Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: next generation new build

To (Ofcom contact): Chinyelu Onwurah

Name of respondent: Aileen Boyd

Representing (self or organisation/s): Scottish and Southern Energy plc

Address (if not received by email):

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Name Aileen Boyd

Signed (if hard copy)

Chinyelu Onwurah
Floor 2; Strategy and Market Developments
Office of Communications
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Head Office
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

Telephone: 01738 456401
Facsimile: 01738 456415
Email:

Our Reference:
Your Reference:

Date: 25 June 2008

Dear Chinyelu

Next Generation New Build

I am writing to provide SSE's comments on the above consultation. As you are aware, we have been involved in industry discussions on the implications of the technological change represented by the development of "next generation access (NGA) networks" where optical fibre is likely to be used to provide high-speed data communications networks for mass market applications. We are interested in these developments primarily from the perspective of a reseller of regulated wholesale products: we expect to be able to provide retail services to end customers on public NGA networks in a similar manner to the way we are currently able to provide these on Openreach copper networks using regulated wholesale products such as wholesale line rental (WLR). We recognise that there will be a need to develop these products for a fibre platform and have attended the recent series of active line access (ALA) product workshops to feed in our views on the principles for the development of such products.

We warmly welcome the current consultation, where Ofcom is beginning to paint the picture of the type of regulatory environment that it foresees will be necessary for the NGA new build developments. We particularly agree with Ofcom on the need for:

- The end customer on a public NGA network to be able to exercise choice in who provides their communications products;

- NGA network infrastructure providers serving mass market customers to factor in the need to provide this customer choice in their design of systems;

- Industry co-ordination in the development of a range of technical and customer-facing standards, which will enable wholesale access products, interfaces and customer processes to be specified, maintained and developed such that the end customer experience is promoted in an efficient and economical manner.

Our answers to the specific consultation questions are attached as an appendix and below we set out some further thoughts on the three areas highlighted above, followed by a specific comment on the technical treatment of multiple products delivered to customer premises, which was discussed at a recent ALA workshop.

Customer Choice

We agree with Ofcom that promoting competition, where feasible, in the provision of communications services is of benefit to customers, as suppliers compete to bring service innovations and cost reductions to customers. We also agree that effective competition occurs where customers have an actual choice of competing suppliers. We would add that there should, in our view, also be a convenient and consistent process for customers to use to switch individual products between retail suppliers so that there are no barriers to the customer exercising their choice. In this way, competition remains a keen dynamic to bring benefits to all customers – not just those who choose to switch – as suppliers know that it is relatively easy for the customers to move away from them if they become dissatisfied with their current product offering. In such a market, we believe that Ofcom would have little need to intervene on a routine basis as customer's interests with respect to price and quality would be protected by competition between suppliers.

NGA Infrastructure

We agree with Ofcom's intention to promote contestability in the provision of NGA infrastructure as this will benefit customers by allowing innovative new infrastructure providers into the market. In our view, such potential providers would need a clear understanding of where, how and with what interfaces they can link the NGA extension into the existing communications network. However, it seems likely that, for some NGA developments at least, there will be only one infrastructure provider – be that an established player such as Openreach or a new entrant of the type that Ofcom discusses in the consultation paper. In these cases, we agree with Ofcom that the situation for end customers is not very different from that of being connected to the Openreach copper networks – wholesale access products would be necessary to allow other suppliers to provide their competing retail services over the NGA network, otherwise the customer will not be able to choose (on an economic basis) between competing suppliers and will effectively be "tied in" to the retail products of the NGA network provider.

We therefore welcome Ofcom's clear signal in this document that the situation of customers being "tied in" for communications services as described above is, in general, unacceptable. This is underlined by reference to Ofcom's powers to carry out market reviews for limited geographical NGA areas and impose remedies where significant market power (SMP) is found. This should provide clarity to prospective investors on regulatory expectations of the availability of customer choice. In this respect, we are heartened to note Ofcom's comment that at least some potential investors are intending to provide "open access" to their networks such that their end customers do have the widest possible choice of supplier of retail services. While there may be some situations where a requirement for "open access" is not appropriate, we believe that in general, for the roll-out of standard public networks to support mass market products, these open access principles should be developed.

