



**RESPONSE BY BRITISH SKY BROADCASTING GROUP PLC
TO OFCOM'S DISCUSSION DOCUMENT "STRATEGIC REVIEW OF CONSUMER SWITCHING"**

EXECUTIVE SUMMARY

1. Sky agrees with Ofcom that a well functioning switching process between suppliers of fixed telecommunications products, is important to ensuring a good customer experience and to supporting competition between suppliers. The telecoms industry and Ofcom have been working on developing and improving the various switching processes for many years, but still there is considerable opportunity for improvement. The current shortcomings serve neither consumers nor the industry well. Therefore, Ofcom's focus on fixed broadband and telephony switching is appropriate.
2. In order to facilitate improvement of switching processes within broadband and telephony, there is certainly a role for Ofcom. The costs of upgrading systems, combined with the inevitable winners and losers among competing suppliers, means that limited progress is likely to be made without intervention by Ofcom. This has been evident over the last few years. It is useful for Ofcom to set out the attributes against which alternative switching processes could be evaluated in any particular circumstances.
3. Instead, Ofcom has set about identifying a 'strategic vision' by answering the question: "what would be its preferred switching process in a hypothetical 'greenfield' situation?". This is almost entirely unhelpful. There are few, if any, 'greenfield' situations and Ofcom has failed to present sufficient convincing evidence of consumer harm to warrant starting afresh. It would be entirely disproportionate to impose a new, single harmonised switching process across different products, and it would risk substantial consumer harm. By considering a hypothetical 'greenfield' situation, Ofcom has not properly assessed the many practical issues faced in switching fixed broadband and telephony services, such as proper asset identification and customer verification. Ofcom's vision is almost purposefully abstracted from reality, so as to avoid the need for consideration of real-world issues.
4. Not only is Ofcom's vision the answer to the wrong question, but Ofcom's proposed answer is based on leaps of faith, is not underpinned by solid evidence nor robust analysis and full consideration of alternative interpretations, and is predicated on a narrow view of the economic analysis of this issue. Ofcom has chosen to focus on the distinction between gaining provider-led and losing provider-led processes, yet this is only one aspect of switching processes, and in general not the one that most affects customers' experience of the process. Ofcom interprets its own survey evidence, which is largely equivocal between the two, as supporting the case for gaining provider-led processes. Ofcom's theoretical case against losing

provider-led processes is based on an economic assessment that targeted save activity unequivocally reduces consumer welfare – whereas in fact this is a complex area of economics, and a more balanced review of the question would suggest a much more equivocal and ambiguous answer.

5. Ofcom’s consultation process on this matter also is flawed: the first stage of a strategic review, particularly where it provides the first real opportunity for stakeholders to comment, should be to consider in an open and transparent way how markets work, and present evidence in a balanced way, rather than to start from the position where Ofcom’s mind appears to be firmly made up. Even though Ofcom has started this review with firm views on the outcome it prefers, (i.e. harmonised gaining provider led process), it has still not undertaken any form of impact assessment at this stage, preferring to defer that to a later stage when such an assessment would be too late and risk being wholly redundant. Ofcom’s approach is not consistent with its own duties; it is not consistent with regulatory best practice, or Ofcom’s own guidance, which indicates that an impact assessment will be an integral part of Ofcom’s decision making process, rather than a ‘bolt-on’ at the end of that process. As a result, this is a flawed consultation which can only practically be rectified by Ofcom re-consulting, asking appropriate, open questions, and approaching the issues raised by the consultation with an open mind.
6. Ofcom’s intention to review switching processes in relation to pay TV services following its review of broadband and talk is inappropriate and completely without foundation. By Ofcom’s own evidence, there is a lack of any consumer harm that needs to be addressed by Ofcom. Furthermore, pay TV displays completely different service characteristics to telecommunications products; which mean that, there is no possibility of slamming, it is not considered an essential service, nor is it a provided using a shared infrastructure like LLU-based broadband and telephony.
7. This response is structured as follows:
 - SECTION 1 explains our support for an improvement in switching processes for fixed broadband and telephony;
 - SECTION 2 addresses what an appropriate objective would be for Ofcom, for switching within fixed broadband and telephony;
 - SECTION 3 explains why Ofcom’s consideration of an ideal process in a hypothetical ‘greenfield’ situation is almost entirely unhelpful;
 - SECTION 4 reviews the Ofcom’s narrow focus on the distinction between gaining provider-led and losing provider-led processes, and shows why Ofcom’s own survey evidence is largely equivocal between the two;
 - SECTION 5 reviews Ofcom’s theoretical arguments against targeted save activity, and shows why a more considered assessment of the economic literature has a much more ambiguous conclusion; and
 - SECTION 6 shows why Ofcom’s intention subsequently to review switching processes in pay TV is entirely without merit.

SECTION 1. SWITCHING PROCESSES WITHIN FIXED BROADBAND AND TELEPHONY

1.1 We support Ofcom's focus on seeking to improve switching processes within broadband and telephony. In this section we explain why:

- telecommunications services are like most other subscription based services – just more complex;
- there is a range of shortcomings with current fixed broadband and telephony switching processes; and
- Ofcom's decision to exclude consideration of switching to and from cable, within its current consideration of broadband and telephony switching, is inappropriate.

Telecommunications services are like any other subscription service – just a lot more complex

1.2 The process of switching one's telecommunications provider shares many attributes with most other long term subscription based services, but also has some interesting differences. Almost uniquely, there are physical assets involved – typically the phone line – quite unlike a service such as banking or insurance.. Additionally, the physical assets are part of an old network that was not originally designed to be shared, with access made available via regulation. Such complexity warrants the industry utilising an agreed switching process.

There is a range of shortcomings with current fixed broadband and talk switching processes

1.3 Ofcom's research shows that, “...a majority of switchers said the switching process they went through was relatively easy”¹, which, when combined with those that registered “neither easy nor difficult”, left a small minority of between 1% and 16%, by service, registering their experience of switching as difficult. Nonetheless, there are recognised issues and identified opportunities for improvement with the current switching processes (most comprehensively documented by the OTA²). The industry and Ofcom should address these issues in the most expedient and proportionate manner in order to address the most egregious shortcomings, and to improve the customer experience overall.

