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Dear Tim

### **Draft Annual Plan 2013/2014**

Virgin Media is pleased to provide feedback on Ofcom's Draft Annual Plan for the year 2013/14 (the 'Draft Plan') and continues to support Ofcom's undertaking of this consultation exercise setting out proposals for the planned activities and priorities for the year ahead. Having a clear view of the initiatives anticipated in the forthcoming year and beyond is important in what is an ever evolving and competitive industry.

We recognise that the Draft Plan sets out the high level intentions of Ofcom, and that each individual policy project or initiative will be subject to collaboration and consultation with industry. We therefore do not seek to comment on specific elements of it for the purposes of this response, save where we consider that there are any points of general applicability or matters that are appropriate to raise in advance of the projects themselves. We look forward to engaging with Ofcom on each of its consultations during the year ahead.

### **Provisional Timings**

We welcome Ofcom setting out in the Draft Plan its anticipation of when projects are likely to be undertaken. The ability to know the relevant timings of projects and the likely impact on regulation is important to industry, and therefore advance information in the Draft Plan is very much welcomed. However, during the 2012/3 year several project timings slipped significantly from the anticipated dates, not simply by weeks but often by months. On a number of occasions this was left unexplained or where revised estimates were provided, these were also not met. Whilst we accept that the accurate prediction of the exact timing of each project is impossible and subject to many variables, it is essential that Ofcom strives to ensure that initial estimates are as accurate as possible, and where there is a risk to a timing not being met this is communicated at the first opportunity with accurate revised timings being provided to ensure maximum clarity for industry and stakeholders.

### **Co-ordination with Industry**



The Draft Plan sets out a number of major projects and initiatives that will be undertaken within the year. This, as the Draft Plan identifies, is in addition to the programmatic work and services discussed in Section 6. There will be a considerable need to gather information from industry in the course of these projects, which will impose a significant burden on stakeholders. It is vital that Ofcom takes full account of the volume and nature of requests made to stakeholders in order to ensure that the level of information required remains both proportionate to the task, and manageable to the stakeholder. Several projects running through this year have considerable overlap (for example the reviews of the Fixed Access and Wholesale Broadband Access markets), and the strategic planning of information requests is vital to ensure that the burden on stakeholders is minimised to ensure that the quality of the information that is able to be produced remains at the highest possible level, which will help Ofcom to make sound, evidence based decisions.

## **Specific Projects**

### **a. Switching**

Virgin Media looks forward to engaging with Ofcom in its continuing review of switching, and despite the description of the "long term strategic view", would emphasise the need for Ofcom to retain an open minded, evidence based approach to switching. Virgin Media notes that the intention of any changes is to "make competition work more effectively" in the market for single or bundled services. In attempting to empower consumers through a changed switching process, it is vitally important that when considering which products or services are right for them, consumers are empowered with accurate information. In the context of broadband marketing, Virgin Media has long been concerned about ADSL broadband providers' use of inflated headline broadband speeds such as 24Mbps, when only a tiny minority of households (if any) could ever achieve such speeds. More recently, following minor alterations to the BCAP Code covering this area, ADSL providers have taken to specifying no speeds at all in broadband service marketing. Further, a similar problem is becoming apparent in the promotion of mobile data services. 3G, 4G and DC-HSDPA services are being marketed as 'superfast' or 'ultrafast', when in reality they deliver speeds far below what is generally expected to be provided by such services. As Government and the regulator looks to drive the take up of genuinely fast broadband services, misleading or entirely absent information risks undermining – not empowering – consumer decision making. As such, any reform of the switching regime must go hand in hand with further reform of marketing rules.

### **b. Review of Regulatory Financial Reporting**

Ofcom notes in Section 5 of the Draft Plan that a further consultation on this project is due to be published in 2013. This project originally

included a review of cost orientation - a central remedy in many regulated markets. It is of concern that this review appears to be continually sidelined to the extent that the promised consultation in 2012 did not materialise and a publication (of uncertain consultation status) has yet to appear in 2013. As market reviews are undertaken during the year, understanding Ofcom's approach to this important remedy will be essential to stakeholders, and the current situation where decisions are being proposed despite a lack of policy direction does not appear to be in line with the stated aims in the Draft Plan of being Consultative, Transparent, Responsive, Informed, Effective and Proportionate.



c. Pay TV

Virgin Media agrees with Ofcom that it has a duty to ensure fair and effective competition in this sector. Virgin Media continues to believe that there are concerns over the way the sector operates and would urge Ofcom to ensure that it continues to monitor both supply and, in particular, the terms of supply closely in the forthcoming year in order to establish whether further action may be required to promote competition for consumers.

d. Strategic Purpose 5 : maintaining audience confidence in broadcast content

When considering approaches in relation to PSBs, Ofcom should ensure that any consideration of the extension of rights and privileges given to PSBs is appropriately balanced against a proportionate extension of the responsibilities of the PSBs. Virgin Media welcomes the injection of market based principles into PSB use of spectrum through initiatives around AIP. Such moves are crucial to providing context for the historic and ongoing benefits that accrue to PSBs – indirectly to licence fee payers and consumers more broadly - as a result of the zero cost of Cable carriage of linear and catch up PSB services.

We hope that the above comments are helpful in highlighting particular areas where Virgin Media believes that additional clarity may assist in setting out the proposed priorities and work programme for 2013/14. We would welcome the opportunity to discuss any of our comments in further detail if this would assist Ofcom in its publication of a clear and informed plan for the coming year.

Yours sincerely,

David Christie.