



Notification under Section 94 of the Communications Act 2003 of Contravention of General Condition 18

**Notice served on Media, Marketing & Promotions (“MMP”) by the Office
of Communications (“Ofcom”)**

**This is the non-confidential version. Confidential information and data
have been redacted. Redactions are indicated by “[X]”**

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NOTIFICATION TO MEDIA MARKETING & PROMOTIONS (“MMP”) UNDER SECTION 94 OF THE COMMUNICATIONS ACT 2003 OF CONTRAVENTION OF GENERAL CONDITION 18

Ofcom’s determination

1. Ofcom hereby determines that there are reasonable grounds for believing that MMP has contravened and is contravening General Conditions 18.1 and 18.2 (“GC 18.1” and “GC 18.2”). Specifically:
 - a. MMP has provided electronic communications services used in connection with non-geographic numbers and comprising Publicly Available Telephone Services (as defined in the General Conditions), to Prime Time Radio (“PTR”) previously part of Saga Radio Limited.
 - b. MMP is a Communications Provider (as defined in General Condition 18 “GC18”) and PTR is a Subscriber (as defined in GC18).
 - c. MMP has an obligation under GC18.1 to provide Number Portability (the ability of a subscriber to port, as defined in GC18) at the request of a Subscriber (PTR).
 - d. MMP has an obligation under GC18.2 to provide Portability (a facility between providers to enable porting, as defined in GC18) at the request of another communications provider (Uniworld Communications (“Uniworld”)).
 - e. PTR, a Subscriber, has requested MMP to provide Number Portability in respect of 3 non-geographic numbers.
 - f. Uniworld, a communications provider, has requested MMP to provide Portability in respect of 3 non-geographic numbers.
 - g. MMP has failed to provide PTR with Number Portability (in contravention of GC18.1).
 - h. MMP has failed to provide Uniworld with Portability (in contravention of GC18.2).

The reasons for Ofcom’s determination are set out in the explanatory statement accompanying this Notification.

General Condition 18

2. Section 94 of the Communications Act 2003 (“the Act”) allows Ofcom to issue a notification to a person where Ofcom has reasonable grounds for believing that a person is contravening, or has contravened, a condition set under section 45 of the Act.
3. Section 45 of the Act grants Ofcom the power to set conditions binding communication providers, namely persons who provide an electronic communications network and/or an electronic communications service.
4. On 22 July 2003, the Director General of Telecommunications (“the Director”) issued a notification under section 48(1) of the Act setting, pursuant to section 45 of the Act, certain general conditions, as set out in the schedule to the notification (“the General Conditions”). The General Conditions took effect from 25 July 2003.
5. The General Conditions apply to all communications providers. GC 18 sets out the requirements for Number Portability and Portability.

6. GC 18.1 requires that:

“The Communications Provider shall provide Number Portability as soon as it is reasonably practicable on reasonable terms, including charges, to any of its Subscribers who so requests”.

7. GC 18.2 further requires that:

“The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability (other than paging Portability) as soon as is reasonably practicable in relation to that request on reasonable terms and in accordance with the Functional Specification”.

Action required by MMP

8. MMP is required to comply with GC18.1 and GC18.2 by:

- a. Providing Number Portability in respect of the non-geographic numbers 08700 50 50 50, 08700 50 50 30 and 08700 50 05 15 as soon as it is reasonably practicable after 27 September 2005 and on reasonable terms, including charges, to PTR.
- b. Providing Uniworld with Portability as soon as is reasonably practicable after 27 September 2005 in relation to its request on reasonable terms and in accordance with the Functional Specification (as defined in GC18).

9. Ofcom considers that for the purposes of GC 18.1 and GC 18.2 ‘as soon as is reasonably practicable’ means a time period in line with the Industry agreed porting process as set out in Chapter 11 of the Reseller Process of the Non-Geographic Number Portability Process Manual. Under the Industry agreed process, completing the paperwork for Portability should take no more than a few days.

