



## Consumer Switching

A statement on changes to switching processes for fixed voice, broadband on the KCOM copper network

A consultation on modifications to General Conditions to give effect to these changes

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**Statement**

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## About this document

It is vital for consumers to be able to exercise their choice and switch providers easily in order to take advantage of competition in the communications sector.

This document sets out our decision on changes to the processes used to switch voice and broadband provider on the KCOM copper network<sup>1</sup>. This network is present in the Kingston upon Hull area, where the Openreach copper network is not available. This statement follows our consultation on KCOM network switching processes, which was published on 29 October 2014 and closed on 10 December 2014<sup>2</sup>.

The consultation asked whether consumers planning to change their voice or broadband provider over the KCOM copper network would benefit from harmonising the two existing switching processes to a single process and, if so, whether this process should be led by the gaining or the losing provider. We also sought views on a number of proposals designed to enhance consumer protection during switching on the KCOM network. Finally, we asked about the implementation timescales for these proposed reforms, and whether we should take into account any other issues in making our decision.

This document summarises our consultation proposals, sets out the responses we received, and then gives our assessment and decision on each proposal. It then consults on the proposed wording of the modified General Conditions (GCs) to give effect to the decisions we have made.

Our work on KCOM switching processes follows similar work on the Openreach network. In 2013 we harmonised the processes used to switch fixed voice and broadband services over Openreach to a single process led by the Gaining Provider. We also mandated consumer protection enhancements to this process. These reforms will be implemented on 20th June 2015.

We are also currently undertaking work to understand the impact of switching processes used on other networks on the consumer experience of switching and on competition. This includes the switching of bundled voice, broadband and subscription pay TV services to and from cable and satellite, and voice and data services on mobile networks. We plan to publish our findings in 2015, together with a consultation, should we conclude that further switching processes reforms should be made.

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<sup>1</sup> Throughout this document we refer to the 'KCOM copper network'. By this we mean the copper network operated by KCOM Group PLC in the Hull area. This network was referred to by respondents to our October consultation variously as the 'KC copper network' or the 'KC Hull (Kingston Communications) network'.

<sup>2</sup> Referred to in this document as 'the October consultation'.

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## Section 1

# Executive summary

- 1.1 Competitive communication markets are more likely to work well for consumers when it is quick and easy to switch between providers.
- 1.2 In 2013 we decided to harmonise switching processes on the Openreach network to a single process based on the existing Gaining Provider Led Notification of Transfer (GPL NoT) model. We also added enhancements designed to improve consumer protection during switching.
- 1.3 In October 2014 we consulted on similar proposals for the KCOM<sup>3</sup> copper network in the Kingston upon Hull area. These included proposals to harmonise existing switching processes to a single process based on the existing GPL NoT model, and to add a number of consumer protection enhancements.
- 1.4 The KCOM and Openreach copper networks, and the switching processes they use, are similar. We consider that the problems arising from these processes, and the resulting consumer harm, are also likely to be similar, albeit on a smaller scale on KCOM. These harms include the drawbacks of having two processes rather than one, and the disadvantages of the Losing Provider Led Migration Authorisation Code (LPL MAC) process.
- 1.5 To address these issues we have decided to require that the LPL MAC process is decommissioned on the KCOM network, and replaced with the existing Gaining Provider Led Notice of Transfer (NoT) process. We think this will deliver improvements for consumers more quickly, with lower implementation risk and at lower cost, than changing to a different switching process.
- 1.6 However, we recognise that there are potential problems associated with the NoT process, including slamming, break in service, erroneous transfers, and lack of clarity over the implications of switching. To address these issues, we have decided to require that:
  - Gaining Providers (GPs) obtain and store a record of customer consent to switch;
  - GPs electing to co-ordinate the transfer of bundled services must submit an order to KCOM, where available, for simultaneous transfer with minimal loss of service;
  - GPs must not place Working Line Takeover (WLT) orders unless an exact address match is identified, and in these circumstances LPs must notify the incumbent user that an in-bound customer wishes to take over their line; and
  - Losing Providers (LPs) should provide consumers with better information on the implications of their decision to switch.
- 1.7 We have decided to allow KCOM, and the providers which operate on its copper network, until 20 June 2015 to ensure that the harmonised GPL NoT switching regime is in place, and to implement the NoT+<sup>4</sup> enhancements.

<sup>3</sup> KCOM is the designated Universal Service Provider in the Hull area.

<sup>4</sup> We term this proposed solution 'GPL NoT+' because it builds on the existing GPL NoT process.

## Section 2

# Introduction

- 2.1 In this section we set out the background to Ofcom's work on processes for switching fixed voice and broadband providers on the KCOM copper network in the Hull area. In light of the similarities between the processes used on the Openreach and KCOM networks (referred to above), we also describe the changes we have made to switching processes on the Openreach copper network, and explain the scope of the networks and services as included within our wider switching work programme.
- 2.2 In reaching our decisions to improve consumer switching processes on the KCOM network, we are exercising our powers to amend the General Conditions of Entitlement ('GCs') which apply to Communications Providers under the Communications Act 2003 ('the Act'). We set out below an overview of Ofcom's relevant duties and powers under the Act, and the requirements and procedures which must be met before Ofcom can introduce new GCs or modify existing GCs.
- 2.3 In Annex 2, we consult on the proposed modifications to the current GCs that are required to give effect to the decision set out in this document.