We have two further comments on infrastructure matters mentioned in the consultation paper.

Paragraph 2.22 refers to Ofcom's previously issued guidance on new build communications infrastructure. We feel it would be useful for Ofcom to supplement the information published on its website with a factsheet for developers that clearly explains that it is possible for a variety of companies to provide communications infrastructure in new developments supplemented, in due course, by an explanation of the principles it is developing in this consultation exercise.

At the end of section 5 of the document, Ofcom discusses the Openreach/Sky Integrated Reception System (IRS) product for television delivery in the Ebbsfleet NGA area. We support Ofcom's view that Openreach should develop this as an open platform making it available on "fair reasonable and non-discriminatory commercial terms" to other pay TV retailers who express a commitment to use the system.

<u>Development of Standards</u>
We agree with Ofcom that this is a key area to consider in order to bring the benefits of customer choice to new build NGA networks in the most efficient and economic manner. As Ofcom outlines in section 4 of the document, suppliers have to invest in internal systems and processes between themselves and their wholesale infrastructure provider(s) in order to allow them to manage mass-market volumes of customers taking their retail products. Currently, a large number of suppliers use the regulated wholesale products from Openreach such as WLR, representing a significant investment across the industry. Ofcom is right to identify a potential barrier to competition if suppliers' interfaces with new NGA providers are significantly different from their existing Openreach interfaces. We agree with Ofcom that two potential ways to tackle this issue are a) to minimise differences in the interfaces between new NGA access products and existing regulated access products; and b) to develop a generic approach to NGA/retailer interfaces such that there is a standard, scalable set of processes that can apply to all NGA networks, although the underlying technologies may be different.

We believe, in fact, that it should be possible to address both approaches discussed above by means of a sufficiently co-ordinated industry standards body, as Ofcom is advocating in the consultation paper. In our view, another key benefit of having a such a "standards body" is the clarity that this would provide for new entrants – thus addressing a perceived barrier to entry for such parties in "finding out" what processes they are supposed to implement and follow in order to do business in the market.

We see significant similarities between the coordination needs expressed by Ofcom in relation to standards for NGA access and other Ofcom projects – for example, the one to promote a single migration process for customers wishing to switch their retail products and another to develop a new number portability database. All these areas are concerned with customer experience but require industry co-operation to deliver them. Particularly in relation to the customer switching project, we have been involved in the discussions and have advocated that industry processes need to be subject to a light-touch form of change management or "governance", so that they are owned by the industry and can be developed by the industry as the market develops.

We believe the same considerations apply to the development of standards for NGA access products and interfaces. In our view, there should be a governance body, independent of any one player in the industry, but answerable via appropriate representation to the industry as a whole. If the body was set up in a co-regulatory manner, this would have the further advantage that it could also be made answerable to Ofcom in terms of its objectives and purpose. Ofcom would then have a single body to communicate with on this subject, would be able to delegate the day-to-day administration and development objectives to this body but would still be able to keep an eye formally on the direction and pace of developments. In fact, it is difficult to see how the necessary standards could develop with sufficient transparency, authority and industry ownership if there was not some formal governance around them.

Our final observation on this topic is that, as Ofcom has noted, not all potential investors are embracing the concept of open access for NGA networks. Those who perceive that a more profitable strategy would be to seek to tie in customers to bundles of products that depend on specific infrastructure would not have any incentive to work to develop, agree or implement standards designed to allow other service providers to offer different retail products over their infrastructure. It is also possible that those suppliers who perceive that they can obtain a “first mover” advantage in providing retail products to new customers on NGA networks will not have the same incentives to develop an efficient and smooth transfer process for these customers to use to switch products between different suppliers.

Due to the different interests of different parties, we think it is unlikely that a set of standards or a standards body will emerge through consensus in the industry. We believe that Ofcom will have to make cooperation with a standards body mandatory for communications providers of a certain description i.e. those rolling out infrastructure and services for the mass market of “switchable” products such as telephony and broadband.