10. The complainant, Uniworld, has not asked Ofcom to remedy any consequences of the contraventions notified, and Ofcom is therefore not requiring that any consequences of the contraventions should be remedied.

11. In accordance with the statutory period set out in section 94(4) of the Act, MMP has until 27 September 2005 to in which to make representations to Ofcom about matters contained in the notification accompanying this explanatory statement.

12. If MMP does not comply with GC 18.1 and GC 18.2 by providing Number Portability and Portability as set out in this Notification, Ofcom may issue an enforcement notification under section 95 of the Act and/or may impose a penalty on MMP under section 96 of the Act.

Interpretation

13. Words or expressions used in this Notification have the same meaning as in the General Conditions or the Act except as otherwise stated in this Notification.

David Stewart

Director of Investigations
26 August 2005

Explanatory Statement

Section 1

Summary

- S1. Section 45(1) of the Communications Act 2003 (the “Act”) gives Ofcom the power to set conditions, including general conditions, binding on the person to whom they are applied.
- S2. The Schedule to a notification issued by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act, and taking effect from 25 July 2003, sets out certain general conditions (“General Conditions”).
- S3. Sections 94 to 96 of the Act provide for the “enforcement of conditions” and give Ofcom powers to take action, including the imposition of penalties, against persons who contravene, or have contravened, a condition set under section 45.
- S4. The General Conditions apply to all communications providers. General Condition 18 (GC 18) sets out the requirements for Number Portability (under GC 18.1) and Portability (under GC 18.2).
- S5. Since June 2000, Media, Marketing & Promotions (“MMP”) has provided services including the use of 3 non-geographic numbers to Prime Time Radio (“PTR”). The numbers (“the disputed numbers”) were 08700 50 50 50, 08700 50 50 30 and 08700 50 05 15. During the period when MMP supplied services to PTR, calls to the disputed numbers were passed to PTR.
- S6. On 4 January 2005, Uniworld Communications (“Uniworld”) wrote a letter to MMP requesting that the disputed numbers be ported from THUS Plc (MMP’s electronic communications network provider) to Energis (Uniworld’s electronic communications network provider). MMP did not port the disputed numbers to Energis.
- S7. On 5 January 2005, MMP wrote to PTR, treating the request to port as 3 months notice to terminate the contractual agreement between MMP and PTR in respect of the disputed numbers. MMP also stated that PTR did not have any entitlement to the disputed numbers, and that to retain use of the disputed numbers MMP would either have to continue to use MMP as its service provider, or “agree suitable financial recompense” with MMP in exchange for MMP agreeing to release the disputed numbers to PTR’s preferred “service provider” or PTR’s preferred “service provider’s” “network operator”.
- S8. On 15 February 2005 PTR wrote a letter to MMP requesting that the disputed numbers be ported in accordance with the notice of non-geographic port that was previously submitted to MMP by Uniworld. MMP failed to port the disputed numbers to Energis.
- S9. On 27 April 2005 Ofcom opened an investigation to examine an alleged refusal by MMP to provide Portability in respect of 3 non-geographic numbers following

PTR's request to retain their telephone numbers when switching from MMP to Uniworld.

