

**Frequently asked questions (FAQs) by
service providers about the new
regulatory framework**

Version 2

13 May 2003

Introduction

This is the second version of the FAQs which are intended to answer the most common questions asked by service providers about the new regulatory framework that enters into force in July. This version includes fresh material on numbering requirements, a new section devoted to Airtime Providers and amended FAQs for PMR, PAMR and CBS providers. In addition a set of FAQs for Internet Service Providers has been published separately at www.oftel.gov.uk/publications/eu_directives/2003/ispfaq0303.htm The list of FAQs is intended to be open-ended - where OfTel answers further questions from service providers that may be of wider interest, it will add them to the list.

Where the FAQs refer to General Conditions of Entitlement you need to be aware that two sets of general Conditions are currently out on consultation. One set is intended to be notified under the Communications Bill when it has been enacted. A second interim set has been prepared to ensure that the government is able to fulfil its community obligations in the event of the Bill not having received Royal Assent in sufficient time to implement the EU Directives on electronic communications on the 25 July. The Communications Bill set are published at www.communicationsbill.gov.uk/pdf/Implementation_Con_Doc_AnnexC.pdf ; the interim set at www.communicationsbill.gov.uk/pdf/Implementation_Con_Doc_AnnexA.pdf .

The answers are intended to be as helpful and informative as possible but they need to be read with the understanding that the examples covered represent typical cases; these FAQs cannot be taken as applying to all instances where a particular set of circumstances needs to be taken into account. References to the Communications Bill are references to the print of 5 March 2003. Please also read the disclaimer at the end of this document.

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1. Will service providers be required to offer contracts?

1.1 Yes. Under the new regulations, communications providers who provide public electronic communication services must offer to enter into a contract at the request of an end-user. The contract must include the following information:

- the name and address of the Communications Provider;
- the services provided, and the service quality levels offered, including the time for initial connection;
- the types of maintenance services offered;
- details of prices and tariffs, and how up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- the duration of the contract, the conditions for renewal and termination of services and of the contract, including the end-user's right to terminate the contract without penalty if the provider modifies the contract to the detriment of the end-user;
- any compensation and the refund arrangements which apply if contracted quality service levels are not met, and
- how dispute resolution procedures can be initiated.

1.2 In practice, this means that all service providers will be required to offer end-users a contract which is likely to be in writing. This is likely to have little effect on larger service providers, but may affect some smaller providers whose current procedures are more informal.

1.3 The intention behind this condition is to establish a minimum set of terms that should be included in a contract between an end-user and a communications provider. Oftel sees this as a key consumer right that is not related to a communications provider's size.

The requirement to offer contracts is set out in article 20 of the Universal Service Directive and is being implemented by General Condition 9.

2. Will service providers need to publish information on their quality of service?

2.1 Under the new framework Ofcom will be able to direct communications providers who provide services to the public to publish information on their quality of service – following a consultation on the detail of any information to be required. This requirement will not cover any communications providers which have been providing services for less than 18 months. This is to reduce the regulatory burden on recent new entrants.

2.2 At present, there are two Oftel-endorsed quality of service publications:

- the mobile networks call success rate survey - www.oftel.gov.uk/publications/research/2002/call_survey/index1202.htm and
- the fixed operators' Comparable Performance Indicators - www.cpi.org.uk/

It should be noted that both of these initiatives are voluntary and that Oftel has not used its powers to enforce quality of service publication.

2.3 Oftel intends to continue this programme of work, and envisages that Ofcom would only use its ability to request further information where that programme was insufficient for some reason. Due to the sample sizes necessary to get statistically significant results it is unlikely – but not impossible – that small service providers would be directed to publish quality of service information.

2.4 The powers to impose quality of service reporting are derived from article 22 of the Universal Service Directive and are being implemented by General Condition 11.

3. Will service providers be required to comply with codes of practice?

3.1 Yes. All providers of electronic communications network and services will be required to publish a basic code of practice for their residential and small business customers. This is a new policy initiative that stems from proposals set out in the Communications White Paper www.communicationswhitepaper.gov.uk/.

3.2 The codes of practice should set out the service provider's relationship with their customer in easy-to-understand language. Copies of the code will have to be provided on request and free of charge to any customer.

3.3 It is intended that communications providers should establish their own codes of practice, and submit these to Oftel or Ofcom for compliance checks and assessment. However, groups of service providers could develop a common code of practice that they would all agree to follow, rather than each have individual codes of practice. However, if a service provider does not have a code of practice, or is not signed up to another code of practice, they will be in breach of the general conditions.