1.4 Ofcom considers that, within a range of communications products and services, “the worst problems arise for fixed-line and broadband switching (including bundles of the two)” and thus has determined to focus its efforts here first³. Sky concurs with this focus. Not only is there evidence of shortcomings in the existing processes, but:

- broadband and telephony are considered by the government to be essential services, and therefore to be worthy of provision under a universal service obligation and government support (in the case of broadband); and

¹ Ofcom consultation; Strategic review of consumer switching, 9 September 2010, paragraph 4.26
<http://stakeholders.ofcom.org.uk/consultations/consumer-switching/>

² The OTA has produced two documents listing the recognised issues with the current switching processes; AOT Migrations Process Imps-v3 - <http://www.offta.org.uk/AOT-Migs.pdf> and MAC Migrations Process Imps-v3 - <http://www.offta.org.uk/MAC-Migs.pdf>

³ Ofcom consultation 2010, paragraph 1.8c

- broadband and telephony services utilise common assets: telephone numbers in the case of all telephony, and (for most broadband and telephony suppliers excluding Virgin Media (VM)) the shared PSTN network of BT.

Ofcom’s decision to exclude consideration of switching to and from cable within its current consideration of broadband and talk switching is inappropriate

- 1.5 While Ofcom has chosen to focus on telephony and broadband, it has inappropriately chosen to exclude consideration of the switching of those services to and from cable. From a consumer point of view this makes little sense, because:
- the customer’s imperative to remain in communication with friends, family and safety of life services – whether by voice telephony or broadband email – and minimise any outage when switching, applies equally whether or not the switch includes going to or from a service provided over VM’s cable network; and
 - in telephony, VM cable customers share the common asset base of telephone numbering. Customers switching to or from VM are able to port their telephone number. This aspect of switching needs to be coordinated regardless of the underlying network technology being used.
- 1.6 For the above reasons, Sky considers that any broadband and telephony switching process needs to include services provided over both BT’s PSTN and VM’s cable network.

SECTION 2. OBJECTIVES FOR SWITCHING WITHIN FIXED BROADBAND AND TELEPHONY

- 2.1 Sky supports Ofcom being involved in improving switching processes within broadband and telephony. In fulfilling this role, it is helpful for Ofcom to identify and enunciate clear objectives for its involvement. We expand on these points in this section, and outline Sky’s view as to what an appropriate set of objectives would be.

The role of Ofcom

- 2.2 The fixed telecommunications industry has not had a good record in making improvements to switching processes of late. This is partly because any change to existing processes causes expense, and that expense is often unequally spread across the industry. Changes to switching processes may make it easier for customers to switch to or from particular providers unequally. This creates winners and losers. In such circumstances, it is not surprising that a highly competitive industry is unable easily to agree on a way forward. There is a need for Ofcom to facilitate progress in this area.
- 2.3 This has always been the case. Ofcom set out its clear intention to fix migration problems in fixed telecommunications as early as 2004. The fact that, six years later, we are having the same discussion is precisely because the industry needs Ofcom to fulfil this role in order to move forwards.

Appropriate objectives for Ofcom

2.4 Ofcom has proposed a set of seven “*Principles to support a positive consumer experience*”⁴ against which the attributes of different switching processes can be evaluated. Sky considers that the seven principles are largely appropriate to the task but that it would have been helpful if Ofcom’s objective had been to undertake a robust consideration and debate on:

- a) the principles: their appropriateness and application;
- b) switching costs: their relative importance⁵, distinguishing whether they fall on consumers or providers, and weighing their notional value against the real costs of implementing and running changed switching processes; and
- c) costs versus benefits analysis: to be early in the consultation – rather than when preferred processes have already been decided, and including some quantification of benefits.

2.5 Sky considers it is productive to debate the prioritisation of Ofcom’s principles and to ensure that a common interpretation of their meaning is held by all stakeholders, including Ofcom. Sky proposes a slightly different set of four top tier principles as follows (using Ofcom’s numbering and titles of its principles):

ii) Protects against slamming: Like Ofcom, Sky considers that the detriments from slamming to both consumer and legitimate providers are significant. Robust processes must be in place to minimise the potential for this to happen, and then backed up with an appropriate enforcement regime and penalties for persistent offending.

iv) Ensures a reliable process with speedy restoration if things go wrong: This can be thought of as the root cause of Ofcom’s first principle (Minimises unnecessary switching costs), which was favoured by Ofcom as a top tier principle. The best way to minimise switching costs is to ensure that the process or processes are reliable.

vi) Supports competition in retail markets: Sky supports Ofcom’s view that competition is key to its overall policy objective and that processes are competitively neutral.

vii) Is cost efficient to implement and maintain: Unlike Ofcom, which does not include this principle in its top tier on the basis that “*it is unlikely to be a differentiating factor for our ‘greefield’ assessment of the options*”⁶, Sky proposes this last principle as top tier in recognition that substantial processes exist today and in proposing improvements to those processes, the cost of implementation should be a critical deciding factor.

Importance of practicality and recognition of the starting point

2.6 In working through the compromises that individual stakeholders will inevitably need to make in order to drive for improvements in the current switching processes, the practical challenges of implementing telecommunications switching need to be kept in mind. There are two key aspects to this:

⁴ Ofcom consultation 2010, paragraph 6.7 & 6.31

⁵ Ofcom cites switching costs of “hassle”, “understanding the process”, “number of touch points” (i.e. engagement between consumer and provider), “slamming”, “continuity of service”, and “awareness of contractual arrangements”, without sufficient discussion and evidence as to their relative impacts or whether and if so, what portion of those costs befall consumers or providers.

⁶ Ofcom consultation 2010, paragraph 6.47

- recognition of the starting point: i.e. what systems are in place now and if they are faulty, why that is the case? The OTA has made a start here in recording the issues. The next step is a root cause analysis to pinpoint the opportunities for improvement; and
- practicality: e.g. much switching ‘harm’ arises due to the fact that we are dealing with legacy networks, worked on in the field with imperfect records. These records are going to remain imperfect, so the switching systems and processes will need to be designed to work well in spite of those imperfections.

SECTION 3. OFCOM’S STRATEGIC VISION OF A HYPOTHETICAL HARMONISED ‘GREENFIELD’ SWITCHING PROCESS

3.1 Ofcom has identified its ‘strategic vision’ by answering the question: “what would be its preferred switching process in a hypothetical ‘greenfield’ situation?”. We explain in this section why this is unrealistic:

- ‘greenfield’ conditions do not exist today and are not likely to in any significance, relative to existing services, for the foreseeable future;
- there is no great benefit to a single harmonised process, and indeed it risks substantial consumer harm; and
- re-thinking switching processes from scratch, let alone introducing a single harmonised process across products, would be wholly disproportionate and contrary to Ofcom’s duties.

These are discussed below.