- S10. Ofcom has now completed its investigation and has concluded that there are reasonable grounds for believing that MMP is contravening or has contravened General Conditions 18.1 and 18.2, by failing to provide Number Portability and/or Portability.
- S11. Pursuant to section 94(1) of the Act, Ofcom therefore gives MMP a notification under section 94 of the Act. MMP is required to comply with General Condition 18 by:
- a. Providing Number Portability in respect of non-geographic numbers 08700 50 50 50, 08700 50 50 30 and 08700 50 05 15 as soon as it is reasonably practicable after 27 September 2005 and on reasonable terms, including charges, to PTR.
 - b. Providing Uniworld with Portability as soon as is reasonably practicable after 27 September 2005 in relation to its request on reasonable terms and in accordance with the Functional Specification (as defined in GC18).
- S12. Ofcom considers that for the purposes of GC 18.1 and GC 18.2 'as soon as is reasonably practicable' means a time period in line with the Industry agreed porting process as set out in Chapter 11 of the Reseller Process of the Non-Geographic Number Portability Process Manual. Under the Industry agreed process, completing the paperwork for Portability should take no more than a few days.
- S13. Ofcom has not determined how any consequences of the contraventions should be remedied, in this Notification, as the complainant, Uniworld, has not asked Ofcom to consider these matters.
- S14. MMP has until 27 September 2005 to in which to make representations to Ofcom about matters contained in the notification accompanying this explanatory statement.
- S15. If MMP does not comply with General Condition 18.1 and 18.2 by providing Number Portability and Portability as set out in this Notification, Ofcom may issue an enforcement notification under section 95 of the Act and/or may impose a penalty on MMP under section 96 of the Act.

Section 2

Ofcom's investigation and reasoning

Background

1. In June 2000, Prime Time Radio ("PTR"), previously part of Saga Radio Limited, contracted with Media, Marketing & Promotions ("MMP") for the translation of non-geographic numbers 08700 50 50 50, 08700 50 50 30 and 08700 50 05 15 ("the disputed numbers") to PTR's geographic telephone number so that calls made to the disputed numbers were routed to PTR.
2. From June 2000 until late 2004, commercial arrangements for the provision of these services continued between MMP and PTR, and the disputed numbers were treated in all material respects as numbers used for callers wishing to reach PTR. Calls were made to those numbers and passed by MMP to PTR's premises throughout this period.
3. Late in 2004, PTR entered into negotiations with Uniworld Communications ("Uniworld") to take over the services formerly provided by MMP. Those negotiations continued during early 2005.
4. On 4 January 2005, Uniworld wrote a letter to MMP requesting that the disputed numbers be ported from THUS Plc (MMP's electronic communications network provider) to Energis (Uniworld's electronic communications network provider). MMP did not port the disputed numbers to Energis.
5. On 5 January 2005, MMP wrote to PTR treating the request to port as 3 months notice to terminate the contractual agreement between MMP and PTR in respect of the disputed numbers. MMP also stated that MMP did not have any entitlement to the disputed numbers, and that to retain use of the disputed numbers MMP would either have to continue to use MMP as its service provider, or "agree suitable financial recompense" with MMP in exchange for MMP agreeing to release the disputed numbers to PTR's preferred "service provider" or PTR's preferred "service provider's" "network operator".
6. On 15 February 2005 PTR wrote a letter to MMP requesting that the disputed numbers be ported in accordance with the notice of non-geographic port that was previously submitted to MMP by Uniworld, and providing information from Ofcom's website about the Number Portability obligations under General Condition 18. MMP failed to port the disputed numbers to Energis.
7. On 8 April 2005, MMP translated the disputed numbers to another termination point. The effect of this action was that callers to the disputed numbers were no longer able to reach PTR, and promotional information produced by PTR which advertised the disputed numbers as a means to contact PTR, became worthless.
8. On 12 April 2005 MMP wrote to PTR offering a "one-off buyout cost" for non-geographic number 08700 50 50 50 of [§<].
9. MMP have subsequently claimed that PTR rented the disputed numbers from MMP and that the disputed numbers are owned by MMP. This position was one element in arguments advanced by MMP to PTR and Uniworld (and

subsequently, to Ofcom) that MMP is not required to provide number portability or portability in respect of the disputed numbers.

