Advisory Committee Scotland –Response to NGA Consultation

1. Introduction

We welcome the opportunity to respond to the Consultation on the Policy approach to Next Generation Access (NGA). This is an extremely important element in the future provision of broadband service which will underpin the delivery of many forms of communication in the future. It is of particular importance to many areas of Scotland and we see specific issues for the more rural areas, which we address in our response.

1.1 General Comment

It is recognised that broadband availability in Scotland is amongst the highest levels in the developed G7 countries, and this is an excellent reflection of the combined efforts of the public and private sectors.

However, as reported by the EU in the Bridging the Broadband Gap Communication, despite the general increase in broadband connectivity, access in more remote and rural regions across the EU is limited because of high costs, due to low density of population and remoteness.

This population scarcity limits the exploitation of economies of scale, entails lower rates of demand, and reduces expected returns from investment. Commercial incentives to invest in broadband deployment in these areas often turn out to be insufficient. However, on the positive side, it is recognised that technological innovation is reducing deployment costs.

Rural areas also lag behind urban area in terms of connection speeds. The Communication reports that download speeds of around 512 kbps have been the most common in rural areas in the past two years. In more urban areas, average speeds are now commonly 2Mbps and above. While in urban areas, there is a clear trend towards higher bandwidth, in rural areas speeds tend to remain constant. This divergence follows from lower technological performance resulting both from distance, and from lack of competition. This is seen in Scotland through the deployment of limited Exchange Activate technology at 512kbps, for example.

From this background, we believe that there is a real danger of a widening digital divide as NGA starts to be rolled out in the country if left to the market entirely.

2. Response to Questions

2.1 Question 1 When do you consider it would be timely and efficient for next generation access investment to take place in the UK?

We agree that we are likely to get the best technical solutions by leaving it to the market to develop, or at least the best compromise between an affordable and good technical solution. The best time for investment will then be down to the business plans of the suppliers and we believe it is right at this stage to monitor the investments as suggested. This does not avoid the requirement for Ofcom to set out the regulatory landscape at an early stage, however. We also believe that as investment activity increases, we must pay particular attention to the geographies that see no activity and ensure conditions are in place to encourage investments here by whatever organisation is the most suitable e.g. telecom operators, utilities, community broadband projects, public sector. As is stated in the document, the timing, reach and nature of next generation access investments are vitally important and this is equally the case for the most remote geographies.

2.2 Question 2 Do you agree with the principles outlined for regulating next generation access?

We note the concerns on the possibility of a greater digital divide occurring with the introduction of next generation access and the issues Ofcom consider around attempting to identify areas which will not be commercially viable at this stage. We would contest that there are fairly large areas of Scotland which can be identified at this stage; a starting point would be the areas which cannot achieve current generation broadband due to copper access issues and which are having to be addressed by public sector intervention. There has been many years experience within the Highlands and Islands, to take an example, of the public sector having to intervene to try and keep up with the basic levels of service available elsewhere. We do not believe for one moment that this will be any different when it comes to NGA. We are concerned, therefore, that there appears to be an attitude that this is too difficult to predict at the moment and it should be reviewed again at the tail-end – more of the sticking plaster approach. We do not believe that needs to be the case.

We encourage **innovative solutions** and would not wish restrictions to be placed which would cause any limitation. We believe that innovation has to be viewed at a number of levels including for solutions in more remote areas where no competition is likely at the infrastructure level. We believe that the packaging of suitable

spectrum, on a geographic basis if necessary, should remain a consideration in an effort to improve opportunities for competitive supply.

We agree with the principles of **equivalence** but note that this is not the case for current generation products in a number of areas in Scotland. In these areas, retail broadband products are limited in supply due to the lack of infrastructure investment. Public sector intervention has not addressed this issue. We do not wish to see such circumstances exist in the future. We question how some elements of equivalence will work in practice in our more remote areas where customer numbers are low and investment required is disproportionately high.

2.3 Question 3: How should Ofcom reflect risk in regulated access terms?

We agree with the principle of **contestability** and that any operator should be allowed to invest in NGA infrastructure as soon as they wish. We do question how this can be achieved in the more remote areas and how third parties can choose to make investments independent of bottleneck asset owners.

We agree that regulation must reflect the **risks of investments** and we believe that this will be essential, and may need to be varied, in remote areas. Where competition is insufficient, regulation must enable providers to receive revenues to reflect the value of alternative investment, otherwise we risk not seeing timely and efficient investment. We strongly believe that a potentially different view must be taken for these areas where risks are significantly higher for operator investment.

We absolutely agree that **certainty** of regulation is important and we believe a clear message is required at the earliest date in order to set the landscape for future investment. Delay could severely affect the deployment of NGA in the UK.

We are interested in the anchor product approach and see this as a potential method for helping to ensure investment reflects value, risk and reward in areas where competition is insufficient. It will, of course, be essential that this anchor product is defined to reflect current conditions and to have a mechanism to change this over time in an effective manner.

2.4 Question 4: Do you agree with the need for both passive and active access remedies to promote competition?

We believe it will be essential that multiple levels of competition are available, based on passive and active elements to reflect the different economics in different geographic areas. Passive input competition through LLU has not been achieved in the majority of areas in Scotland and is virtually non-existent outside the urban

Central Belt. We further question the economic benefits of duplicating active elements of the NGA infrastructure in areas of low subscriber numbers. It will therefore be essential to retain active input competition to allow any element of competition to take place. We also agree with the proposition that NGA active elements, based around Ethernet, will offer more opportunity for flexibility and choice in the range of end services to the customers.

2.5 Question 5: Do you consider there to be a role of direct regulatory or public policy intervention to create incentives for earlier investment in next generation access?

We agree that where the market in current generation broadband is well established and has competitive supply, the market will invest as we are starting to see already. However, there are many areas in Scotland that do not have competitive supply, other areas where public sector intervention has been the supply enabler and, to date, a number of other areas which do not have current generation supply even now. We do not believe that the market will address these areas for NGA either. We also do not see that these areas should be addressed by public sector intervention at the tail end of NGA availability and would instead encourage a more innovative and early approach to these areas where we know from many years clear evidence, that the market will not provide alone.

One option may be to review progress when a commercially viable NGA service is made available to 50% of UK households. By this stage the market should have settled on the most viable technical solution. If there were public sector intervention at **that time** for the most geographically remote/difficult to access 10% of potential customers, the commercial rollout from 50% to 90% of households would become more appealing. This approach would allow the market to take on the technical risk and cost of NGA, as well as dictate the initial speed of rollout. However it would also mean that the most rural areas were not the last to obtain service, they would get it at the same time as most non-urban areas.

We would also suggest that Ofcom may wish to give some form of steer to central and devolved Government about what they may be required to do and when - i.e. how long should they give the market to react, and what are they likely to have to do if there is market failure. This will help ensure a joined up and consistent approach - and allow Government departments to budget for (probably significant) investment in the medium term.