3.4 Oftel has published guidelines on how it plans to assess codes of practice procedures for compliance checks and assessments under the Communications Act. These are posted at www.oftel.gov.uk/publications/ind_guidelines/2003/copi0203.htm

3.5 The requirement to comply with codes of practice is derived from clauses 49, 50 and 52 of the Communications Bill, and will be implemented by General Condition 15.

4. Will service providers be required to have a dispute resolution scheme?

4.1 Yes. Under the new regulations all communications providers that serve residential consumers and small businesses will have to provide them with an out-of-court dispute resolution procedure that is independent, transparent, simple, inexpensive, fair and prompt. Out-of-court settlement procedures are sometimes also known as alternative dispute resolution.

4.2 It should be noted that significant market power is not required to trigger this obligation. The need to comply with a dispute resolution scheme is a consumer protection issue and therefore covers all communications providers that serve residential consumers and small businesses.

4.3 The Telecommunications Ombudsman Scheme, established in June 2002 by an industry working group in consultation with consumer bodies is Oftel's (and the Government's) preferred solution to out-of-court dispute resolution. A current list of communications providers who have signed up to the Scheme is available at www.otelo.org.uk/website/html/home.php

4.4 If a service provider decides not to join the Ombudsman Scheme it is still obliged to have an out-of-court settlement system. This will need to be approved by Ofcom.

4.5 Oftel will shortly be publishing guidance on how dispute resolution procedures will be approved. Not having a satisfactory dispute resolution system will be a breach of the General Condition.

4.6 The requirement to comply with a dispute resolution scheme derives from article 34 of the Universal Service Directive and is being implemented by General Condition 15 and clauses 49, 51 and 52 of the Communications Bill.

5. What is a small business user?

5.1 A small business user is an organisation that has 10 or fewer employees or volunteers, and is not itself a provider of communications services.

6. What obligations apply to PBR (private business radio) users?

6.1 An example of PBR, sometimes known as private mobile radio or PMR, is where a local trades firm such as a plumber or electrician self-provides a PBR system for its on-call staff within a local area served by one base station, typically covering a town centre and suburbs. Because PBR is self-provided, with the end-user owning or leasing the radio equipment, it will only be subject to spectrum licensing requirements under the new regulatory framework.

6.2 This is a change from the present arrangements, where PBR systems are operated under a Telecommunications Act class licence as well as being subject

to spectrum licensing under the Wireless Telegraphy Acts. A third-party provider may supply some or all of the equipment, installation and maintenance necessary to run a PBR but this is not the same as providing a packaged electronic communication service. As a result, a PBR user will not be subject to the general conditions and will not be exposed to any new obligations under the new regulatory framework.

7. What obligations apply to PAMR (public access mobile radio) and CBS (common base station) providers?

7.1 PAMR (Public Access Mobile Radio) is a type of two-way radio service provided by a third-party provider. Because the end-user is buying access into a service that is not self-provided PAMR providers are providing a public electronic communication service. This is because they are providing a service that consists in:

- the conveyance of signals;
- by means of an electronic communications network; and
- which is provided so as to be available to members of the public.

7.2 The actual obligations that will apply to PAMR providers in practice are relatively light as PAMR is not a Publicly Available Telephone Service (PATS). They include requirements to offer contracts and to issue bills that do not overcharge end-users. Where directed by Ofcom, they will also need to publish information on their quality of service (see FAQ # 2). Additionally if they offer services to small business users (see FAQ # 5) they will also be required to have a dispute resolution scheme (see FAQ # 4) and to produce and comply with codes of practice (see FAQ # 3).

7.3 The same obligations will apply where a radio service is provided by means of a Common Base Station (CBS), sometimes known as a Community Repeater. A CBS is similar to PBR but provided on a commercial basis by a radio specialist company to third parties, such as tradesmen or other end-users. CBS providers are providing a public electronic communication service.

7.4 In this context, the subscribers to a CBS service qualify as members of the public even though they are likely to be business users. Although the number of subscribers/end-users is limited by the capacity of the base station, this is true, in theory, for any network-based service. It is just that the footprint of a CBS is smaller than that of most other commercial networks.

7.5 Where PAMR and CBS systems are subject to spectrum licensing requirements under the Wireless Telegraphy Acts the expectation is that this will remain the case under the new framework, although the Acts may be subject to amendment by virtue of the Communications Bill.

8. What obligations apply to providers of Wi-Fi access?

8.1 Wi-Fi is a term used to describe a Radio Local Area Network (RLAN) offering broadband wireless access to the Internet. Providers of Wi-Fi access are clearly offering a conveyance service, hence an electronic communication service. However, depending on the terms by which potential customers gain access to the service it may or may not be a publicly available service.

