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Dear Justin,

ISPA welcomes the opportunity to submit comments on the [Next Generation Networks: Further Consultation](#).

The Internet Services Providers' Association (ISPA) UK is the trade association for companies involved in the provision of Internet Services in the UK. ISPA was founded in 1995, and seeks to actively represent and promote the interests of businesses involved in all aspects of the UK Internet industry. Its membership includes Internet service providers (ISPs), cable companies, web design and hosting companies and a variety of other organisations. ISPA currently has over 130 members, representing around 95% of the UK internet access market by volume.

A full list of members is available at:

http://www.ispa.org.uk/html/about_ispa/ispa_members.html

This response reflects views of ISPA members on the specific questions posed by Ofcom. It should be noted that not all ISPA members share the specific views expressed on individual issues. Where significant divergence of views exists, this is highlighted in this paper. Several individual ISPA members (including BT for example) will submit more detailed views on the consultation separately.

ISPA welcomes the clear role for industry set out in the Consultation document, and agrees that industry led processes will be the best means of taking forward such discussions. ISPA's considerations on this subject, and the forms that these bodies should take is included in ISPA's responses to the questions asked in the Consultation document.

This consultation is being conducted against a high level of uncertainty. The exact details of the putative Next Generation Networks are currently unknown. And these NGNs are emerging into the market at the same time as BT is offering a series of Undertakings in lieu of a reference under the Enterprise Act. Therefore the communications market looks to be entering a transitional period, a time for industry to adjust to both BT's behavioural and organisational change and to manage the risks and opportunities that Next Generation Networks present. ISPA therefore supports the development of a set of governing policies to enable the development of NGN based competition. ISPA further supports the fact that these policies are to be developed hand in hand with the undertakings offered by BT, arising from Ofcom's Strategic Review of Communications.

ISPA supports and encourages the level playing field that the policies for next generation SMP products is aiming to create. ISPA strongly supports the fact that no retail services, using SMP

products, are to be launched by BT without associated wholesale inputs being available. ISPA agrees that BT must not launch new downstream services, until it has provided access to the upstream input, and further that the upstream input must be available in order that other service providers can launch downstream services simultaneously with BT.

ISPA welcomes Ofcom's caution where they recognise that some of the changes that may result from the move to Next Generation Networks could prove a danger for communication providers, for example, asset redundancy.

Ofcom is correct to exercise caution, and some ISPA members have expressed a concern that BT has not specified the technical details of the Next Generation Networks yet, making it difficult to comment on the Further NGN document with the detail that Ofcom are seeking. The analogy that has been used to describe the situation likens the consultation to asking an individual what colour they would like their brand new 'highly desirable' car to be, without knowing which make or model, or the performance or features may be supplied.

ISPA's response is based on what members know so far, and to an extent, on what members believe may happen as the move to Next Generation Networks gathers pace. There is a lack of certainty, and detail in the products that will affect the market place, and ISPs are having to make assumptions as to the products that BT will be offering. Critically, major investment decisions are being made by ISPs on the assumptions that are held at present, but that could change within a narrow timeframe. ISPA member's concerns centre on BT's ability to deliver a product that industry believes will take it into the future and what the wider impact will be for ISPs in the UK, particularly small and niche ISPs, if BT fail. However, the frustration of uncertainty that is felt by smaller and niche ISPs, is acknowledged by BT Wholesale, who are unable to discuss exact costs and pricings at the current time, as they don't yet have all of the information required.

Question 1. Do you agree with Ofcom's proposed approach for the charges of narrowband voice SMP products provided over next generation interconnects?

ISPA agrees that clarity and predictability about regulation is important for charges. ISPA agrees that it is difficult to fully consider the regulatory requirements that will be required prior to full consideration of this area, but agrees that Ofcom should strive to produce commercial certainty where possible. ISPA is of the opinion that there is a need to ensure an appropriate return on BT's investment in NGNs, but some members have expressed the concern that the Consultation document focuses more strongly on BT's commercial certainty, than the commercial certainty offered to all communications providers. Further clarification of Ofcom's approach is required, not least as it *appears* to be inconsistent with that adopted in the recent NCC review.

