequate return for risk model, based on upstream prices.

Section 7 and consultation questions 10-13

13. We welcome Ofcom's intention to facilitate an approach to pricing in the near-term that will 'allow the market to trial and experiment with next generation access deployments' (para 7.28) in contrast to the difficulties and uncertainties associated with regulatory price setting in the absence of clear, effective demand. It is clearly also important that the regulatory response is flexible enough to adapt to evolving requirements as the market grows and becomes established. This appears to us to be a suitable method of 'hands-off' regulation, allowing the parties to establish a suitable pricing regime among themselves while reserving a role for regulatory intervention should this be necessary. This would appear to us to be a correct approach to Ofcom's principles which is also likely to facilitate network investment.

Section 8 and consultation questions 14-17

14. It is clearly right that some thought is given to the issues surrounding parallel investment in both copper and fibre, and establishing the principles for how the eventual transition from one to the other might take place. Nevertheless, several aspects of this are likely to reflect what takes place over the long-term as well as what the initial experience proves to be in practice. Given the initial NGA investment scenarios, oriented as they are towards new build developments or slightly more niche network investment models, perhaps a more opportune time to consider much of the issues here will occur at a later date once critical mass is a little closer and once the issues involved are better defined as opposed to being speculative. Trials of NGA investments in established network areas are to get underway and it may be that much of the lessons appropriate to how transitions will need to be managed in practice in the vast bulk of communications service area will emerge once these trials are in full swing.

15. Again, it is the top-line principles that are likely to be key. We have already argued in earlier Ofcom consultations that BT should not be compelled to maintain its need to offer the supply of services based on copper in areas where it has already rolled out fibre and, subject to Ofcom establishing fair rules on access for all operators in situations where a single operator has won a supply contract to roll out communications services to a particular locality (see above, para. 16), this is likely to be the way in which transition initially occurs. We would agree that a geographical, locality-based approach should be paramount in determining where a transition may be encouraged – essentially, one based on a consideration of where there is operational fibre access, over which services are actually offered, in parallel to existing copper. It may be that this takes place at the sub-regional level. The protection of citizens and consumers, and the delivery of continuing services under the heading of universal service, are clearly going to be fundamental to whether Ofcom needs to intervene in this area in the future.

Section 11 and consultation question 19: What role can the public sector play in next generation access deployment?

16. We are glad to note the existence of Section 11 and Ofcom's preparedness to continue to debate the issues around the extent to which the public sector can become involved in the provision of next generation access. We have previously argued in Ofcom consultations that the public sector has a key role to play and, indeed, that it should assume responsibility for providing the access 'pipe', with retail providers allowed access to it on a non-discriminatory

17. Nevertheless, we are aware that this is a complex area – not least given that Ofcom is right to identify the backhaul network as having a key role here and that apparent shortcomings in the access network, and any consequent attempt to address these via the provision of fibre networks at the access level, may be compromised by problems with backhaul. We also recognise that Ofcom is yet to be persuaded of our arguments in general – as it again concludes here (para 11.7). However, we are encouraged that Ofcom clearly does believe that there is a role for public sector intervention to secure the ‘widest possible availability of next generation access’ (para. 11.11) in under-served geographic areas and at the sub-regional and/or sub-nations level, and that public intervention can play ‘an important and welcome part’ in stimulating the deployment of next generation access (para. 11.16). Ofcom’s indication of the need for partnerships of a wide range of organisations to prevail (para. 11.19) is also quite clearly a correct one.

18. In terms of the more narrowly-defined debate set out in the consultation document, we believe that there is (in our terms) at least a fallback role for public sector intervention and for public sector institutions (including Ofcom itself in this specific context) in the following major areas of potential market failure:

- focusing the attention of network operators on geographic areas that can already be identified as remaining under-served in the future and acting to aggregate demand so as to facilitate an investment case. Several areas that are likely to have public sector institutions which can function in this way are likely to reflect a mixture of urban areas and rural ones (for example, Yorkshire), so it is clear that there may be some cross-over between the role of public and purely private sector institutions in this regard. Rather than seeing this as a problem, we would see it as a solution (as indeed it was in Northern Ireland in the instance of first generation broadband): a strengthening of the case for investment in one area strengthens the case in neighbouring ones too. In other areas which do not have major urban centres (e.g. the south-west of England), the potential for

- facilitating investment in NGA at community level. We note Ofcom's reservations here in the sense that subsequent activity may obviate the need for community-based initiatives (para. 11.10), but would argue, in contrast, that it is the presence of such schemes in the first place that may have encouraged the subsequent activity. Consequently, they will have played a key role and, as we pointed out in the previous bullet point, a strengthening of the case for investment in one area strengthens the case of neighbouring areas too
- co-ordinating activity across the UK. There is a key role here for institutions which have a UK-wide role in monitoring the roll-out of NGA plans and supplying information to others which may strengthen the case. We would include Ofcom in this, given our arguments above (para. 8) that its regulatory emphasis on the market means that it must take responsibility for the market failure which under-provision clearly represents. A comparison with what is happening internationally should also be a key part of Ofcom's remit in this area
- analysing socio-economic differences in NGA network coverage and in the subsequent take-up of services that NGA facilitates. Another aspect of the 'digital divide' on which we have focused our comments above is the socio-economic, as opposed to the geographic, one: there is likely to be a socio-economically based division on the take-up of NGA services and, indeed, in the areas to which NGA networks are initially extended. There is a role for a variety of public sector institutions here, including Ofcom: if it is to fulfil its role of serving the interests of all UK citizens and consumers, Ofcom must direct a part of its regulatory activity towards ensuring an even balance of NGA coverage and, as far as it is able to do so, a fair take-up of NGA services amongst all socio-economic groups.

Section 12 and consultation question 20: A proposed framework for action

19. Subject to the reservations and comments expressed above, we believe that Ofcom's proposed framework is a good one. Certainly, the setting out of its proposed activities in Figure 7 is a helpful breakdown of the areas which need to be addressed and we are glad to note that Ofcom sees a clear role for itself in these. We have argued throughout this submission for the proactive intervention of all public sector bodies in arguing the case for NGA investment and we welcome Ofcom's attempt to establish a detailed focus for itself

20. This is a new area for everyone, involving the first fundamental introduction of a different type of technology into how the communications network operates. In many different respects, involving many different aspects of policy-making, lessons will only become clear as NGA investment is trialled and then rolled-out. Consequently, it is clear that all the institutions involved must retain the flexibility to learn the lessons at each stage and that, from a regulatory point of view, regulation must not be dogmatic, but pragmatic. Only in this way can we ensure that the social and economic benefits of NGA investment are delivered in a way which transparently works for the interests of citizens and consumers.

Contact

21. For further information about any aspect of this submission, please contact:

Adrian Askew
General Secretary
Connect
30 St. George's Road
Wimbledon SW19 4BD

Tel: (020) 8971 6000
Fax: (020) 8971 6002

e-mail: union@connectuk.org
<http://www.connectuk.org/>

Billy Hayes
General Secretary
Communication Workers Union
150 The Broadway
Wimbledon SW19 1RX

Tel: (020) 8971 7200
Fax: (020) 8971 7300

e-mail: info@cwu.org
<http://www.cwu.org.uk>