8.2 Where access is provided on the internet café model, typically with a time-based pricing structure and a service open to anyone, the provider of Wi-Fi access will be providing a public electronic communication service. However there are other circumstances in which Wi-Fi access is provided in a way which does not make it available to members of the public; where, for example, access is restricted to members of an academic community or to the customers of a particular hotel. As the WiFi market is still in an early stage of development, with a variety of business models being tried out, it is not practicable to give more guidance at this stage.

8.3 For Wi-Fi providers who are providing a public electronic communication service, there will be an obligation to offer contracts (see FAQ # 1) and providers may be directed to publish information on the quality of their service (see FAQ # 2)

9. Is a supplier of terminal equipment providing an 'associated facility'?

9.1 Some service providers have expressed concern that the Communication Bill's definition of an 'associated facility' is broad enough to catch terminal equipment such as a mobile telephone and so bring the suppliers of such equipment within the sphere of regulation as providers of associated facilities. However this is not the case. Terminal equipment within the scope of the Radio Equipment and Telecommunications Terminal Equipment Directive (99/5/EC), such as mobile phones, is explicitly excluded from the new regulatory framework.

9.2 Although it is not possible to itemise every conceivable facility that would count as an associated facility (which in many cases is likely to depend on a particular set of circumstances) Oftel's understanding is that it refers to wholesale inputs into the provision of electronic communications networks and services that are not themselves networks or services but which support their provision. Frequently cited examples are electronic programme guides and conditional access systems. Facilities, which are used in conjunction with networks to provide electronic communications services, such as Domain Name Servers (DMS) and Intelligent Network (IN) databases, are also associated facilities. A fuller explanation of how associated facilities relate to the provision of networks and services is given in the *Guidelines for the interconnection of public electronic communications networks*, shortly to be posted on the Oftel website.

10. Can non-SMP providers be obliged to provide access?

10.1 Some service providers have queried the circumstances in which Oftel/Ofcom would exercise the powers conferred by Communications Bill that enable access-related conditions to be imposed on providers that do not have SMP in a particular market.

10.2 Although it is not possible to specify all the scenarios in which the exercise of these powers would be exercised, a point of departure is suggested by recital 6 of the Access Directive, which recognises that there may be large differences in negotiating power between providers and that some providers depend on infrastructure provided by other providers to deliver their services. In these circumstances national regulatory authorities should be able to ensure end-to-end connectivity by imposing proportionate access obligations on providers that control access to end-users.

10.3 It is worth noting that the exercise of these powers is hedged around with the onerous procedural requirements of consultation with interested parties as well as notification to the European Commission and the national regulatory authorities of other member states. So the use of these powers would not be entered into lightly.

11. What numbering obligations apply to communications providers?

11.1 Where telephone numbers are made available in accordance with the National Telephone Numbering Plan, communications providers will be required only to adopt telephone numbers that have been allocated by Ofcom and only to allocate numbers to subscribers that Ofcom has either allocated to the provider in question or to another person who has subsequently sub-allocated them to the provider. Although these obligations apply to all communications providers, the draft Numbering Plan (www.ofcom.gov.uk/publications/numbering/2003/ntnp0303.htm) only extends to four types of numbers:

- Public Telephone Network Numbers;
- Telex Service Numbers;
- Network Codes; and
- Administrative Codes.

The draft Plan also proposes that Internet domain names, Internet addresses and addresses or identifiers incorporating either an Internet domain name or an Internet address, including email addresses should be excluded from treatment as Telephone Numbers. Oftel has also gone on record as saying that it "does not wish to regulate private network number schemes" (see Oftel's response to the first consultation on the general conditions posted at www.communicationsbill.gov.uk/pdf/Implementation_Con_Doc_AnnexB.pdf).

11.2 Where providers are allocated numbers by Ofcom, they will need to develop a numbering plan for their use that is consistent with the National Telephone Numbering Plan.

11.3 Providers adopting telephone numbers are required to do so in an effective and efficient way. Additionally, they may not discriminate unduly against other providers for purposes connected with the use of electronic communications networks or services by those other providers or their customers. They must also take reasonable steps to secure that their own customers only use numbers in a way that is consistent with the National Telephone Numbering Plan and other numbering provisions as set out in the General Conditions and the Communications Bill on the allocation and adoption of telephone numbers.

11.4 Providers who wish to apply for numbers must use the appropriate application form, as directed by the Director or Ofcom, and provide the information required by the form and any additional information relevant to the application when this is requested by the Director or Ofcom.