For example, a new operator who is just breaking in to the voice market may wish to benefit from the efficiencies of his network to offer a cheaper service to end customers. This operator will need to interconnect with BT to offer a fully accessible service, but will be constrained by the old PSTN pricing model for these calls. Since interconnect calls will make up the majority of traffic for any new operator this policy may have the effect of constraining business models until the end of the transition period.

ISPA acknowledges that there is likely to be some difficulty in developing IP interconnect 'rules' that provide certainty, a smooth and economic transition from PSTN and appropriate (investment) incentives for BT. However, ISPA would welcome further detailed clarification of Ofcom's proposed approach. ISPA does not believe that the current proposals are either sufficiently

informative or transparent so as to provide any real guidance to future interconnect arrangements and/or costs.

While ISPA recognises that there is a need to consider, in some detail, the transition of interconnect from PSTN to IP, ISPA is less convinced that Ofcom should seek to impose some form of artificial solution, which appears to temporarily inflate IP interconnect costs. This is not to question the need for cost recovery, but there may need to be a greater effort to reach consensus as to how these costs are apportioned and where they fall. This type of artificial solution raises a number of concerns, particularly given that this 'holistic' approach applies at the wholesale level. ISPA believes that such an approach would potentially preclude communications providers offering more efficient and innovative retail voice propositions. ISPA will reserve detailed comments on Ofcom's proposed approach for the regulation of charges until the exact proposals have been issued/released.

Question 2. Do you agree with the overall approach that there needs to be continuity for existing SMP products, but that it would not be appropriate to continue them indefinitely?

ISPA agrees with the overall approach that there should be continuity for existing SMP products, but strongly believes that the decision to stop products where it is believed that it would not be appropriate to continue with them must be a cooperative process. ISPA agrees that it may not be appropriate to continue all existing SMP products indefinitely. Moreover, market definitions in the future may actually broaden, in which case, the product specific SMP obligations on BT will alter over time. ISPA agrees with Ofcom that BT cannot unilaterally decide to stop providing existing SMP products, and agrees that changing existing SMP products should only be allowed to occur following a market review, and that providers still using legacy SMP products should be fully consulted on the options that would be available to them following withdrawal.

As indicated in responses to Ofcom's initial consultation on NGNs, there is a requirement for continuity on existing SMP products. ISPA previously stated (in the ISPA response to the NGN consultation in January 2005) "*ISPA would want to make sure that 100% of consumers were able to achieve a usable basic [satisfactory] service on broadband, and that this had been proven over a sustainable time period before it be appropriate to agree a process and timetable for the withdrawal of FRIACO.*" ISPA's opinion on this matter has not changed.

ISPA believes that it is likely to be in both consumers and most ISPs interests to continue to offer a narrowband flat-rate product as long as sufficient demand exists. Therefore, ISPA would not agree to the withdrawal of FRIACO and other wholesale narrowband products until:

- ❑ Consumers no longer demand wholesale narrowband products;
- ❑ The industry reaches, through natural/commercial migration, the inflection point where it no longer makes commercial sense to continue offering a flat-rate narrowband product;
- ❑ Existing and future wholesale broadband products are considered able both to support effective and sustainable competitive solutions, and to provide an effective "substitute" for current flat-rate narrowband services.

ISPA would not support any migration while there remain flat-rate narrowband customers requiring narrowband services. ISPA would not welcome a 'forced migration' of existing or remaining narrowband customers, and considers that recipients of the FRIACO, and other

wholesale narrowband products, should, according to market conditions, determine any date or time-scales for migration.

ISPA would welcome a formal process involving Ofcom, to guide the industry to the point where it is agreed that existing SMP products can be terminated.

Question 3. Do you agree with the general criteria Ofcom has proposed for withdrawal of legacy SMP products after an interim period?

Essentially ISPA agrees with the general criteria that Ofcom has proposed for the withdrawal of legacy SMP products after an interim period, although further clarification is required as to the suggested process and Ofcom's proposed 'tests'. ISPA recognises the value of involvement with Consult 21, but believes there is a real need to make sure that the whole industry is involved with Consult 21, not just the large players, to ensure that the whole industry is represented fairly, and that those providers who rely more heavily on legacy SMP products are not disadvantaged. This must be a fully commercial negotiation process, involving all players in the market.