‘Greenfield’ conditions do not exist

3.2 Ofcom suggests that its preferred ‘greenfield’ process should be applied when developing new switching processes, or developing processes for new switching scenarios⁷. Sky considers such a line of thinking to be misguided because:

- the existing services of broadband and telephony, and their associated existing switching processes, can be expected to be in demand for many years to come, either standalone or as part of any future bundle;
- “New services”, such as FTTC based broadband still include elements of the existing products and technologies (e.g. WLR, MPF and SMPF); and
- truly new services, such as FTTP, will be relatively few in number, and their take up by consumers is likely to be modest compared to the existing services for many years to come. From a consumer perspective the services of greatest relevance will be the familiar telephony and broadband services. Different underlying network assets will be likely to be involved and hence different means of asset identification will be likely to

⁷ Ofcom consultation 2010, paragraph 2.8

be needed. But the use of new network assets need not mean a different switching process is needed.

There is no great benefit to a single harmonised process, and indeed it risks substantial consumer harm

3.3 Ofcom attributes a number of consumer concerns to the lack of a harmonised switching process. These include:

- “*difficulty for consumers to know what to do to switch*”⁸;
- “*A single harmonised switching process which moves all services in a bundle ...considerably reduces the burden on consumers*”⁹; and
- “*A harmonised switching process ensures that consumers encounter only a single common process when switching*”¹⁰.

These concerns are addressed below.

3.4 **Knowing what to do to switch.** Sky considers that Ofcom’s concern over consumers not understanding the switching process prior to engaging with it, is misplaced. Through the considerable marketing by providers and the numerous comparison and switching web sites, consumers can be in no doubt that they are *able* to switch their telephony and broadband to another provider. While on the whole consumers understand they *can* switch¹¹, they have no need to understand *how* to switch, until they decide to move. Assisting them through the move is a key contribution of the gaining provider and of third party intermediaries.

3.5 **A single harmonised switching process.** Jettisoning today’s processes in favour of creating some new harmonised process is not only wholly disproportionate, but would be likely actually to result in considerable consumer harm, for the following reasons:

- **High new costs:** A great deal of expense, effort and experience has been invested by the industry and Ofcom in developing the current systems. Given the complexity of the underlying task, it is naïve to think that any less expense, or effort will need to be expended, in developing an entirely new process;
- **Delay and disruption:** It has taken years to develop the current processes and to refine them to the point where they are working as well as they are. One can expect that if a single new “harmonised” process was mandated to replace existing processes, there would be a substantial delay before that new process was implemented. Additionally, there would be significant disruption during its implementation with the introduction of a whole new set of teething problems that would be likely to take years to iron out, severely impacting consumers;

⁸ Ofcom consultation 2010, paragraph 2.46

⁹ Ofcom consultation 2010, paragraph 2.48

¹⁰ Ofcom consultation 2010, paragraph 2.48

¹¹ Ofcom consultation 2010, Figure 12 and 13: 1%-2% of “inactive consumers” when prompted agreed that lack of clarity as to the steps necessary to take in switching was a reason for them not considering switching. 0%-2% of those who considered switching, but didn’t, gave “information reasons” as their reason for not switching.

- **Impact on innovation:** The expense and demand on providers' systems resources required to develop and introduce a new switching process will be likely to crowd out new product developments, and other innovations and improvements calling upon that same systems resource; and
- **Impact on consumers:** Ultimately providers' costs will be passed on to consumers and it is likely that this will be disproportionately high for customers of smaller providers, with the potential to distort competition.

3.6 If Ofcom considers that there is value in common processes, then it only needs to harmonise within, not between different services or bundles of services. Seen from the consumer perspective, this would mean a common process for each of the three telecommunications service variants of: standalone telephony; standalone broadband; and bundles of telephony and broadband. But there may be switching process differences between the services. There is no need for any greater harmonisation as a consumer engages with only one or other of the three variants of switching processes, one at a time.

3.7 The creation of a single harmonised new process is not a good idea. Ofcom has maintained to Sky¹² that its consideration of its preferred switching process in a hypothetical 'greenfield' situation does not represent an ambition to introduce such a process across all communications products. If this is the case, and it is difficult to reach any other interpretation from a reading of the consultation document, then it is not clear to Sky how this is a useful strategic vision.

3.8 There are existing switching processes in place for telephony and broadband. Though some certainly need improvements, by and large they work well. Instead of a single, harmonised process across products, Sky considers that Ofcom needs to facilitate an effort by the industry of urgent but evolutionary improvement of the existing processes.

Re-thinking switching processes from scratch, let alone introducing a single harmonised process across products, would be wholly disproportionate and contrary to Ofcom's duties

3.9 This section outlines why Sky considers that:

- Ofcom presents insufficient evidence of consumer harm to support its preferred solution; and
- Ofcom is not abiding by its responsibilities.

Insufficient evidence of consumer harm

3.10 Any argument for radical intervention of the type contemplated by Ofcom should be based upon compelling evidence of a need for such intervention. In telephony and broadband switching, Ofcom's own research evidence is insufficient to support its preferred solution of a harmonised GPL process, as shown below:

- *"...a majority of switchers said the switching process they went through was relatively easy"*¹³, which, when combined with those that registered "neither easy nor difficult",

¹² Meeting between Ofcom and Sky at Ofcom, 9 November 2010

¹³ Ofcom consultation 2010, paragraph 4.27

left a small minority of between 1% and 16%, by service, registering their experience of switching as difficult;

- At the first industry Switching Working Group meeting called by Ofcom, it presented its view that *“based on our understanding of the true root causes of mis-selling/slamming complaints over the last six months, 33% of complaints could be tackled via the consumer switching project.”*¹⁴ Using Ofcom’s figure of *“the total average no contact complaint”* of 438 per month¹⁵, then a 33% reduction of those might result in just 144 complaints being remedied as a result of the switching programme; and
- The recent National Audit Office (“NAO”) report into Ofcom’s performance dated November 2010¹⁶ stated that there was room for improvement in some areas based on complaints to Consumer Direct in 2009. The Consumer Direct complaints did not cite switching as the main complaint driver. Ofcom’s 2009/2010 Annual report states that of the 105,400 telecoms complaints that Ofcom received during the 2009/10 period *“around seven per cent of complaints related to customers experiencing problems with changing broadband service or the provision of service in a new property.”*¹⁷.

3.11 These levels of satisfaction should caution Ofcom against proposing radical and intrusive new regulation. Any proposals to improve the switching experience must be proportionate, ensuring that the regulatory burden is minimised and that solutions are tailored to address specific areas of concern.

Ofcom is not abiding by its responsibilities

3.12 Ofcom’s responsibilities under section 3(3) of the Communications Act require it to adhere to principles ensuring that regulatory activities are *“transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed”*. In Ofcom’s Annual Plan statement Ofcom maintains that:

*“Wherever possible, our goal is to allow the market to deliver positive outcomes for consumers and citizens, without regulation. Ofcom remains committed to reducing and simplifying complex or unnecessary regulation, while improving the value for money that we deliver to stakeholders by continuing to improve our own efficiency”*¹⁸.