The complaints

10. On 15 March and 4 April 2005 Uniworld contacted Ofcom by email to seek advice about MMP's refusal to port the disputed numbers to Uniworld on behalf of PTR.
11. On 7 April 2005 Ofcom opened an enquiry into the allegation by Uniworld that MMP had failed to comply with GC 18 in refusing to provide Number Portability and Portability in respect of the disputed numbers.
12. Ofcom contacted MMP on 12 April and 13 April 2005 by telephone to discuss the matter and to inform MMP that Ofcom was considering whether or not to investigate an alleged contravention of GC 18. During these discussions MMP asserted that it did not have an obligation to port the disputed numbers to Uniworld because (in its view) MMP was not a "network operator", and confirmed that services to PTR on the disputed numbers had been ceased by MMP.
13. Further to this, Ofcom wrote to MMP on 14 April 2005, confirming that it had opened an enquiry into this matter and providing a direct link to the section on Ofcom's website where the obligations under GC 18 are set out. Particular references were provided in relation to the definition of communications provider, the definition of electronic communications service ("ECS"), the definition of a Publicly Available Telephone Service ("PATS") and the obligations relating to Number Portability and Portability.
14. On 27 April 2005, Ofcom concluded the enquiry, deciding to investigate whether MMP had contravened and was contravening GC 18 in its refusal to cooperate with PTR and Uniworld regarding porting of the disputed numbers.
15. Ofcom wrote to MMP on 27 April 2005 to confirm that it had opened an investigation to examine an alleged refusal by MMP to provide Number Portability and Portability in respect of the disputed numbers and setting out the details of the matters to be investigated. Ofcom confirmed that the legal instrument for the investigation is GC 18, which concerns the provision of Number Portability and Portability. The published bulletin confirmed that "the scope of Ofcom's investigation is to establish whether, in the circumstances provided for in [GC 18], MMP has an obligation to port the numbers, and whether it is in breach of [GC 18] by failing to do so".

General Condition 18

16. Section 45(1) of the Communications Act 2003 (the "Act") gives Ofcom the power to set conditions, including general conditions, binding on the person to whom they are applied. Section 45(2) provides for general conditions; section 45(3) refers to the condition concerning numbering (set out section 58) and section 58(e) and (f) concern the transfer of numbers.
17. The Schedule to a notification issued by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act, and taking

effect from 25 July 2003, sets out certain general conditions ("General Conditions").

18. Sections 94 to 96 of the Act provide for the "enforcement of conditions" and gives Ofcom powers to take action, including the imposition of penalties, against persons who contravene, or have contravened a condition set under section 45.
19. The General Conditions apply to all providers of electronic communications networks and/or electronic communications services. GC 18 sets out the requirements for Number Portability and Portability.

General Condition 18.1

20. GC 18.1 requires that:

"The Communications Provider shall provide Number Portability as soon as it is reasonably practicable on reasonable terms, including charges, to any of its Subscribers who so requests".

General Condition 18.2

21. GC 18.2 further requires that:

"The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability (other than paging Portability) as soon as is reasonably practicable in relation to that request on reasonable terms and in accordance with the Functional Specification".

Ofcom's investigation

22. During its investigation Ofcom has considered the evidence provided to it from each of PTR, Uniworld and MMP, which included:
 - a. copies of the letters negotiating and setting out the contractual arrangements between PTR and MMP in 2000 in respect of the disputed numbers;
 - b. Uniworld's request to port the disputed numbers at PTR's request on 4 January 2005;
 - c. PTR's request to port the disputed numbers on 15 February 2005;
 - d. copies of the correspondence between MMP and PTR in respect of the disputed numbers since porting was requested;
 - e. Representations from MMP during telephone conversations with Ofcom and in writing on 4 August 2005; and,
 - f. Representations from MMP during a meeting with Ofcom on 17 August 2005.

Ofcom's reasoning

23. Ofcom has considered whether MMP has a requirement to provide Number Portability and/or Portability under GC 18. In order for MMP to fall within the requirements to provide Number Portability (to PTR) or Portability (to Uniworld):

First:

a) MMP must be a Communications Provider;

Then, either, pursuant to GC18.1:

b) PTR must be a Subscriber; and

c) PTR must have requested Number Portability.

