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Ofcom
Strategy and Market Developments
Riverside House
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30th November 2007

Dear Mr Carter,

Future Broadband: Policy Approach to Next Generation Access

Response from England's Regional Development Agencies

This response is from SEEDA on behalf of the nine English Regional Development Agencies and reflects the areas where RDAs have unanimity of views. Individual RDAs may additionally respond separately where they have region specific comments.

The RDAs acknowledge that there is a circular argument about providing NGA in advance of demand. However, affordable high-bandwidth broadband is now a requirement for many companies to enable them to develop and deliver their products competitively with indications that this requirement and others, including access to public sector services, will only grow. RDAs believe that for these reasons the deployment of NGA is vital to maintain the economic and social well-being of the UK.

We have the following specific comments in response to each of the Ofcom questions.

1. Ofcom question 1 – When do you consider it would be timely and efficient for next generation access investment to take place in the UK?

- 1.1. The time is now.
- 1.2. Experience suggests a likely lead-time of many years to secure investment, plan and then implement substantial improvements to the local access network. Meanwhile international competitors that have a head start with NGA will consolidate their advantage and it is reasonable to expect that developing countries will jump straight to NGA fibre based solutions. RDAs strongly believe there is a need to factor into thinking the potential strategic impact of NGA investment on UK competitiveness.

2. Ofcom question 2 – Do you agree with the principles outlined for regulating next generation access?

- 2.1. The RDAs welcome the additional principle “reflecting risk in returns” and note that Ofcom are consulting on a range of approaches. The RDAs think that this consultation needs an urgent conclusion since the outcome will affect investment decisions. A clear outcome from this consultation should be to provide “regulatory certainty”, which is stated as being the other additional principle.
- 2.2. The RDAs believe that the ultimate aim of regulation should be to enable all UK businesses and the public sector to be innovative in the goods and services that they provide without being constrained in the future, as they are now, by limitations of the current access infrastructure (both in terms of variable speed and lack of universal accessibility). The existing principle of "maximising potential for innovation" in the consultation document is limited to innovation by the communications providers as far as the provision of data services is concerned. RDAs remain unconvinced that this limited objective is consistent with the wider "innovation by all" objective described above.

3. Ofcom question 3 – How should Ofcom reflect risk in regulated access terms?

- 3.1. RDAs would like to see a simple approach to regulation to provide certainty for investors.
- 3.2. It is possible that different operators will install infrastructure in specific geographical areas of the country and that there will be variations in the passive and active products offered by these operators. In such circumstances, these operators will certainly hold significant market power in the particular location and regulation will need to ensure open access for other service providers at a practical, not just a theoretical level. Our specific concern is that if product offerings are very different and represent a sufficiently small percentage of the overall market then it may be impractical for other operators to take advantage of them, because the return will be insufficient to justify the cost of fitting in with a "minority" product.

4. Ofcom question 4 – Do you agree with the need for both passive and active access remedies to promote competition?

- 4.1. Yes. However, RDAs believe that many of the options currently listed are unlikely ever to happen in practice and we would not wish extended consideration of such "dead" options to delay regulation.
- 4.2. Regulated access products at the passive and active levels must be fit for purpose and allow interoperability of equipment. This will lead to lower equipment and operating costs, all of which will benefit the consumer and promote innovation.

5. Ofcom question 5 – Do you consider there to be a role of direct regulatory or public policy intervention to create artificial incentives for earlier investment in next generation access?

- 5.1. Yes. The RDAs do not consider that the current environment encourages the investment required to meet the needs of UK plc.
- 5.2. To encourage investment in a completely new access network the RDAs believe that the form of regulation needs to be clear and understood by investors.
- 5.3. It is not clear that the existing market-led model, regulating competition over what is an existing infrastructure, can effectively promote or indeed trigger investment in an entirely new infrastructure. There remains a very real concern among RDAs that further delay to the transition to NGA will occur in the absence of appropriate incentives. Without incentives, there will continue to be a tension between the long-term competitive needs of UK plc and the legitimate but much shorter-term commercial imperatives of private companies charged with delivering shareholder value.
- 5.4. A new model to encourage longer-term investment in a new NGA network needs to be developed. RDAs do not believe that NGA will happen in a timely and efficient manner with existing telecommunications investment models where very short-term returns are expected.
- 5.5. The market led approach has been successful to date. The functional separation of BT and BT Openreach along with the principle of equivalence has delivered first generation broadband to most, though not all, of the UK. However, we would argue that this approach has had much less impact on headline speeds, especially when compared with some of our major international competitors. **It is worth noting that the development of the current market and regulatory framework for first generation broadband has been against a background of an existing local access network inherited by the incumbent operator.**
- 5.6. **NGA is a completely new access infrastructure.** RDAs believe that to provide a truly ubiquitous NGA network a step-change in policy and regulation is required. If the market-led approach is dogmatically applied to brand new NGA infrastructure this could lead to different NGA scenarios in different places with a resulting regulatory complexity and overhead that detracts from the objective of securing a good deal for the end-users.
- 5.7. With the existing market-led policy, RDAs understand the rationale of Ofcom’s light touch regulation style. However, RDAs believe that a policy debate must now take place and that a regulation method such as “utility style” needs serious consideration to ensure that investment

takes place in a new NGA network to provide the same access and benefits to all citizens wherever they reside.

- 5.8. The RDAs believe that the way to maintain an NGA infrastructure once built is through the creation of a separate “Infrastructure Company” with utility style regulation and a Universal Service Obligation.
- 5.9. RDAs note the encouragement in the document for the work of the Broadband Stakeholders Group to measure the potential social and economic value of NGA. Connectivity is critical to the competitiveness of the UK economy and a fundamental pre-requisite to a knowledge economy. RDAs welcome this opportunity to contribute to the policy debate and advance the case for investment in NGA.

Yours sincerely,

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SEEDA

On behalf of the English RDAs