Vonage Limited ("Vonage") welcomes the opportunity to respond to Ofcom's Consultation "Changes to General Conditions and Universal Service Conditions Implementing The revised EU Framework."

In this response we have confined our comments to Ofcom's proposed changes to General Condition 18 dealing with delay and compensation requirements.

Under Ofcom's proposals General Condition 18 would read as follows:

18.9 Where Communications Providers delay the porting of a Telephone Number for more than one-working day or where there is an abuse of porting by them or on their behalf, they shall provide reasonable compensation as soon as is reasonably practicable to the Subscriber for such delay and/or abuse.

18.10 The Communications Provider shall set out in a clear, comprehensive and easily accessible form for each Subscriber how Subscribers can access the compensation provided for in paragraph 18.9 above, and how any compensation will be paid to the Subscriber.

Vonage has numerous concerns regarding the proposed changes to General Condition 18. These concerns are set out in the following numbered paragraphs.

i) Ofcom is proposing a compensation scheme that will require the payment of compensation to customers for delay or if there is an abuse in porting.

In paragraph 10.44 Ofcom's proposed approach for fixed porting is that the port activation must take place within one working day from when the Gaining Provider ("GP") requests activation from the Losing Provider ("LP").

Ofcom is proposing a compensation payments scheme but does not specify how the compensation payment scheme will work in practice – this is being left to CPs to determine for themselves. However, Ofcom expects CPs to pay a *reasonable level of compensation* in the event of delay or abuse of porting.

As guidance in the Consultation, Ofcom considers that "a delay or fault in porting is analogous to a delay or fault in service provision." To this end, Ofcom has reviewed a number of fixed line CPs' existing compensation schemes for fault compensation and has found that compensation schemes are generally based on a rate equivalent to the daily cost of the service. BT's fault compensation scheme is given as an example: BT calculates compensation by multiplying the subscribers' quarterly phone service rental by four, dividing by 365 and multiplying by the number of days late in installing the service or a fault not repaired.

There is a fundamental flaw in Ofcom's methodology for compensation because Ofcom is assuming that porting of a number is always a pre-requisite for providing service – Ofcom makes the assumption that a telephone number = telephony service provision so that a delay or fault in porting is analogous to a delay or fault in service provision; this presupposes that if a port is delayed then service provision will likewise be delayed. This is not necessarily the case. For VoIP providers such as Vonage the porting in of a number is not a pre-requisite for establishing VoIP service activation provided that the customer keeps their existing broadband service. When a Vonage customer initially subscribes to Vonage that customer is allocated a new geographic telephone number by Vonage and that number is activated on the Vonage service commencement date. Following the service activation date (the date on which Vonage customers can make and receive calls utilising the Vonage service) a customer can then choose to port in or port out their telephone number. It is the consumer protection issues surrounding a Vonage customer subsequently wishing to port in their existing dsl telephone number (e.g., BT number) to Vonage (or any VoIP provider) that Ofcom has failed to address in its consultation.

Currently the dsl connection will be lost when porting the number which is assigned to the underlying telephone service to a new telephone service which is to be provided via the existing dsl service (e.g. VoIP service). Upon porting the number, the telephone & dsl services are both ceased **leaving the customer without any fixed line connectivity whatsoever**.

Practical example of the problem:

A customer with dsl broadband on their line decides to port their number to another CP. Customer approaches the CP and requests a number port. The CP follows the standard process and ports the customer's number. As a consequence of porting out a number, BT disconnects the customer's voice service and because the dsl connectivity is dependant on the presence of an underlying telephony service the dsl connection is ceased also. The result is that the customer loses both their voice service and their dsl connection.

This situation occurs despite the fact that the customer never approached their existing provider with a request for any of their services to be disconnected. However both voice service and their dsl service will have been disconnected.

The loss of all services running across a dsl connection on porting of a number from a dsl provider to a VoIP provider is a consequence that consumers are not aware of at the time they put in a request for porting their number to a VoIP provider.