And/or pursuant to GC18.2:

d) Uniworld must be a Communications Provider; and

e) Uniworld must have requested Portability.

24. Each of these elements has been considered in turn below.

Communications Provider

25. Communications Provider is defined in GC 18.5(b), which states:

(b) *“Communications Provider” means a person who provides an Electronic Communications Network or an Electronic Communications Service;*

26. In this situation, Ofcom has concluded that MMP is a “reseller” as it is reselling the provision of a non-geographic number translation (in the sense that it provides telephone services, including in this case services using non-geographic numbers, to end users but does not itself operate an electronic communications network) and has a relationship with a provider of an electronic communications network. It is therefore necessary to determine whether MMP provides an electronic communications service (“ECS”).

27. ECS is defined in Section 32(2) of the Act, which states:

32. Meaning of electronic communications network and services

...

(2) *In this Act “electronic communications service” means a service consisting in, or having its principal feature, the conveyance by means of an electronic communications network of signals, except so far as it is a content service.*

28. The reference to conveyance of signals is clarified in section 32 of the Act, which states:

32. Meaning of electronic communications network and services

...

- (8) *In this section references to the conveyance of signals include references to the transmission or routing of signals or of parts of signals and to the broadcasting of signals for general reception.*

29. Furthermore, the term signal is defined in section 32(10) of the Act, which states:

32. Meaning of electronic communications network and services

...

- (10) *In this section “signal” includes—*

- (a) *anything comprising speech, music, sounds, visual images or communications or data of any description; and*
- (b) *signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus.*

30. The arrangements between PTR and MMP were set out by MMP in its letter of 1 June 2000 to PTR (headed “Agreement”).

31. In this Agreement, MMP set out terms relating to the provision of a service for receiving telephone calls through the non-geographic number 08700 50 50 50. These terms included the translation of the non-geographic number to PTR’s geographic telephone number so that calls made to the non-geographic number were routed to PTR. PTR confirmed on 24 August 2005 that use of all three of the disputed numbers was provided on the same terms and agreement, and the services provided by MMP were the same for each number. This view is supported by the facts presented to Ofcom by MMP in its letter of 4 August 2005 and not disputed by the parties to this matter.

32. Under the Agreement, MMP provides PTR with the ability to receive telephone calls made to specified non-geographic numbers. The definition of “signal” in the Act includes speech, communication and data of any description, and is therefore broad enough to encapsulate the speech which is the subject of telephone calls.

33. By routing or “translating” telephone calls to PTR’s geographic telephone number from the disputed numbers, MMP’s service consists of or has a principal feature being the conveyance of signals. MMP subscribe to a non-geographic service provided by THUS Plc (“Thus”). Although Thus operated the electronic telecommunications network that routed calls being the subject of the Agreement, PTR did not have a contractual relationship with Thus. Instead, MMP entered into a contract with Thus and offered the capability provided to it by Thus to its own customers including, in this case, PTR. The service is a service which has as its principle feature, call conveyance (speech). PTR would not have received telephone calls without its contractual relationship with MMP.

34. Therefore, Ofcom considers that MMP has provided and did (until the service was terminated) provide an ECS to PTR. It follows that MMP is a Communications Provider as defined in GC 18.5 (b) and is subject to GC 18.1 and 18.2.

General Condition 18.1

Subscriber

35. Subscriber is defined in GC 18.5(o), which states:

- (o) *“Subscriber” means any person who is party to a contract with the provider of Publicly Available Telephone Services for the supply of such services in the United Kingdom;*

36. PTR was a party to contracts with MMP in respect of services used in connection with the disputed numbers, as discussed above. However, for PTR to fall within the definition of Subscriber, the ECS that MMP provides to PTR under those agreements must be a Publicly Available Telephone Service (“PATS”).