11.5 Allocated numbers may be withdrawn by the Director or Ofcom where a provider has not adopted them within six months of the date of allocation or such other period as Ofcom will be able to direct. A similar provision applies to the allocation of a series of telephone numbers which have not been adopted to any significant extent within a six month period.

11.6 These obligations are set out in General Condition 20. Additionally, numbering requirements appear in the National Telephone Numbering Plan and clauses 53 to 60 of the Communications Bill.

11.7 Communications providers providing publicly available telephone services (PATS) will be required to provide Number Portability to any of their subscribers, on request. Number Portability is the ability of subscribers to retain their telephone numbers independently of the provider providing them with service. Number Portability must be provided as soon as is reasonably practicable as well as on reasonable terms including charges.

11.8 PATS providers will also be required to provide Portability at the request of other communications providers. Portability is a facility provided by one communications provider to another that enables a subscriber requesting Number Portability to continue to be provided with any PATS on the same telephone number irrespective of who is providing the service. In order to comply with this obligation resellers providing PATS may have to ensure that they have robust arrangements in place with their network providers.

11.9 There are a series of provisions intended to ensure that charges for the provision of Portability should be reasonable. These include requirements that:

- charges shall be cost-oriented and based on incremental costs (unless both providers have agreed, or Ofcom has directed, another charging basis);
- the provider whose number is being ported (the donor provider) may not charge for system set-up or additional conveyance costs;
- the donor provider may not charge for ongoing costs relating to the registration of a ported number or subscriber; and
- the donor provider's charges must be based on the reasonable costs incurred in providing portability;

Moreover Portability must be provided on reasonable terms and in accordance with a Functional Specification published by the Director or Ofcom.

11.10 Where a provider provides Portability they may be required by the Director or Ofcom to provide a record of each number for which it has provided Portability and the provider to whom it has been ported. The provisions on Number Portability are set out in General Condition 21.

11.11 Where a communications provider has been allocated numbers by the Director or Ofcom it will have to meet reasonable requests to supply directory information relating to its subscribers to whom those numbers have been allocated or to any other end-users to whom numbers allocated to it have been sub-allocated. Such information is to be supplied for the purpose of providing directories and directory enquiry facilities.

11.12 Similar provisions also apply in the case where telephone numbers have been sub-allocated to a communications provider by a person to whom numbers have been allocated, either directly or indirectly. Directory information must be supplied on terms which are fair, cost-oriented and non-discriminatory and in a format to be agreed between the provider and the person making the request. These requirements are set out in General Condition 22.

11.13 Where communications providers adopt non-geographic numbers they are required to ensure, subject to technical and economic feasibility, that end-users in any part of the European Community outside the UK are able to access them. However providers may limit access by calling end-users to a specific geographical area where the subscriber has chosen to limit access for commercial reasons. These requirements are set out in General Condition 23 which implements article 28 of the Universal Service Directive.

12. What obligations apply to airtime providers?

12.1 Airtime providers which typically sell airtime acquired from GSM networks to individual and corporate end-users are providers of public electronic communications services. As a result they will be subject to the general conditions that apply to such providers. They will be required to offer contracts (see FAQ 1); they may be directed to publish information on their quality of service (see FAQ 2).

Additionally, if they serve domestic or small business users (see FAQ's 5) they will be required to comply with codes of practice (see FAQ 3) and will need to have a dispute resolution scheme (see FAQ 4). Finally, in common with other communications providers they will be subject to a set of numbering obligations (see FAQ 11).

12.2 Airtime providers will normally be providing publicly available telephone services (PATS) which customers rely on to make and receive national and international calls as well as being able to call the emergency services. Because of this, providers of such voice telephony services are subject to additional consumer protection requirements which fall into five main areas:

- access to the emergency services and emergency planning
- directories and directory enquiries
- transparency and publication of information
- metering and billing
- additional services for customers with disabilities.

Access to the emergency services and emergency planning

12.3 There is a requirement to provide free access to the emergency call numbers '112' and '999' as set out in General Condition 4 which implements article 26 of the Universal Services Directive. Additionally, providers may be requested by the authorities responsible for emergency organisations, or by such departments of national and local government as the Director or Ofcom may direct, to enter into arrangements for the provision or rapid restoration of services in the event of a disaster or civil emergency. This requirement is set out in General Condition 5, 'Emergency Planning'.

Directories and directory enquiries

12.4 Airtime providers providing PATS will be required to offer their customers access to operator assistance and directory enquiry services. Where providers allocate telephone numbers to their subscribers there is an additional obligation to provide those subscribers, at their request, with a directory that includes directory information on all subscribers to whom the provider has allocated telephone numbers in the subscriber's local area as well as directory information on all other subscribers outside the local area who have been allocated numbers by any provider. Subscribers have the right to prevent their information appearing in a directory.