3.13 Sky notes that Ofcom intends to carry out an impact assessment as required under section 7 of the Communications Act, though only at a later stage. This would be acceptable provided a range of options are considered rather than a limited set of variants of Ofcom’s preferred solution. In the current context, where there is limited evidence of consumer harm to justify heavy-handed intervention, it is incumbent on Ofcom to explore fully a wider range of options. Ofcom’s approach is not consistent with best regulatory practice, including Ofcom’s own impact assessment guidelines¹⁹ or those provided by the Better Regulation Executive²⁰. Ofcom has clearly stated in its Impact Assessment Guidelines²¹ that:

¹⁴ Consumer Switching handout dated 18 November 2010 p23

¹⁵ Consumer Switching handout dated 18 November 2010 p22

¹⁶ <http://www.nao.org.uk/publications/1011/ofcom.aspx>

¹⁷ Annual Report p29 <http://www.ofcom.org.uk/files/2010/07/annrep0910.pdf>

¹⁸ 2011 Annual Plan p7 <http://www.ofcom.org.uk/files/2010/06/annplan1011.pdf>

¹⁹ <http://www.ofcom.org.uk/about/policies-and-guidelines/better-policy-making-ofcoms-approach-to-impact-assessment/>

“Ofcom’s decisions can impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of regulation. Our bias against intervention means that the prospective benefits of regulation must exceed the costs. If intervention is justified, we are guided by the principle of choosing the least intrusive means of achieving our objective”.

- 3.14 Sky therefore urges Ofcom to revisit its processes and preference for a single harmonised GPL process.
- 3.15 Lastly, on 29 October Sky and other stakeholders were advised by Ofcom that 1430 pages of market data on consumer switching and bundling prepared by Saville Rossiter-Base had recently been published on its website. Sky has only been able to conduct a brief review of those tables and we reserve our right to make further submissions on that data. However, on the basis of that review we are further concerned by the weakness of Ofcom’s evidence and question whether consumers’ switching experiences warrant the wholesale reinvention of the current switching processes.

SECTION 4. GAINING PROVIDER AND LOSING PROVIDER-LED SWITCHING PROCESSES

- 4.1 Not only has Ofcom answered the wrong question in arriving at its proposed strategic vision, but its conclusion that the answer is a gaining provider-led (GPL) process over-simplifies the issue, and is not supported by the evidence. In this section we explain why:
- Ofcom has inappropriately narrowed its future consideration of switching processes to look only at GPL processes, when a more pragmatic approach, recognising the systems in processes in place already, would be much more appropriate;
 - Ofcom’s narrow focus on the distinction between GPL and losing provider-led (LPL) processes completely ignores other important dimensions of switching processes, some of which have more significant impact on the consumer’s experience. Focusing on the GPL vs LPL distinction is premature in advance of a fuller consideration of the other issues;
 - Ofcom’s conclusions about the superiority of GPL processes is not well-founded;
 - there is a range of other considerations that Ofcom does not fully take into account in reaching its conclusion in favour of GPL over LPL; and
 - focussing solely on GPL processes leads to the consideration of expensive, overly complex and problematic solutions.

Ofcom has inappropriately narrowed its future consideration of switching processes

- 4.2 Ofcom has stated that it has restricted its future considerations to GPL processes; “...we are not proposing, at this stage, to give further detailed consideration of LPL processes”²².

²⁰ <http://www.bis.gov.uk/policies/better-regulation>

²¹ http://stakeholders.ofcom.org.uk/consultations/ia_guidelines/

²² Ofcom consultation 2010, paragraph 7.15

- 4.3 In Ofcom's proposed terms of reference for its industry Switching Working Group²³ the work is restricted to considering just three variants of a GPL process. The scheduling of the Working Group - coming before responses to Ofcom's consultation document have been submitted and considered - and restrictive approach, illustrate Ofcom's closed mind to possible alternatives.
- 4.4 To take this step is effectively to dismiss the much more pragmatic and proportionate response to switching problems in fixed broadband and telephony - which is simply to improve the existing processes. To the extent that these processes are not GPL, Ofcom has effectively dismissed this option without having yet carried out an impact assessment in spite of the fact that this decision could have very substantial costs to industry and perhaps to consumers.

Ofcom's narrow focus on the distinction between GPL and LPL processes

- 4.5 Ofcom has chosen to reduce the consideration of the process of switching among suppliers in its analysis to only one aspect of such processes: gaining provider led (GPL) versus losing provider led (LPL) processes.
- 4.6 There are several more practical dimensions of the switching process that Ofcom could have, and indeed should have, chosen to use as the basis for comparing and evaluating different switching approaches, or at least included equally in its consideration, including:
- **Asset identification:** the identification of the right telephone line is required for the consumer's switch to take place, and also to ensure innocent consumers do not lose their service. Such errors have significant negative impacts on consumers and providers alike;
 - **Customer verification:** the linking of the correct customer to the intended action is an imperative and is a key to curtailing slamming;
 - **Information exchange:** the provision of general information, useful for facilitating switching, is available from a variety of sources, some better than others;
 - **Switching consequences:** the most obvious and potentially impactful consequences are those flowing from an early termination of a consumer's contract. Customers' existing provider is best placed to inform them of these consequences; and
 - **Provider relationships:** key to a successful switch is the relationship between the retailer and other parties, such as the network operator, wholesaler, and competing retailers.
- 4.7 The pros and cons of the key steps within the complex switching processes need to be established and weighed along with a balanced and comprehensive consideration of the role or contribution to be made by each of the losing or gaining provider in those key steps.

Ofcom's conclusion about the superiority of GPL processes are not well-founded

- 4.8 Notwithstanding Ofcom's inappropriately narrow focus only on whether switching processes are GPL or LPL, Ofcom's decision to limit its consideration to GPL processes going forward is

²³ Invitation to participate in the Switching Working Group was emailed to industry contacts on Friday 29/10/2010 including an attached terms of reference for the first meeting planned for 19/11/2010.

not well-founded. Ofcom bases this decision on a view that GPL processes are superior to LPL processes:

“based on our analysis of the evidence on consumers’ switching experiences we are of the view that GPL processes result in significantly less hassle and are easier for customers to navigate”²⁴

4.9 Ofcom’s conclusion relies on two premises: the findings of consumer research and Ofcom’s analysis of the alleged ‘hassle’ involved in LPL switching processes²⁵. Neither of these adequately supports Ofcom’s conclusion.