We note that, in the case of the number portability project, Ofcom has effectively mandated the requirement for the industry to co-operate via amendment to General Condition 18 and, as a result of that amendment, the body “UK Porting” has been set up. In our view, Ofcom should pursue a similar route in relation to the necessary standards body for NGA developments. This would be a regulatory intervention to kick-start an ongoing industry process that should reduce the need for Ofcom to intervene in more detailed problems and issues that we expect would be inevitable if the matter of standards is not addressed in a co-ordinated manner from the outset. In this context, we are aware that there have been recent issues for customers (and hence for Ofcom) in the area of customers attempting to switch or “migrate” their broadband service between different suppliers. We believe that these issues could have been averted by considering the customer switching experience at the outset of the technological developments enabling broadband service provision. Similarly, therefore, we believe that this is a key area to be addressed, for the benefit of customers and the prevention of future issues, during the present series of consultations on NGA developments.

Specific point on delivery of multiple products to customer premises
A further area we wish to mention is that of the technical delivery of multiple products to customer premises. We understand that there are two main technical approaches to designing the layering of multiple products over a communications link to a premises: either “overlaid” or “unbundled”. These alternatives were discussed at the ALA workshop in mid June and we understand the terms to have the following meanings.

- In the “overlaid” products scenario, one retail service provider – possibly associated with the NGA infrastructure provider – would “own” the physical link to the customer’s premises and allow other supplier’s products (where compatible) to be overlaid on their own use of the communications link. In this scenario, commercial issues between the customer and the “owner” of the link might mean a cessation of service to the end customer, which would also affect the provision of services by the other suppliers.

- In the “unbundled” scenario, our understanding is that multiple suppliers of services to end customers each rent their channel on the physical communications link from the NGA infrastructure provider. In this scenario, the commercial relationship between the end customer and each supplier is distinct and unaffected by commercial cessation of service by any other supplier.

We believe it is essential for the protection of customers and the future health of the market that the unbundled alternative is pursued. This is more sustainable as future products and services evolve and supports a switching process that allows the end customer to choose unbundled services from different providers if they wish. The diagram overleaf presents a very high level view of how the unbundled layering of products could look in logical terms, illustrating how it supports customer choice in the provision of multiple retail products from different suppliers.

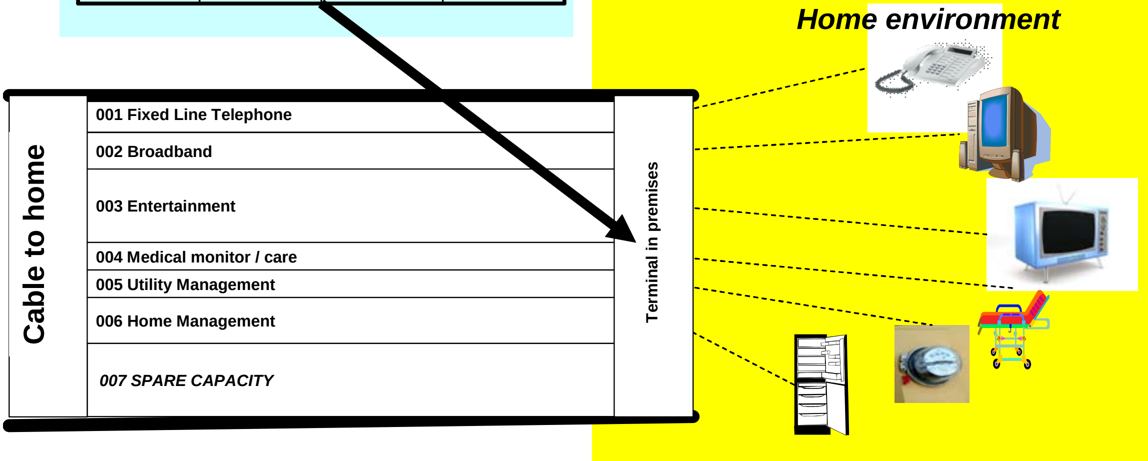
I hope these comments are helpful. We would be happy to discuss them further and will contact you shortly to see if that would be useful.