Further aspects of this requirement are that:

- a reasonable fee may be charged for the provision of directories;
 - directories may be produced by the provider or by a third party;
 - directories must be updated at least once a year; and
 - Ofcom may direct in what form a directory is made available.
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These requirements are set out in General Condition 8 and implement, in part, article 5 of the Universal Service Directive.

Transparency and publication of information

12.5 An airtime provider providing PATS will be required to publish information on its applicable prices and tariffs and on its standard terms and conditions. This information should include:

- a description of the PATS that are offered;
- which PATS are included in any subscription or periodic rental charges;
- details of standard discounts and special and targeted tariff schemes as they apply to access, usage charges and maintenance;
- details of the compensation and/or refund policy offered;
- what types of maintenance service are offered;
- the standard contract conditions offered including any minimum contractual period; and
- any available dispute resolution mechanisms.

The provider shall meet reasonable requests from its customers to send them this information and shall also publish it on its website.

These requirements are set out in General Condition 10 on 'Transparency and publication of information' which implements article 21 of the Universal Service Directive.

Metering and billing

12.6 All airtime providers will have to ensure they only bill end-users for services that have actually been provided to them and that there is no over-billing. They will also need to keep records to demonstrate that this has been achieved. Ofcom may, subject to consultation, direct the minimum period that records have to be retained for – under no circumstances can this exceed 15 months.

12.7 Where providers derive an annual turnover in excess of £40m from the provision of PATS, they will also be required to apply to one of three approval bodies (BABT, BSI, NQA) for the approval of their Total Metering and Billing System (TMBS). This application will have to be made by no later than 31 December 2003. Although there is no prescribed date by which time approval must be obtained, there is an obligation for it to happen as soon as is practicable. The Metering and Billing requirements are set out in General Condition 12.

12.8 Airtime providers who provide PATS must also provide their subscribers, on request, with a basic level of itemised billing, either free of charge or subject to a reasonable tariff. Ofcom may, subject to consultation, direct the minimum level of itemisation required to meet this obligation. The requirement does not apply to

services provided on a pre-paid basis or where subscribers have an alternative way of tracking their usage and expenditure. The requirements on itemised billing are set out in General Condition 13.

Additional services for customers with disabilities

12.9 Airtime providers who provide PATS incur a number of additional obligations in respect of their customers who have disabilities. These include:

- consultation with Ofcom's Consumer Panel (when it is constituted) to ensure that the interests of end-users with disabilities are taken into account in the development and provision of services;
- directory information and directory enquiry facilities provided free of charge to end-users who are not able to use a printed directory because of their disabilities and free onward connection to telephone numbers they request;
- access to a Relay Service which provides text-voice translation for subscribers who need to make calls where, because of their disabilities, some or all of the call is made or received in text format;
- a special tariff scheme for subscribers who need to use a Relay Service to compensate for the additional time it takes to make calls using such a service;
- access to emergency organisations, operator assistance and directory enquiry facilities using short code numbers; and call progress announcements in a suitable form for end-users who need to use a Relay Service;
- a priority fault repair service provided at no more than standard charges for subscribers with disabilities and a genuine need for an urgent repair;
- a nominated third-party scheme, provided free of charge, where the nominee may deal with bills and billing enquiries on behalf of subscribers with disabilities who are dependent on telephone services;
- contracts and bills in reasonably acceptable alternative formats (eg large-print, Braille or electronic) for blind or visually-impaired subscribers; and
- wide publicity for the above services in appropriate formats for end-users with disabilities.

12.10 Where providers have not previously been required to make these additional services available, the services must be in place by 31 December 2003. These obligations are set out in General Condition 18 and implement article 7 of the Universal Service Directive.

Disclaimer

The FAQs posted here are intended to be helpful and informative but they need to be read with the understanding that the answers are general in nature and apply to typical examples. They cannot be taken as applying absolutely to individual cases where a particular set of circumstances needs to be taken into account. Nor can they act as a substitute for specific legal advice. These FAQs do not fetter the discretion of the Director General of Telecommunications to resolve any dispute or investigate any matter to which this guide relates. Where terms defined by the Communications Bill are explained in the FAQs, the explanations cannot replace the formal Bill definitions but are written so as to make those definitions more comprehensible to people with a non-legal background. References to the Communications Bill in this set of FAQs are references to the print of 5 March 2003 which may be subject to change as it passes through Parliament.