4.10 An objective interpretation of Ofcom’s research evidence would not support its conclusion that GPL processes are superior to LPL processes. For example:

- consumers who had not considered switching, were ambivalent to the types of process *“...the actual **switching process did not appear to be the key barrier.**”²⁶* (emphasis added);
- *“Looking at the switching process in general (Figure 15) **no switching process is more significantly likely to be rated as difficult**”²⁷* (emphasis added); and
- Ofcom claims that the Notice on Transfer (NoT) process is *“...significantly more likely to be rated as easy”*. This is because 86% of customers said that the switching process for NoT processes was easy, compared to 71% for MAC/PAC (LPL) process, and 63% for cease and re-provide²⁸. But this is to compare apples, bananas and pears. Cease and re-provide switches are primarily accounted for by pay TV and cable-based services, where an engineer has to visit (by the nature of the service), and where the product choice is a complex one to make. No wonder customers find that experience harder than switching a phone service, which is the predominant NoT process. Similarly, the MAC/PAC switching is predominately broadband and mobile telephony. Again, both are much more complex products than fixed telephony, with different speeds, devices and usage caps to consider. Again it is unsurprising that the process is considered more difficult than telephony, which makes up the lion’s share of NoT switches.

4.11 In terms of the alleged superiority of GPL versus LPL processes in terms of ‘hassle’:

- **‘Hassle’ is inappropriately related to the underlying switching process:** Ofcom states that “a “substantial minority” of consumers (between 31% and 48%) agree with the statement that changing providers ‘seems like too much hassle’”²⁹. The 31% refers to people who actually switched services but the 48% of people who determined it was too much hassle to switch had *“neither switched nor considered [switching]”*. Therefore Ofcom is basing its policy making on consumers who have never actually experienced or indeed even thought about experiencing the switching process. Ofcom itself states that *“there are a range of reasons for considerers not switching (for example save activity,*

²⁴ Ofcom consultation 2010, paragraph 4.123

²⁵ Ofcom consultation 2010, paragraph 2.19

²⁶ Ofcom consultation 2010, paragraph 4.23

²⁷ Ofcom consultation 2010, paragraph 4.28

²⁸ Ofcom consultation 2010, paragraph 4.28

²⁹ Ofcom consultation 2010, paragraph 4.22 and Figure 10

inertia, no benefit in moving and contractual terms) and no particular reason stands out in the consumer research” (emphasis added)³⁰.

Ofcom’s further ‘evidence’ presented to link different degrees of ‘hassle’ to specific classes of switching processes³¹ is more likely to reflect the underlying service characteristics being switched rather than the switching process itself. For example, switching a phone line where no engineer visit is required, no customer equipment need be changed, and no new passwords need be entered into a PC, is considerably easier than switching broadband service, hence is likely to be rated as “less hassle”.

- **Level of switching:** Ofcom implies that low levels of switching may be indicative of undue hassle, yet its own research finds that in industries where a GPL process is the norm, such as gas and electricity and the banking sector, the levels of switching are not high. In 2009 only 16% of those surveyed had switched gas or electricity and only 5% switched bank accounts³². Ofcom itself acknowledges in the Consultation that “switching levels are likely to be influenced by a range of important factors so it is not possible to draw any direct parallels between switching processes and switching levels”³³.
- **Market research questions are leading:** Sky is particularly concerned by the leading nature of some of the market research questions. Figure 10 illustrates the “proportion of Consumers that agree or disagree that switching providers seems like too much hassle”. Sky is concerned that the question asked was not “why have you not switched providers” but rather “To what extent do you agree or disagree ‘Changing suppliers for my home technology seems like too much hassle?’” This immediately puts into consumers’ minds the hassle concept when none might have existed.

Other considerations concerning GPL and LPL processes that Ofcom fails to take into account

- 4.12 Ofcom’s consideration of a hypothetical ‘greenfield’ switching process means that it ignores, by design, the practical underlying difficulties which are at the source of many of the faults in current switching processes. If Ofcom had turned its attention to considering the real-world underlying issues to telecommunications switching and the contributions that different approaches and involved parties can make, then it would have unlikely to have settled on its preferred GPL process so adamantly.
- 4.13 The underlying data supporting asset verification is imperfect. For example, Openreach hold incorrect postcodes against some assets or has multiple address records (Address Keys) for a single property. Such issues are well known across the industry, and unlikely to change in the near future in the absence of a very significant data cleansing effort by Openreach. It would be practical to formulate switching processes on the assumption that this data will remain imperfect. Where underlying data is incorrect, the possibility of switching the wrong service increases.
- 4.14 Anecdotally, more problems arise today via the Advice on Transfer (“AoT”) process than the Migration Authorisation Code (“MAC”) process. This is largely due to the ineffective asset identification, and verification of the customer and the customer’s committed intention, due to

³⁰ Ofcom consultation 2010, paragraph 4.25

³¹ Ofcom consultation 2010, Figure 11

³² Ofcom consultation 2010, paragraph 4.16 and Figure 9

³³ Ofcom consultation 2010, paragraph 4.18

the truncated role of the existing provider in AoT processes. Partly as a result, the current MAC based LPL processes have been found by the OTA to have fewer issues requiring addressing³⁴ compared with the AoT process, a GPL process (and do not cause consumer harm through either Erroneous Migrations or Slamming of end user services).

- 4.15 While obviously it is the gaining provider that has the role of enabling the provision of the new service, given the complex nature of the physical switching of networks, there is a key role for the existing provider. Ofcom's evaluation of the existing switching processes against the principles that Ofcom proposes³⁵ do not give appropriate weight to the value of the existing provider's contribution to a smooth switching process – particularly in delivering against the principles of “Ensuring a reliable process” and “Enabling continuity of the main service”.
- 4.16 The role of the existing provider needs to be considered when it comes to explaining to the customer the consequence of their switch, such as early termination charges (ETCs). Ofcom's research shows that simply having a warning about potential ETCs without specifying the amount, “*appears to hinder good switching decisions*”³⁶. Clearly the existing provider is best placed, and in most situations, the only party able accurately to provide this information.
- 4.17 Ofcom's research also shows that the “*vast majority*” of slamming is found in the GPL fixed-line move and acknowledges that “*this is likely to reflect the lower level of upfront validation in the GPL NoT process*”³⁷. Having acknowledged this very obvious deficiency in GPL processes, rather than consider the pros and cons of harnessing the benefits to be derived from engaging with the existing provider through an LPL process, Ofcom moves straight to seek feedback on its proposed three alternate GPL processes – all of which include some form of costly additional external intervention to compensate for the absence of the existing provider in the GPL switching process.

Focussing solely on GPL processes leads to the consideration of expensive, overly complex and problematic solutions.