Yours sincerely

Aileen Boyd
Regulation Manager

Central Organisation

Central Site Register (Record for this home)			
Identifier	**Technical Capacity 100**	**Provision**	**Provider**
OO1	1	Phone	Post Office
002	10	Broadband	Thus
003	50	TV	Virgin
004	10	Dialasis	NHS
005	1	Metering	Accuread
006	1	Home Mgt	Shield
007	*27*	*SPARE*	



Appendix

Consultation Questions

Question 1: What can Ofcom do to encourage timely standards development for new build NGA wholesale access products and interfaces? Which industry body is best placed to undertake the standardisation of these products and interfaces? What action should Ofcom take if these standards fail to materialise?

We believe it has been helpful in terms of bringing parties together and stimulating debate, for Ofcom to have taken the initiative to set up the ALA workshops mentioned previously. In these, Ofcom can observe and facilitate the debate on standards setting which, in our view, covers a number of different types and levels of interface:

- technical standards such as device characteristics; definition of customer premises equipment; traffic protocols; interfaces; inter-operability;
- product quality definitions such as those necessary to support “high definition” television; contention ratios; priority of different services on a line;
- product and process issues such as standard features of the core customer experience e.g. use of specific dial tones and numeric codes; process for switching a single unbundled retail product between different suppliers.

In the future, the communications-based products that end customers would expect to be easily able to switch between providers are likely to extend to include media content and other future applications associated with increasing automation of home services. Thus customer perception of what they would wish to be able to “switch” will, in our view, drive the areas that a wholesale access standards body should be concerned with and these, in turn, are driven by the products and services that retail suppliers wish to bring to market. This illustrates that the standards body will have a continuing role to foster service innovation and develop the initial standards so that they react to and, where possible, anticipate market developments.

However, for the reasons discussed in our covering letter, we do not believe that a consensus on establishing standards for NGA developments will develop across the industry in a timely manner. We therefore believe that either an existing industry body will have to be charged with the task, underpinned by appropriate support from all relevant industry players, or a new body will have to be set up.

Whichever route is taken, we believe that it should be set up on a co-regulatory basis such that Ofcom has ongoing links and formal awareness of proceedings, although day-to-day developments and documentation would be the responsibility of the body. The constitution of the body should allow representation from all relevant sectors of the communications market i.e. both NGA infrastructure providers and the suppliers who wish to use their networks and potentially some customer representation. We are not, in fact, aware of a current industry body that has this sort of representation or membership.

The nearest potential candidate, in our view, is UK Porting, which has been set up in response to the recent amendments to General Condition (GC) 18 that require industry co-ordination to establish a new form of number porting database. We understand that UK Porting is developing its own form of governance to address its immediate task.

In fact, given that one of the items of significance to customers when they switch their telephony services is the ability to keep the number they have become used to using, there is perhaps an initial overlap between the required standards body and the role for which UK Porting was established.

We believe that it is significant that infrastructure providers are effectively mandated by GC18 to form and support this new body and thus membership and cooperation with this body is ultimately enforceable by Ofcom. As discussed in our covering letter, we believe that this will be a necessary framework for the NGA standards body, given the different commercial interests of different industry players. In order to establish the co-regulatory arrangement, give the body a set of objectives, and ensure that relevant industry parties cooperate with the proceedings and standards set by the body, it appears to us that Ofcom will have to bring forward a new GC covering these matters.

If Ofcom sees merit in exploring this approach, we suggest that the way forward might be to debate the matter at a future meeting of the ALA workstream, with a view to developing a formal policy consultation on the matter. One important aspect of the necessary standards for NGA is the matter of processes to enable a customer to switch his retail products between different suppliers, as we discuss further in our covering letter. It would therefore appear appropriate for this project to consider linking in with the existing Ofcom project to establish a single migration process for this particular aspect of standards development.

Question 2: Do you agree with Ofcom's approach to promoting competition and consumer choice in new build fibre access deployments?

We agree with Ofcom's overall approach to promoting competition without unduly intervening in the market. However, it is also useful for Ofcom to signal, as it has done in section 4 of the document, that its expectations are generally for the continuing availability of customer choice, certainly at the retail level, and where feasible at the infrastructure level as well.