37. PATS is defined in GC 18.5(l), which states:

- (l) *“Publicly Available Telephone Service” means a service made available to the public for originating and receiving, or only receiving, national and international telephone calls through a number or numbers in a national or international telephone numbering plan;*

38. The terms of the contracts between PTR and MMP include the translation of the disputed numbers to PTR’s geographic telephone number so that calls made to the disputed numbers are routed to PTR.

39. This service must be made available to the public. “Public” is not defined in GC 18, however, Oftel stated¹ in the context of a “public electronic communications networks” that:

Oftel’s understanding has been that a publicly available service is one that is available to anyone who is both willing to pay for it and abide by applicable terms and conditions. A publicly available service is distinguishable from a bespoke service restricted to a limited group of individual and identifiable customers.

It is also to be understood that the term members of the public requires a broad interpretation – it is not to be read as residential and small business customers. A service because of its scale, such as a virtual private network, is only likely to attract corporate customers is still considered to be available to members of the public.

40. On this basis, MMP’s service can be considered to be available to the public, for as long as the potential customer is willing to pay and abide by any terms and conditions, MMP is likely to provide the service. Therefore, as MMP provides a service for receiving telephone calls through numbers in a national or international telephone numbering plan, which is available to the public, MMP provides PATS.

¹ *Guidelines for the interconnection of public electronic communications networks* dated 23 May 2003

41. In summary, as there were contracts between PTR and MMP for the provision of PATS in the UK, PTR falls within the definition of Subscriber for the purposes of GC 18.5(o).

Number Portability

42. Number Portability is defined in GC 18.5(h), which states:

- (h) *“Number Portability” means a facility whereby Subscribers who so request can retain their Telephone Number on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber*
- (i) *in the case of Geographic Numbers, at a specific location; or*
- (ii) *in the case of Non-geographic Numbers, at any location,*
- provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan;*

43. Therefore PTR needs to have requested that it retain its telephone numbers (the disputed numbers) on a Public Telephone Network, independent of the person who provides the service to it.

44. With respect to whether the retention of the disputed numbers is in accordance with the National Telephone Numbering Plan, the disputed numbers are non-geographic numbers and will remain non-geographic numbers subsequent to porting. The National Telephone Numbering Plan, will not be contravened by the disputed numbers being ported.

45. Public Telephone Network is defined in the General Conditions as:

An Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications and also other forms of communication, such as facsimile and data.

46. The issue of whether PATS was being provided by MMP was discussed above. Therefore as there is an ECN that is being used to provide PATS, the disputed numbers are on a Public Telephone Network.

47. To determine whether the disputed numbers will be retained on a Public Telephone Network, Uniworld must also use an ECN to provide PATS. As Uniworld will be providing the same services to PTR as MMP did previously, that is, the translation of the disputed numbers to PTR's geographic telephone number so that calls made to the disputed numbers are routed to PTR, Uniworld will fall within the definition of providing PATS. As this will be provided via the use of Energis's (Uniworld's provider of an electronic communications network) ECN, porting of the disputed numbers will result in the disputed numbers being retained on a Public Telephone Network.

48. Therefore the request by PTR to retain the disputed numbers is a request to retain telephone numbers on a Public Telephone Network and it follows that there has been a request by PTR for number portability as defined in GC 18.5(h).

General Condition 18.2

Portability

49. Portability is defined in GC 18.5(k), which states:

(k) *“Portability” means any facility which may be provided by a Communications Provider to another enabling any Subscriber who requests Number Portability to continue to be provided with any Publicly Available Telephone Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service;*

50. On the basis of its having held itself out to PTR as an alternative supplier of services competing with MMP for the provision of the services in respect of the disputed numbers, Ofcom considers that Uniworld is also a Communications Provider. MMP has not argued the contrary view.

51. In that case, Uniworld (a Communications Provider) has requested that MMP (also a Communications Provider) enables PTR (a Subscriber who has requested Number Portability) to continue to be provided with PATS by reference to the same telephone numbers (the disputed numbers) irrespective of the company providing the services to PTR.