- 4.18 One of the proposed ‘enhanced GPL processes’, on which Ofcom seeks feedback on is the Third Party Verification (TPV) process³⁸. This can be expected to be an expensive process to establish, with high on-going costs. For such a process to provide failsafe verification of the identity of the customer (a critical element in combating slamming), the external TPV organisation, must have access to confidential personal information. That is problematic on a number of grounds:
- consumers would have to give their consent for their personal information to be used for the purpose of TPV, introducing another potential barrier to switching for some consumers;
 - for the existing base of broadband and telephony customers who had not previously opted into this use of their personal information, it would be a hugely disruptive and

³⁴ The OTA has documented current issues with the different switching processes that require improving. The AOT document lists 15 improvement areas whereas the MAC document only lists 7.

³⁵ Ofcom consultation 2010, paragraph 6.48 onwards

³⁶ Ofcom consultation 2010, paragraph 4.57

³⁷ Ofcom consultation 2010, paragraph 4.73

³⁸ Ofcom consultation 2010, paragraph 6.58

costly effort to go back to them and explain the basis, and gain their consent, for this new proposed use;

- the systems and authentication necessary to ensure that existing providers had sufficient assurance of the authenticity of the TPV before handing over the requested personal data of their customers, would be expensive, burdensome and prone to potential failures, yet again reducing the robustness of the overall switching process; and
- consumers have been educated to be wary of giving out personal information in the guise of verification, particularly to organisations that they do not have a relationship with.

4.19 The injection of a TPV into the switching process would appear to contribute at least the same switching costs (such as the cost of an additional ‘touch point’) as engaging with the customer’s existing provide, without any of the benefits, all in an effort to avoid any touch point with the losing provider.

SECTION 5. THE LEGITIMACY OF TARGETED SAVE ACTIVITY

5.1 Ofcom has based its conclusion in favour of GPL switching processes largely on two premises:

- a) that the research evidence indicates these processes to be better for consumers; and
- b) that the theoretical evidence suggests that save activity, which is facilitated by LPL processes, is harmful to customers and competition.

5.2 In the last section we showed why the research evidence is in fact rather equivocal and why Ofcom should have considered a wider set of issues in making its assessment. In this section we address Ofcom’s theoretical evidence, which leads Ofcom to conclude targeted save activity in a LPL switching process is likely to “*dampen competition*” and “*imply higher prices*”³⁹. We show that:

- there is nothing distinctive about the welfare effects of targeted save activity in communications services, or under LPL processes, as compared to the rest of the economy;
- targeted save activity is an accepted practice in relation to other services and Ofcom’s arguments against it in telecommunications have no foundation;
- Ofcom’s own survey evidence does not support its position;
- the observed market characteristics are at odds with the effects that Ofcom predicts from targeted save activity; and
- a more objective view of the economic arguments on the welfare effects of targeted save activity suggests these to be ambiguous at best.

³⁹ Ofcom consultation 2010 paragraph 5.111 bullet point 3

There is nothing distinct about targeted save activity in communications or under LPL processes

- 5.3 Ofcom states that “A legitimate question is therefore what is special about the communications sector that might justify the potential concern about save activity”⁴⁰. Ofcom’s answer is “under current LPL switching processes... there is an automatic built-in opportunity for save activity”⁴¹. In essence, Ofcom’s argument is that:
- LPL processes ‘lock in’ an opportunity for the losing provider to embark on targeted save activity during the switching process;
 - the resulting save activity that takes place under LPL switching processes is harmful to consumers, overall; and
 - therefore, LPL switching processes should not be favoured.
- 5.4 Therefore, the only distinct characteristic of the circumstance being considered by Ofcom is that, under LPL processes, there is *always* an opportunity for targeted save activity when a customer requests to cancel their subscription. In the rest of the economy, there is *sometimes* such an opportunity (for example, if a customer of a subscription service simply cancelled their direct debit, there would not be such an opportunity).
- 5.5 Ofcom’s analysis purports to show that when there is *always* this opportunity for save activity, the net result is harmful to consumers. By extension, its same analysis presumably would show that when there is *sometimes* such an opportunity, it would also be harmful (only less so if carried out only on a proportion of cancellation requests).
- 5.6 Therefore, Ofcom’s real argument is not that save activity under a LPL process is harmful, but that save activity *per se* is harmful. It would appear that Ofcom’s ‘legitimate question’ is indeed very legitimate: there is nothing distinct about targeted save activity in communications services or under a LPL switching process.

Targeted save activity is an accepted practice in relation to other services and Ofcom’s arguments against it in telecommunications have no foundation

- 5.7 The opportunity for targeted save activity takes place in almost every sector of the economy, particularly where services are consumed on a subscription basis, and is an integral part of competition among firms. Consumers purchase a range of products and services through entering into long term purchasing relationships, often including regular subscription payments, like those for telecommunications services. Products and services based on a long term relationship with subscription characteristics include:
- financial services: banking, investments, house/home insurance, car insurance;
 - magazine and newspaper subscriptions;
 - leisure services: gym memberships, golf clubs, wine clubs, National Trust, membership of museums and the zoo;

⁴⁰ Ofcom consultation 2010 paragraph 5.47

⁴¹ Ofcom consultation 2010 paragraph 5.47

- utilities: gas, electricity, water; and
- housing: mortgage, rent, domestic cleaning service.

5.8 In light of this, Ofcom’s objection in principle to targeted save activity is quite startling. The evidence and arguments put forward by Ofcom to treat telecommunications services differently, fall well short of the standard that would be required in order to justify intervention under competition or consumer law to prohibit targeted save activity.

5.9 Just like any other sector, the volume of save activity in telecommunications is kept in close check by the market itself. This is more so now than ever before. Blogs and specialist discussion groups are dedicated to services such as broadband and telephony services. Any discount offered to one subscriber who threatens to switch tends to trigger other calls repeating their successful story. This high level of transparency exercises a very real constraint on the market pricing and practices of all telecommunications providers.

5.10 It would appear that Ofcom has an objection to the existence of price discrimination and to suppliers considering consumers as individuals, capable of engaging with a vibrant competitive market and determining for themselves their own value for different services. Ofcom and its predecessors have spent over twenty years deregulating the telecommunications market and supporting the introduction of competition, to the point where today there is energetic rivalry between providers offering a range of consumer choice and improved value. Now that this has been achieved, Ofcom is so distrustful of the result that it wants to control and order that rivalry such that it tells suppliers when they can and cannot offer a discount to their consumers.

Ofcom’s own survey evidence does not support its position

5.11 Ofcom’s consultation document states that “...the large majority of consumers who were subject to save activity reported a positive experience with this practice”⁴².

5.12 Ofcom’s evidence also shows that consumers who experience a switching process which has a greater opportunity for targeted save activity (i.e. MAC or PAC), are *more* likely to state that their experience of the process has made them more likely to change supplier in future. A mere 6% said that they were less likely to switch again having experienced such a process.