ISPA members have also expressed concern regarding the compensation arrangements for SMP product migration where there is no provision for third party providers. There is no acknowledgement of the time spent by 'project managers' and no recognition of the 'soft' costs for the administration involved with changing from SMP legacy products.

ISPA generally agrees the criteria proposed by Ofcom. In terms of the second scenario described by Ofcom, we note that products may be withdrawn if provision is considered "uneconomic or disproportionate". The issue of whether the provision of a product is considered uneconomic must be determined by market conditions, and the ISPs using those wholesale inputs; it should not be based on a unilateral decision by BT. In addition, it should be a matter for the recipients of legacy products to determine any date or time-scales for migration, according to market conditions.

ISPA is concerned with the wording used in scenario 3, as it is ambiguous. ISPA would like clarity on what is meant by "where practical", "adequate" and "adequate time". ISPA is also concerned that the wording of scenario 3 potentially conflicts with the wording in the Undertakings, whereby fixed timescales are sought, rather than the openness of the NGN document.

In light of Ofcom's suggestion that the withdrawal of legacy products will need to be considered before the expiry of the NCCs, ISPA believes that Ofcom should take a more structured and formal approach to this issue. For example, over the period of the NCCs, Ofcom will be required to conduct a series of market reviews to determine whether BT has SMP on legacy (markets) products, and whether BT has SMP in NGN markets and products. These reviews will aid Ofcom's analysis and information to support the analysis of scenarios 2 and 3.

Question 4. Which network intelligence capabilities are likely to be associated with the underlying network where BT has SMP and cannot be independently provided by alternative providers, and why?

The answer to this question will depend on the exact details of NGN which are currently not available. However, ISPA members foresee opportunities in developing and running services not previously possible, after the move to 21CN, and are seeking to avoid network intelligence capabilities being embedded into BT's network whereby they could not be provided separately.

ISPA members would like assurance of their capability to choose to NOT buy services or provisions at the current time, but to have the option to buy them in the future from BT, or from other service providers. Paragraph 3.46 suggests providers may only have one chance to influence whether BT has to provide a particular wholesale variant, and if they do not respond in time, BT will not be required to offer it.

While inter-working options may change in the future, as NGN is unrolled, ISPA members would like to make sure that the potential threat to competition and innovation as highlighted, is considered and properly addressed.

Many of the network intelligence capabilities will be dependent on price, but no prices are mentioned in the consultation document. As a first step, BT should be asked to flesh out Ofcom's observations in Annex G to the consultation. In short, BT could produce a discussion paper on network intelligence on 21CN, which would indicate what type of - network intelligent – services are under consideration, where they might reside (geographically/technically) in the network, and their view as to whether independent provision is economically/technically feasible etc. This need be no more than a discussion paper, but could provide one of the (many) items for discussion regarding new obligatory products within Consult21 and the new regulatory framework.

It must be stressed that given the limited information available to ISPA members at this time, that it is difficult to provide a full answer to this question.

Question 5. What are your views of the practical implications of applying Equivalence of Input to NGNs:

a. in relation to MSAN interconnection?

ISPA members have different views on this subject dependant on the services that they offer, e.g. whether they are a LLU operator, a pure service provider, a backhaul provider etc. However, as a group we believe that it is appropriate to apply Equivalence of Input standards and procedures to MSAN interconnections or interconnections at any other point.

b. end-to-end quality of service?

If standards of end-to-end quality of service are agreed, it should be possible to apply Equivalence of Input principles to Next Generation end-to-end services.

c. depth of network hooks?

There is wide ranging debate on this subject, as different service providers want different things. If Equivalence of Input is applied to the depth of network hooks there is a need to make sure that approved standards are used by everyone.

Question 6. Do you agree with the issues Ofcom has identified that need to be addressed by all communication providers as they move to NGNs and what others are there?

At the present time, ISPA agrees with the issues that Ofcom has identified, but does not agree that *all* these issues need to be addressed by *all* communications providers as it depends on the nature of their business. There are likely to be more issues that will need to be addressed that have not been covered in the consultation document, but many of these will be new issues arising from the provision of, and use of NGNs that can not be predicted at the moment.

