

20 December 2004

Number Portability Commercial Group
&
New Voice Services Customer Information Industry Working Group

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Director of Competition Policy

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Dear Sir or Madam,

Subject – Number portability and Ofcom's interim PATS policy

On 6 September 2004, Ofcom issued a consultation and interim guidance entitled New Voice Services that amongst other things set out Ofcom's interim position on the application of the regulatory framework to new voice services (“the Interim PATS Policy”).

Ofcom feels that that some clarification about the operation of the Interim PATS Policy in respect of Number Portability would be helpful and is therefore issuing this letter.

Eligibility of new voice services providers for Portability

Ofcom explicitly considered the eligibility of new voice services providers for Portability in the Interim PATS Policy (see paragraph 5.9 of the New Voice Services consultation). The Interim PATS Policy in respect of Number Portability is that only new voice service providers that provide PATS and which comply with the corresponding obligations should be eligible for Portability. In particular, Ofcom would not expect a communications provider to provide Portability to a provider which was providing access to emergency services but was not complying with the PATS obligations.

In the New Voice Services consultation Ofcom is also consulting on the suitability of the network integrity and emergency call location PATS obligations for new voice services. In view of this, Ofcom would regard a service as compliant with the PATS obligations if, as well as complying with the other PATS obligations, it were consistent with Ofcom's current views on the applicability of the network integrity and emergency call location obligations to new voice services as described in Section 6 of the new voice service consultation.

Guidance for communications providers offering new voice services

Communications providers that are asked to provide Number Portability to their subscribers should satisfy themselves that their service is a PATS service and that it complies with the Interim PATS Policy. Where the service provided to its subscribers is a PATS service which complies with the Interim PATS Policy, a communications provider is obliged to provide Number Portability in the circumstances provided for in General Condition 18.1 of the General Conditions of Entitlement.

When requesting Portability from another provider as provided for in General Condition 18.2 or, in readiness to provide PATS to customers who want to retain their telephone numbers, requesting service establishment and a porting agreement with another provider, communications providers should state to the provider to whom the request is directed that their service is a PATS service and that it complies with the Interim PATS Policy.

Ofcom reminds communications providers that the Interim PATS Policy is subject to review and that Ofcom has not made any commitment to continue this policy after the publication of the statement on new voice services. Ofcom is currently waiting for the Commission to clarify its policy on new voice services and hopes to be able to publish the statement in the first quarter of 2005. Providers should therefore be aware that the circumstances in which they are able to secure Portability under the Interim PATS policy may be subject to change. However, Ofcom will seek to ensure that any Porting under the interim arrangements is not affected by decisions regarding any final policy.

Guidance for communications providers in receipt of requests for number portability

Ofcom judges it reasonable for a communications provider that receives a request for Portability to ask for written confirmation that the applicant's service is a PATS service and that it complies with the Interim PATS Policy and on provision of such confirmation shall provide Portability. If the applicant fails, contrary to Ofcom's guidance above, to state that that is the case then it is reasonable for it to refuse to provide Portability. However, the recipient of the application for portability does not have the right or the responsibility to ask the applicant to prove that this is the case.

Yours sincerely

Andrew Heaney