52. In summary, Uniworld has made a request to MMP for Portability, and by failing to provide Portability MMP are in breach of General Condition 18.2.

Timing for the provision of Number Portability and/or Portability

53. GC 18.1 and GC 18.2 require that Number Portability and Portability, respectively, are provided “as soon as [it] is reasonably practicable”.

54. The Non-Geographic Number Portability End-to-End Process Manual² cites an 85 day period between “initial contact” and “ready for service” for number portability of non-geographic numbers. This 85 day process concerns the process for service establishment between networks. This covers the planning, network databuild, engineering testing and operational testing.

55. Ofcom considers that a reasonable period for a reseller such as MMP should be based on the Industry agreed porting process as set out in Chapter 11 of the Reseller Process of the Non-Geographic Number Portability Process Manual. This process sets out as follows: MMP, on receipt of a signed customer letter from Uniworld showing the details of MMP’s customer, must return a copy of the customer letter to Uniworld within two days of receipt of a request to do so, together with its own valid customer letter showing its own customer details for submission to the range holder with the porting request.

56. Therefore, under the Industry agreed process, completing the paperwork for Portability should take no more than a few days.

² Version 10 Issued: 01/10/04

MMP's representations and Ofcom's response

57. In a letter to Ofcom dated 4 August 2005, MMP has argued that it “owns” the disputed numbers and that PTR “rents” these numbers from MMP. GC 18.5(h), which sets out the definition of Number Portability, makes reference to a Subscriber being able to “retain their Telephone Number” (emphasis added). A literal interpretation of the term “their” in the context of a telephone number may suggest ownership (although ownership by the Subscriber, not the communications provider offering the services).
58. If there is no real doubt about the meaning of an enactment, a court will apply the literal meaning. Where there is real doubt, a court will consider a number of different rules laid down in case law as to how an enactment should be interpreted. It will balance these rules and then decide in favour of which construction they point. To the extent that there is any real doubt about the use of the term “their telephone number”, Ofcom has considered the legislative intent behind number portability to see whether this analysis helps guide that interpretation.
59. The policy objective of number portability is articulated in the Universal Service Directive (“USD”). Recital 40 of the USD states:

Number portability is a key facilitator of consumer choice and effective competition in a competitive telecommunications environment such that end-users who so request should be able to retain their number(s) on the public telephone network independently of the organisation providing the service...

60. Ofcom considers that the legislative intent of what is now GC 18 is to ensure that Subscribers are able to retain their telephone numbers to protect consumer choice and to encourage competition between communications providers. Many consumers, especially businesses, were reluctant to change their communications provider if this meant having to suffer the inconvenience and costs of a new telephone number.
61. Therefore, when interpreting the reference to “their telephone number” in GC 18.5(h), Ofcom’s view is that “their telephone number” would mean the telephone number that a person can be reached on. Ofcom does not consider that the use of the term “their telephone number” requires subscribers to have any form of proprietary rights in the number or rights extending beyond those granted through contract for the provision of PATS used in connection with that number.
62. Support for this view can be found in the *Final Report on Non-Discriminatory Access to Numbering Resources* dated 15 July 1996 prepared for the Commission of the European Union, dealt with issues of ownership, tradability and pricing of telephone numbers. In this regard, it states:

If subscribers were to possess ownership rights to the telephone numbers allocated to them, they would be entitled to keep their respective numbers under all circumstances and dispose of them as they deemed fit. An international telephone number is subject to changes. Exhausted numbering capacity or some other occurrence may lead to demands to change global or national numbering schemes. Because of this, subscribers cannot be granted

“real” ownership rights to their telephone numbers. Consequently, numbers are regarded as a public resource to be administered for the common good by the State or the regulatory authority. In order to be able to accommodate future developments in the telephone network no commitments should be made which prevent numbering schemes from being changed for the benefit of all telecommunications users. Numbers are considered as non-proprietary data to which no particular organisation, institution or individual can claim any ownership. No one should be able to register a telephone number as a trademark.