Some ISPA members are concerned that BT has already committed to new technical standards for the future that precludes certain action now.

ISPA would like to reiterate the uncertainty that service providers have about what the move to NGNs will mean in practice. Changing relationships with BT will facilitate new questions, and inevitably Ofcom have missed many questions that will become relevant as this process moves forward.

Question 7. Do you agree with the policy principles Ofcom has identified for consumer protection during the move to NGNs?

ISPA fully agrees with BT's stated intent that consumers should not notice the move to NGN and that there should be no disruption to consumer services.

ISPA members agree with the three proposed policy principles that Ofcom have proposed in relation to NGN consumer protection and welcome BT's initiative for a trial run of transfer to NGN processes in Cardiff.

ISPA believes that in addition to the three proposed principles, BT and other NGN operators should also endeavour to ensure *CPE* compatibility where consumer's equipment, particularly DSL modems, might be affected.

ISPA believes that BT's transparency as well as the cooperation and involvement of all NGN operators will be vital to ensure consumer protection during the move to NGNs.

Question 8. Do you agree with the overall processes for developing 21CN obligatory products?

ISPA believes that the process for developing 21CN obligatory products should be made a more formal process, with the use of timelines to help plan and inform when deliverables should be available to industry.

ISPA would like to question to what extent this is related to Chapter 3 of Ofcom's document, which contains decision trees and defined processes relating to requests for unbundled network access, particularly in the context of new "obligatory" products.

ISPA considers that the scope for a series of bi-lateral "negotiations", whereby different interpretations of BTW's existing and future obligations might be accommodated is disjointed, and that a clear process and 'order of precedence' must be defined.

Question 9. Do you believe that there is a need to co-ordinate and steer cross industry NGN issues which is not met by existing bodies and process?

There is a real need to coordinate and steer cross industry NGN issues, which is not currently being done by existing bodies and processes at the moment. Ofcom should consider how best to address these outstanding issues and the level of resource they will require by industry.

The current Office of Telecoms Adjudicator (OTA) provides a suitable benchmark and reference point across industry. The OTA has a clearly defined remit and specific Terms of Reference (ToRs); ISPA would like to see similar remits and ToRs being applied to this and the proposed Operational Dispute Adjudicator – noting however, that in the case of the existing LLU OTA the

terms of reference apply specifically to BT's LLU offerings, whereas any application of this method in the NGN arena needs to encompass the development of NGNs across industry.

Question 10. Do you agree that there is a need to co-ordinate the planning and implementation of NGNs on an industry wide basis?

ISPA believes that an independent body like Ofcom with an "adjudicator" type function would be well placed to facilitate industry discussions and co-ordinate activities. However, any such body must have a clearly defined remit. It is questionable whether such a body should be involved in detailed implementation such as determining the manner in which, and when, a communications provider migrates their interconnect points/products to 21CN. The co-ordination role should be one of oversight of BT and other wholesale networks plans, ensuring dissemination of relevant info to all parties and facilitating discussion between relevant parties.

Question 11. Is there a need for a process to address the wider consumer protection issues arising from the move to NGNs?

Yes. Ofcom should consult with its own Consumer Panel and other representatives as to primary and secondary issues arising from the move to NGNs.

Question 12. Has Ofcom identified all the correct industry processes that will be needed to deal with move to NGNs?

Yes as far as we know, although we expect more processes requirement may arise as we go forward which we can't predict now.

Question 13. Do you agree that it appropriate for Consult 21 to continue to take responsibility for developing detail of SMP product migration and development of new products?

No. There is a shared perception among some ISPA members that Consult 21 is a very BT centric process. While Consult 21 is meant to be representative of all industry, the channels of communication flowing from Consult 21 are not always open, and there are some concerns that it is not an inclusive body, and does not represent the whole of industry.

Some ISPA members have expressed concern that with the current levels of communication from Consult 21, there would be insufficient notice taken of non BT requirements.

Furthermore it is a concern that Ofcom/NGNCo will involve itself in all the non-SMP activities, and leave the potentially contentious piece to industry. It is here that Ofcom need to engage, and this is **not** to argue for ex-ante regulation of BT's 21CN or undermine a commercial approach, but simply to clarify that this is where Ofcom's guidance and advice will almost certainly be most needed. Ofcom should reconsider their proposed approach in this area because a limited participation and active involvement of Ofcom at this stage (on these products/services), may prevent dispute, disruption, resource constraints later etc. and therefore lead to lower levels of regulation sooner.