The observed market characteristics are at odds with the effects that Ofcom predicts from targeted save activity

5.13 Ofcom makes a number of statements⁴³ regarding the alleged effects of targeted save activity associated with an LPL process, which it suggests can be similar to the effects associated with a firm offering ‘price guarantees’. These include that save activity;

- hurts competition;
- stifles market entry; and
- dampens the targeting of a competitors customers by another competitor.

⁴² Ofcom consultation 2010, paragraphs 5.94

⁴³ Ofcom consultation 2010, paragraphs 5.78

5.14 These assertions are not supported by the evidence in the market. The broadband switching processes include all three of NoT (GPL), MAC (LPL), and cease and re-provide (C&R). Yet, in the face of Ofcom's negative predictions attributable to the opportunity for the losing provider to exercise targeted save through the MAC and C&R processes, the UK broadband market over the last five years has

- grown hugely;
- reduced the incumbent's market share to one of the lowest in Europe;
- attracted significant new entrants such as Sky and TalkTalk Group (which is now the largest supplier in the residential market);
- supported increased investment by both incumbent and entrants;
- witnessed aggressive marketing, targeting specific competitors by name and proposition; and
- encouraged consumers to exercise their prerogative to move providers - despite imperfect switching processes.

5.15 Even if Ofcom's interpretation of the economic literature were plausible, the observable evidence just does not support its applicability in the UK broadband and telephony market.

A more objective view of the economic arguments on the welfare effects of targeted save activity suggests these to be ambiguous at best

5.16 Sky commissioned Plum Consulting to review Ofcom's analysis of save activity and its report is attached as an Annex to this submission. Plum reaches three broad observations as to Ofcom's analysis:

- Ofcom assumes market circumstances in reaching their conclusions that do not accord with actual conduct in the communications market;
- the economic literature does not directly address save activity. Plum's review of the economic literature considered by Ofcom however does not lead it to the same conclusion as Ofcom; and
- Ofcom does not count the benefits of save activity in terms of avoided switching costs including time and risk of service disruption.

Each of these observations is expanded on below.

5.17 Plum highlights a number of significant inconsistencies and deficiencies in Ofcom's characterisation of the broadband and telephony markets and Ofcom's assertion regarding the detrimental effect of targeted save, including:

- cease and re-provide plays an important role, would tend to reduce the risk of lock-in due to save activity, and should be taken into account;

- there are pronounced differences in the frequency of use of alternative switching mechanisms in mobile versus broadband markets, yet Ofcom does not identify material differences in outcomes in line with its hypotheses;
- service characteristics and customer preferences are heterogeneous, rendering save activity unreliable as a mechanism for lock-in;
- neither market (broadband or mobile telephony) is mature when the transition to next generation access and new device adoption are taken into account;
- entry and competitive conduct characterise the telecommunications market; and
- most consumers welcome save activity.

5.18 Plum's review of the economic literature on switching leads it to a much more ambiguous interpretation to Ofcom's, including:

- evidence in the literature that a small difference in the nature of price guarantees can have a significant impact on their implications for consumer welfare, is not properly taken account of by Ofcom; and
- Plum concludes that the economic literature on price guarantees does not provide a sound basis for conclusions regarding save activity.

5.19 On the specific conclusions that Ofcom draws regarding the practice of price discrimination, Plum notes:

- the overall economic welfare impacts of price discrimination are in principle ambiguous;
- a major survey of price discrimination documented many theories where (under imperfect competition) price discrimination increases welfare;
- "Surplus extraction" can benefit not only producers but consumers: in a dynamic market it improves incentives for innovation and efficient and timely investment. Plum refers to Ofcom's own decision and rationale to not price regulate VULA reached in its recent Wholesale Local Access Market Review; and
- Ofcom's conclusions regarding consumer detriment from price discrimination are not justified based on the economic literature, market experience, nor on consideration of other issues in communications markets.

5.20 Plum considers that Ofcom does not count the benefits of dynamic competition and avoided switching costs, noting:

- Ofcom's hypothesis that banning LPL save activity or moving to a GPL process would induce providers to spread the benefits of competition across the whole market through lower prices to all customers, rather than just to those who identify themselves through switching, ignores the prospect that reducing the rewards of save activity may result in less consumer search and switch activity leading to a reduction in competitive pressure;

- the avoided cost of switching from save activity is a direct benefit to the consumer and the economy; and
- switching costs avoided may be considerable and represent benefits which should be considered in an overall assessment of save activity.

5.21 In contrast to Ofcom’s unequivocal conclusion that “*overall the academic literature’s position on switching costs is that “on balance switching costs seem more likely to increase prices” which would tend to reduce consumer welfare.....switching costs dampen competition, andswitching costs tend to make entry more difficult*”⁴⁴, Plum’s review of the literature led it to conclude:

“We consider that Ofcom’s view on switching costs on competition is not consistent with conclusions of literature cited by Ofcom and is inconsistent with more recent academic studies”

SECTION 6. OFCOM’S INTENTION SUBSEQUENTLY TO REVIEW SWITCHING IN PAY TV

6.1 While the switching of pay TV services is not a focus of this current consultation, Ofcom has stated that it will consider pay TV services following the issuing of its final statement to the second consultation document which it proposes to issue by the end of 2011⁴⁵. Sky considers the inclusion of pay TV services in any consideration of the switching of telecommunications services to be entirely without foundation. This is because:

- there is no evidence of any consumer harm that needs to be addressed by Ofcom;
- “Switching” of a pay TV service is anyway rather a misnomer;
- Ofcom’s own principles of good switching highlight the differences between fixed telecoms and pay TV;
- there are distinctly different service characteristics between pay TV and the telecommunications products of broadband and telephony; and
- it would be disproportionate to consider switching processes for pay TV services further.

We address these issues below.