The consumer protection solution to prevent this situation would be for BT (dsl provider) to automatically re-number the line on porting. This simple solution is, however, a long way off. The FSC submitted an SOR to Openreach back

in September 2007 seeking this solution. Currently, the OTA is working with industry to push for an Openreach product to address the problem. However, **some 4 years on we are still no nearer a solution**. It is therefore highly regrettable that Ofcom has not used its consultation concerning amendments to GC 18 to address this particular problem which will not be solved by the payment of compensation as envisaged under current proposals. The real issue is <u>loss of service</u> in the circumstances detailed above. The elimination of this consumer harm will not be resolved until Ofcom takes direct consumer protection steps to bring about the adoption by Openreach and other WLR CPs of proposals which will cause the dsl line to be renumbered on porting.

ii) Ofcom's proposals do not deal with how compensation is to be measured where the customer is requesting a port out to a more expensive GP service. If the delay is caused by the LP it is unclear how "reasonable compensation" should be calculated in these circumstances. It is unclear whether compensation should be calculated according to the LP's own formula for compensation or whether it should be calculated according to the higher costs of the GP's service. For example, using BT's fault compensation formula (as set out in (i) above), a VoIP provider's compensation levels would be calculated at a few pence for each day of delay. However, would this level of compensation be deemed reasonable when the customer is seeking a port when switching to a GP's more expensive service (to BT for example)? Basing the level of compensation on the value of the GP's service could lead to frankly farcical results. Look, for example, at the cost of BT's ISDN2e ISDN30 services. These are high value services where compensation levels could run into hundreds of £££s. It would be unreasonable and disproportionate for an LP to be required to pay these high levels of compensation. The flaw in Ofcom's thinking behind compensation is the assumption that a telephone number = service provision (i.e. that a delay or fault in porting is analogous to a delay or fault in service provision). On the other hand, and at the other end of the spectrum, Ofcom in its consultation on geographic numbers has calculated (paragraph 6.58 of the consultation on geographic numbers) that the cost of a telephone number is 10 pence per number per year. If the cost of a telephone number is 10 pence per number per year then there is no logic to a CP being required to pay higher levels of compensation based on service provision. If the level of compensation is payable due to the failure to release a number then surely the amount of compensation payable should be related to the actual cost allocated to that number – not the service that would be run over that number.

iii) Ofcom in paragraph 10.62 of the Consultation states that it does not expect the cost of its proposals to be onerous as any scheme could be run in tandem with the obligatory ADR processes. Ofcom assumes that costs to administer the schemes and make payments to subscribers in relation to delayed porting will always ultimately be borne by the CP responsible for the delayed port. This is not going to be the case for a number of reasons:

Ofcom itself in paragraph 10.38 acknowledges that the complexity of the port process increases where multiple parties are involved. It would not be unusual for four parties to be involved in a port request: the GP, the LP, the Range

Holder and a Reseller. Of com is ignoring the central problem that in the event of a delay there is no independent information available to a customer to determine who is actually responsible for the delay. Even if, for example, it could be determined that the delay was caused by the Range Holder it would not be possible for the customer to seek compensation from the Range Holder because the customer has no relationship whatsoever with the Range Holder. Is Ofcom therefore proposing in this circumstance that the customer must channel all claims through the CP with which the customer has a contractual relationship? If so, the only way that the CP might be able to recover compensation for the customer would be if the customer's CP had a commercial agreement in place with the Range Holder (or other applicable CP) for the channelling and resolution of such complaints. In practice such agreements would likely take an age to negotiate (e.g. as is the case with trying to conclude porting agreements today) and in any event the burden of administrative costs and the time which would be incurred and borne by the customer's CP would be wholly disproportionate if it had to follow such a process.

Given this lack of availability to customers of information concerning the reasons for a port delay, the only option open to the customer realistically would be for the customer to pursue an ADR claim via CISAS or OtelO. The customer's CP would therefore be dragged into ADR even if it was not responsible for the delay. True, the customer's CP could argue its case before CISAS or Otelo but the ADR administration costs of each arbitration (win or lose) is c.£350.00 which will always be borne by the customer's CP – win or lose. The costs of Ofcom's proposals will therefore be very high indeed if cases are referred to ADR through no fault of the customer's CP.

iv) Of course, problems associated with establishing responsibility for delay and payment of compensation would not be an issue if Ofcom proceeded with a centralised data base for porting ("CDB"). With CDB, ports could be guaranteed to be completed within one working day and should any delay occur then responsibility for the delay would be readily ascertainable from reporting built into the administration hub.

v) Under Ofcom's proposals compensation would also be payable for abuse in the porting process yet nowhere is "abuse "defined. Vonage would welcome guidance as to what Ofcom would consider to be "an abuse of porting".

Vonage Limited 7th April 2011