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Dear David

Strengthening Openreach's strategic and operational independence

This brief response has been prepared on behalf of Nine Group. Nine provides a wide range of fixed and mobile communications services to business customers in the UK. Nine Group offers its services directly to end user customers through its Nine Telecom division and via resellers through the Nine Wholesale operation. Nine has approximately 500 reseller partners of various sizes located throughout the UK.

You can find out more about Nine Group at our website www.ninegroup.co.uk

We welcome this opportunity to respond to Ofcom's latest consultation on the independence of Openreach and we are generally supportive of Ofcom's approach to achieving this.

An efficiently performing Openreach is critical to Nine's own service delivery and success and in an ideal world we believe that Openreach should be completely separated from BT. However, we recognise the potential obstacles that Ofcom has identified which may delay these much needed changes and we believe that Ofcom's preferred option, "legal separation", is likely to bring significant improvement. Nonetheless, we are pleased to note that Ofcom has not entirely ruled out full structural separation should this prove necessary.

In terms of the current consultation, there are several areas where we feel that Ofcom's proposals are not as strong or as clearly defined as they need to be. We feel that, in order to avoid dilution of the preferred approach, these areas will need to be thought through in more detail and, where necessary, negotiated with relevant stakeholders. The main potential areas of concern are as follows:

Articles of Association and Purpose – the final drafting must ensure a clear definition of Openreach's interests, objectives and priorities, set out unambiguously and prioritising its duties to its customers and other stakeholders, over those of BT Group

Appointment of the Board – Ofcom has suggested that the Openreach board would be appointed by BT but must be approved by Ofcom. We feel that it would be helpful if some terms of reference on both the profile of individual candidates and the shape of the board as a whole is agreed and shared in advance to ensure that the board composition represents all parts of industry, particularly smaller niche CPs and those serving business customers.

Financial Control – This is a particularly important area and it cannot be left to the discretion of BT Group to decide what is appropriate. Ofcom envisages BT setting a “financial envelope” within which Openreach would have delegated authority. This does not in itself appear to explicitly address what an appropriate level of profit and contribution to BT Group would be which will be absolutely fundamental to the future priorities of Openreach.

In the year ended March 2014 Openreach made an operating profit of over £1 billion on revenue of £5 billion and maintaining this level of contribution to BT Group is arguably one of the factors that has led to underinvestment in key areas and the consequent failures in performance.

Openreach Employees – Ofcom expresses a “strong preference” that employees should be directly employed by Openreach rather than BT Group. We believe that this principle is non-negotiable. In order to ensure the commitment of senior management to Openreach and its future success it will be necessary to stop the current free movement of key personnel between Openreach and other parts of BT Group.

Use of BT facilities – we strongly agree that Openreach should be free to use its own or external resources for research and development, systems development etc. We suspect that the current arrangements significantly inflate the costs of development, meaning that industry requirements are often rejected on grounds of cost.

Statements of Requirement – in connection with the above, we believe that new acceptance criteria for evaluating industry SORs are required. Currently the criteria include that development should be beneficial to Openreach. This is not an appropriate approach for a quasi-monopolistic national provider of critical services.

Incentivising Performance – new arrangements should offer clear incentives for Openreach to make significant improvements over current levels of service performance, which is more important than financial performance.

We trust that the above response is helpful and would be happy to discuss any of the issues raised with the Ofcom team in further detail.

Kind regards

Michael Eagle
Industry Liaison and Regulatory Support