Question 14. Do you agree that Consult 21 combined with bi-lateral commercial negotiation and backed-up by Ofcom dispute resolution is the best approach to the agreeing the commercial aspects of new and migrated products?

In principle yes, but the details would need working through carefully. ISPA believe that the proposed Ofcom dispute resolution procedure should enable timely and effective adjudication.

However it is not at all clear how this will work alongside bi-lateral negotiations. While providers will of course have to discuss matters with BTW bi-laterally, does it mean that 'bespoke' arrangements are possible on NGN SMP products – notwithstanding non-discrimination obligations etc.?

ISPA welcomes the maintenance of continuing Ofcom dispute resolution. However, what will be done to streamline the process and time-scales around Ofcom's handling of disputes in the future, which could after all, be equally as important as the resolution itself.

ISPA questions what effect, if any, would a commercially agreed solution for a new SMP product have on the outcome of Ofcom's future Market Reviews. Would these 'agreements' then be supported by a new regulatory obligation – drafted to reflect the commercial agreement? How would these commercial agreements 'fit' into the Framework Directive where Ofcom is obliged to impose (at least 1) requirement(s) on BT, where it is found to have SMP? Clarification in these areas would help ISPA members to understand how Ofcom's suggested approach 'fits' with their own obligations, and how it is likely to work in practice.

ISPA would welcome the opportunity to understand how Ofcom plans to improve its procedure in this area in the future.

Question 15. Do agree that NICC should continue to be responsible for standardisation of NGN interconnect, but needs to be re-constituted as an independent industry owned body?

ISPA believes that NICC must be open and accessible to all industry players. However, due to the regulatory issues that NICC covers, ISPA believes that NICC belongs under the Ofcom umbrella.

Question 16. What are your views on the establishment of a new multi-lateral industry group to address NGN issues, its terms of reference and governance arrangements?

There is currently perceived to be a resource imbalance between BT and the rest of industry.

There are many issues for the ISP industry to address at the moment, and while BT has high levels of resources to address these issues, many of ISPA's members, particularly small and niche members, do not have the levels of resource necessary to support a new industry group. ISPA is concerned that the existence of a new industry group would stretch small member's resources even further, therefore making their participation less effective.

ISPA believes that there should be a suitable flow of information from the industry groups that already exist to all industry players, in order to address NGN issues comprehensively, and making sure that the whole industry has a better opportunity to be effectively represented.

Question 17. What are your views on the establishment of a NGN operational dispute adjudicator, its terms of reference and governance arrangements?

ISPA believes that any such operational dispute adjudicator must be a fully operational body, and understand the real costs and benefits of NGN to the industry, in order to be able to make effective judgements.

ISPA suggest that Ofcom look to the LLU Office of Telecoms Adjudicator (OTA) model, as the preferred means of addressing this issue. Indeed, given the close correlation between the OTA's current work-streams and the issues raised by NGN and the TSR, we see no reason as to why the current OTA cannot be broadened in scope to tackle NGN issues.

However, it is important to note the difference of the proposed OTA compared to today's LLU OTA which is centred on BT's LLU. Any NGN operational dispute adjudicator needs to have a ToR covering all NGNs.

Question 18. Would your organisation be prepared to sign-up to such an adjudication scheme and abide by the adjudicator's decisions?

In principle, ISPA agrees that this is a good idea, and where possible ISPA would encourage members to sign up to such a scheme, but cautions that this would be a matter for individual ISPA members to decide once full details of such a scheme are made available.

However, ISPA recognises that there are differences between LLU and NGN implementation, not least, the fact that OTA was needed to encourage BT to properly meet a regulatory obligation, but as stated in the answer to question 17, ISPA believes that the current OTA model can be adapted to fit.

ISPA UK.

BT has specifically requested that it is made clear that they do not support the ISPA response in relation to Q1, Q3, Q9, Q10, Q13 and Q14 and that they have made their own position clear on all of the consultation questions within their own response to this consultation