A lack of evidence of any consumer harm needing to be addressed by Ofcom

6.2 According to Ofcom’s own customer survey evidence, pay TV subscribers are satisfied with the experience of moving between providers:

- **The ease of moving:** pay TV switchers overwhelmingly do not find the current switching process for pay TV troublesome – 95% of consumers surveyed stated that

⁴⁴ Ofcom consultation; 2010 paragraph 5.31 and 5.32

⁴⁵ Ofcom consultation 2010, paragraph 1.12

they did not find switching pay TV services difficult (80% - totally easy, 3% don't know, 12% neither difficult or easy)⁴⁶;

- **Slamming:** There is negligible experience of misselling, with pay TV subscribers registering an insignificant portion of consumers who had experienced slamming (0.5%)⁴⁷;
- **Contractual barriers:** Contractual reasons as an obstacle to switching “*appears to be less of an issue for pay TV considerers*”⁴⁸;
- **Process issues:** Ofcom consumer research indicates that pay TV consumers who have not switched nor considered switching to another provider in the last 12 months had little or no concerns in relation to process barriers to switching providers (a mere 7% in total agreeing in response to Ofcom’s leading questions that a process concern was the reason why they had not switched providers). This being the lowest proportion of consumers for any of the different communications services, who rated process barriers as a reason not to consider switching ⁴⁹;
- **Knowing the process of switching:** No pay TV consumers (0%) considered their lack of knowledge as to the switching process for pay TV was a factor in their deciding not to switch⁵⁰; and
- **Ease of getting information from existing supplier:** A low 10% of pay TV consumers registered any difficulty in getting the information necessary to move from their existing provider, being the lowest portion of consumer registering a difficulty, across all services⁵¹.

6.3 According to Ofcom’s own evidence and analysis, the process of moving pay TV provider is not an activity requiring further consideration or intervention. To impose some bureaucratic process where none is needed would be disproportionate to any hypothetical benefit. It would undoubtedly impose costs, both in implementation and on-going, that would be passed on to consumers. Worst, to try to bind the moving of pay TV providers into the complex switching processes of telephony and broadband could not only compromise those processes, but expose pay TV services to the kinds of switching errors that do not currently affect that sector.

“Switching” of a pay TV service is rather a misnomer

6.4 The main pay TV services offered today – by Sky, Virgin Media, BT Vision and Top Up TV – each use a different technology platform and consumers could choose to have more than one pay TV service concurrently. So, a customer may cease their current service and may take up another pay TV service, but there may be no “switching” going on, in the same way there is for the likes of telephony and broadband where the use of an underlying shared asset is moved from one provider to another.

⁴⁶ Ofcom consultation 2010, figure 14

⁴⁷ Ofcom consultation 2010, paragraph 4.71

⁴⁸ Ofcom consultation 2010, paragraph 4.52

⁴⁹ Ofcom consultation 2010, Figure 12

⁵⁰ Ofcom consultation 2010, paragraph 4.45

⁵¹ Ofcom consultation 2010, Figure 22

6.5 Increasingly TV services are being offered and delivered across a range of platforms. It is conceivable that the consumer may choose to cease taking their TV service via one platform (eg DTH) while continuing to take it, from their current or a different supplier, on another quite unrelated platform (e.g. mobile). To try to devise a “switching process” outside of the current cease and re-provide, has huge potential for a seemingly simple theoretical concept to spiral out of control into a complex practical nightmare with quite perverse outcomes.

Ofcom’s own principles of good switching highlight the differences between fixed telecoms and pay TV

6.6 Ofcom has identified seven general principles to support a positive consumer switching experience⁵². In the context of considering pay TV switching, these principles highlight the distinct difference between the telecommunications services of broadband and telephony, and an entertainment service such as pay TV. The following three principles particularly highlight this difference:

- protection against slamming;
- enables continuity of service; and
- reliable process with speedy restoration.

Below we address the applicability of each of these principles to pay TV.

6.7 **Slamming.** Ofcom defines “slamming” to be “*where a request for a CPS, WLR and/or LLU has been made without the customer’s express knowledge or consent*”⁵³. Pay TV services such as those of Sky and Virgin Media, utilise none of these telecommunications wholesale products or equivalents. Some pay TV services, such as BT’s BT Vision, are fully dependent on the customer also having the same supplier’s broadband product. In these cases any issues relating to slamming would be caught and addressed in relation to the customer’s decision to move their broadband.

6.8 To Sky’s knowledge there have not been any complaints regarding slamming of a pay TV customer. Certainly no evidence of slamming in pay TV has been presented by Ofcom in its consultation document. This is entirely unsurprising, as it would be rather difficult to cease one pay TV service and provision another, with a different set top box plugged into the TV in the customer’s living room.

6.9 **Continuity of service.** The importance of continuity of a voice telephony or broadband service is distinctly different from that of a pay TV entertainment service, from a consumer perspective. This is recognised by both government and Ofcom. BT has had a voice telephony universal service obligation since privatisation, requiring ubiquitous service coverage, and the government is now committed to the universality of broadband supply. No such universal supply obligation exists or has been suggested for the provision of pay TV.

⁵² Ofcom consultation 2010, paragraphs 6.7 & 6.31. The other principles not discussed here include: minimise unnecessary switching costs, promote the awareness of the implications of switching, ensures a reliable process with speedy restoration, supports competition in retail markets, and is cost efficient to implement and maintain

⁵³ Ofcom consultation 2010, Annex 7 Glossary

- 6.10 It is obvious that consumers place a significantly different reliance upon access to telephony and broadband compared with their pay TV service. While continuity of pay TV services is about customer convenience, the need for continuity of telephony is linked to safety and preservation of life.
- 6.11 **Reliable process and speedy restoration.** The need for “restoration” of a service only arises in the context of erroneous transfer. As noted above such erroneous transfers do not occur in pay TV services.

Distinctly different service characteristics of pay TV platforms

- 6.12 Unlike many broadband or telephony suppliers who use BT’s infrastructure, pay TV services do not utilise shared assets. Without the need to coordinate the switching of the use of a physical asset, and hence properly identify that underlying asset, there is no need to invent any process other than the cease and re-provide arrangement that typifies any typical subscription service in any sector.
- 6.13 Pay TV services like BT Vision and TalkTalk TV require the customer also to be a customer of those suppliers’ broadband services. In these circumstances the service in need of a switching process is the broadband. Provision of the pay TV service can follow the broadband subscription. Thus the service to be switched is the broadband service (for which there already exists a switching process – albeit one that could be improved), negating the need for a separate process also to “switch” the pay TV service.

Disproportionate to consider switching processes for pay TV services further

- 6.14 In light of the lack of evidence of any consumer harm or demonstrable need, it would be disproportionate to subject switching of pay TV services to extensive study or consultation, which are burdensome in themselves. Certainly, there is no justification to impose some standardised process to replace the current cease and re-provide. We would urge Ofcom to be minded of its own commitment as articulated in the Ofcom 2011 annual plan:
- Ofcom will always seek the least intrusive regulatory methods of achieving our objectives; and
 - Ofcom will strive to ensure that interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.⁵⁴
- 6.15 The general conditions under Part 2 of the Communications Act 2003 do not extend to the provision of TV services, and therefore are not legal instruments that are at Ofcom’s disposal to extend any regulation of switching processes to include pay TV services.

⁵⁴ 2011 Ofcom Annual Plan p9 <http://www.ofcom.org.uk/files/2010/06/annplan1011.pdf>