We also agree with Ofcom that competition, where feasible, in the provision of new NGA infrastructure and, separately, in the provision of retail services over different infrastructures, is the best means of protecting the interests of mass-market customers. Such a competitive environment ensures that the customer has a choice of supplier to provide his communications services. We therefore support Ofcom's approach in signalling that, where NGA developments occur on the basis of an exclusive new infrastructure in a geographical area, regulatory intervention would be very likely in situations where wholesale access products were not made available commercially. We also support Ofcom setting the expectation that existing regulated products (or near-equivalents) should be available at existing prices with greater freedom of pricing for new fibre-based services.

Question 3: Do you
(a) believe that the existing obligations must be met by replicating the existing copper products, or that an alternative approach could be satisfactory? What are the implications of replicating existing products on fibre?

It does not seem logical to require regulatory obligations to be met solely on the copper platform which existed at the time that these obligations came into existence. Provided that sufficiently similar services can be provided over the new fibre-based technologies, it would seem sensible to interpret existing obligations as allowing this instead. The main concern, in our view, is to consider the experience of the customer in moving from a traditional to an NGA-based communications infrastructure. In essence, this should be a smooth transition, with the basic service experience as similar as possible for the core mass-market products.

(b): Do you agree that SMP holders rolling out fibre do not need to roll out a copper network in parallel solely to meet their LLU obligation?
Yes – providing fit-for-purpose access products on the fibre platform allow sufficiently similar wholesale services to be provided so that, as discussed above, the end customer experience is as similar as possible to what the customer is used to.

(c): Do you agree with Ofcom's approach in relation to WBA and new build areas?
We agree that if a new build NGA area does not have a sufficiently competitive infrastructure provision (and, in the absence of passive remedies or development of parallel infrastructures, we believe it is most likely that a new build NGA area will <u>not</u> be sufficiently competitive at the outset), a suitable wholesale broadband access (WBA) product should be made available, as Ofcom advocates, on fair and reasonable terms.

(d) Do you believe that the WLR obligation must be met by replicating the existing copper product, or that an alternative approach based on an ALA-type product would be satisfactory?
We do not believe that the WLR obligation should have to be met by a copper-based product but would wish to ensure that an alternative fibre-based product would provide a similar interface for suppliers, at the same network layer, as the current WLR product. The aim, as discussed above, would be for an end-user experience as similar as possible to that derived from the existing WLR product with minimal change to a supplier's current interfaces with Openreach.

(e): Do you believe that the CPS obligation must be met by replicating the existing copper product or that an alternative approach based on an ALA type product would be satisfactory?
See response to question (d) above.

(f): Do you believe that the IA obligation must be met by replicating the existing copper product or that an alternative approach based on an ALA type product would be satisfactory?
No comment.

(g): Do you agree with our proposal to interpret GC 3.1 (c) as being met through the provision and use of a battery backup facility to maintain uninterrupted access to emergency services in new build developments?
We recognise that this matter of continuity of access to emergency services in the event of local power supply failure is a complex one with dimensions of safety, practicality and response to technological change. As a supplier, our preference would be for the NGA infrastructure providers to have responsibility for establishing the best

means of having a back-up facility for customers to contact emergency services in the event of local power supply failure. Requiring customers to purchase different types of telephone equipment (with, say, a battery back-up facility) does not align with our aspiration to provide a customer with as similar an experience as possible, in an NGA environment, to the core features on his existing communications services.

Question 4: Do you think access to the duct network, including non telecoms duct, is a potentially feasible means of promoting competition in new build? If so what types of commercial and operational models could successfully support such access arrangements in the UK?

We think it might be possible to use existing infrastructure including access to duct network in new build areas to develop competition in communications, although we have no feel for the practicalities of duct access. For those parties contemplating providing alternative communications infrastructure, we feel it will be essential for them to be able to link in to existing infrastructure at a suitable point, without building their own backhaul network or exchanges. This suggests that Openreach, as the owner of the ubiquitous copper access network throughout the country, would have to offer such local interconnection services as a regulated product. If Ofcom wish to encourage investment in NGA new build communications developments from outside traditional communications operators, we think it likely that the enabling framework for interconnection would have to be clear before commercial and operational models could be developed.