63. In summary, telephone numbers are a public resource and are administered by the regulatory authority (i.e. Ofcom in the UK). Ofcom agrees with the position set out in the report above that no person or organisation can claim to own a telephone number as a result of the regulatory arrangements relating to the allocation and use of numbers; instead they possess a right of use. The extent of that right of use is determined by and must be construed by reference to, the regulatory arrangements governing the provision of electronic communications services including the relevant number allocation, the regulatory rules surrounding certain types of services (such as PATS) and other specific rules such as GC18.
64. Ofcom therefore does not agree with MMP that it could or should be considered to be the owner of the disputed numbers. It follows that MMP cannot “rent” these to PTR and cannot, through the asserting of an ownership right, lawfully prevent the disputed numbers from being ported. The disputed numbers are the telephone numbers that PTR can be reached on and are consequently “their” (i.e. PTR’s) numbers. Therefore PTR can request to retain their numbers on a Public Telephone Network i.e. request Number Portability.
65. Furthermore, on inspection of GC 18, there do not appear to be any defences or exclusions to the requirement of Number Portability. Specifically, there is no concession made for arrangements whereby telephone numbers are “rented” or “leased”.
66. In the absence of any exclusion to GC 18, by virtue of the fact that MMP satisfies the criteria for the requirement to provide number portability under GC 18.1 and 18.2, MMP is required to port the disputed numbers

Section 3

Conclusions

67. As MMP is a Communications Provider and PTR is a Subscriber and PTR has requested Number Portability, the requirements of GC 18.1 have been satisfied in respect of PTR's request for Number Portability and MMP is required to provide Number Portability to PTR as soon as it is reasonably practicable after 27 September 2005 and on reasonable terms, including charges.
68. As MMP and Uniworld are both Communications Providers and Uniworld has requested Portability, the requirements of GC 18.2 have been satisfied in respect of Uniworld's request for Portability and MMP is required to provide Portability to Uniworld as soon as reasonably practicable after 27 September 2005 in relation to that request on reasonable terms and in accordance with the Functional Specification (as defined in GC18).
69. The request for Portability (i.e. for the disputed numbers to be ported) was first made in January 2005 by Uniworld. The request for Number Portability by PTR was made in February 2005. It is currently August 2005. Therefore a period of over six months has elapsed since the request for Number Portability and to date this has not occurred.
70. Ofcom has now completed its investigation and has concluded that there are reasonable grounds for believing that MMP is contravening or has contravened GC 18 since the date of the requests, by failing to provide Number Portability and Portability respectively.
71. MMP is required to comply with GC 18.1 and GC 18.2 by:
- a. Providing Number Portability in respect of the disputed numbers as soon as it is reasonably practicable and on reasonable terms, including charges, to PTR as a Subscriber.
 - b. Providing Uniworld with Portability as soon as is reasonably practicable in relation to that request on reasonable terms and in accordance with the Functional Specification (as defined in GC18).
72. Ofcom considers that for the purposes of GC 18.1 and GC 18.2 'as soon as is reasonably practicable' means a time period in line with the Industry agreed porting process as set out in Chapter 11 of the Reseller Process of the Non-Geographic Number Portability Process Manual. Under the Industry agreed process, completing the paperwork for Portability should take no more than a few days.
73. The complainant, Uniworld, has not asked Ofcom to remedy with the consequences of the contraventions notified, and Ofcom does not therefore consider it necessary to rule on how the consequences of the contraventions should be remedied, in this Notification.
74. In accordance with the statutory period set out in section 94(4) of the Act, MMP has until 27 September 2005 to in which to make representations to Ofcom about matters contained in the notification accompanying this explanatory statement.

75. If MMP does not comply with GC 18.1 and GC 18.2 by providing Number Portability and Portability as set out in this Notification, Ofcom may issue an enforcement notification under section 95 of the Act and/or may impose a penalty on MMP under section 96 of the Act.