## Background

- 2.4 Well-functioning communications markets require effective switching processes. The ability to switch Communications Providers ('CPs') allows consumers to exercise choice, purchase the service or combination of services which best meet their needs, and switch away if they are dissatisfied with a provider. Conversely, ineffective processes constrain consumer choice, and hence can also be harmful to competition, investment and market entry.
- 2.5 Ofcom has a principal duty to further the interests of consumers in relevant markets, where appropriate by promoting competition. The interests of consumers in relation to switching processes mainly concern their experience of switching, including the ability to switch quickly and conveniently and without loss of service, to be made aware of the implications of their decision to switch before completing the process, and to be protected from being switched against their will. Here, we are primarily concerned with issues directly affecting consumers, but we also consider implications for competition.
- 2.6 In August 2013 we announced our decision to harmonise all switches made over the Openreach copper network to the existing Notice of Transfer (NoT) process, which is led by the gaining provider. We are currently working with industry and the Office of the Telecommunications Adjudicator (OTA) to ensure that this change is fully implemented by 20 June 2015.
- 2.7 In December 2013 we introduced a number of consumer protection enhancements to the NoT process used for Openreach switches. These included requirements for the gaining provider to obtain and store a record of the consumer's consent to switch, and for the losing provider to write to the consumer with an improved explanation of the implications of switching. We also introduced measures designed to reduce the incidence of erroneous transfers during working line takeovers, and to promote a more seamless transfer of bundled voice and broadband services. These enhancements, known as 'NoT+', came into force on 20 September 2014.

- 2.8 In October 2014 we published a consultation on changes to processes used for switching between providers offering voice and broadband services over the KCOM copper network in the Hull area. As with Openreach, we proposed to harmonise the two existing processes to the existing NoT process, which is led by the gaining provider. We also proposed to apply the 'NoT+' consumer protection enhancements to the harmonised process. This consultation closed on 10 December 2014. This document sets out our decision in relation to these proposals. We are also consulting on the amendments to the GCs required to give effect to our decision.
- 2.9 Our work on the switching processes used on the KCOM copper network forms part of Ofcom's wider programme of switching work, which aims to improve the experience of consumers seeking to change their provider. As set out in our July 2014 Call For Inputs<sup>5</sup>, we are currently assessing switching processes for voice, broadband and pay-TV services (and service bundles) delivered over cable, satellite, Openreach and mobile networks. In addition, we continue to explore options for making incremental improvements to Openreach switching processes, and to address barriers to switching, both contractual and non-contractual.

## Scope of this statement and consultation

- 2.10 This statement and consultation concerns processes for switching voice and broadband provider over the copper network owned and operated by KCOM in the Hull area ('the KCOM copper network').
- 2.11 We are not considering, for the purposes of this work, switches made between this network and other networks, including switches made to and from the fibre network which KCOM is currently deploying to premises within its footprint. We have also excluded switches between the KCOM and Openreach copper networks in locations where overlap exists between the two networks (such as the East Yorkshire Expansion area<sup>6</sup>). Where mobile and pay TV services are taken as part of a bundle with KC voice or broadband services, we are only concerned for present purposes with switching processes for the voice and broadband components.

## Regulatory framework

- 2.12 We are proposing to improve consumer switching processes by using our powers to amend the General Conditions of Entitlement ('GCs'). We set out below an overview of Ofcom's relevant duties and powers under the Communications Act 2003 ('the Act') and the requirements and procedures which must be met before Ofcom can introduce new GCs or modify existing GCs.

## Legal framework

- 2.13 Ofcom's legal powers and duties under the Act to regulate this area of the communications sector are derived from and must be read in light of the objectives

<sup>5</sup> See *Consumer switching Next steps and Call for inputs* Ofcom July 2014, at: [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-cfi/summary/Consumer\\_switching\\_cfi.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-cfi/summary/Consumer_switching_cfi.pdf)

<sup>6</sup> Outside of the Hull area KC has an expansion area of its copper network which covers some parts of East Yorkshire (known as the KC EYE network), where separate Openreach infrastructure is also present.

and principles set out in the European Framework and its associated Directives<sup>7</sup>. These provide a common framework for the regulation of electronic communications networks and services in the EU.

### **Ofcom's general duties**

2.14 Section 3(1) of the Act states that:

'it shall be the principal duty of Ofcom, in carrying out their functions:-

to further the interests of citizens in relation to communication matters; and

to further the interests of consumers in relevant markets, where appropriate by promoting competition'.

2.15 Section 3(2) of the Act states that Ofcom is required, when carrying out its functions, among other things, to secure the availability throughout the UK of a wide range of electronic communications services.

2.16 Section 3(3) of the Act requires Ofcom, when performing its duties, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and any other principles appearing to Ofcom to represent best regulatory practice.

2.17 Section 3(4) of the Act states that in performing its duties, Ofcom must also have regard to a number of matters such as appear to be relevant in the circumstances, including:

- i) the desirability of promoting competition in relevant markets;
- ii) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- iii) the desirability of encouraging investment and innovation in relevant markets;
- iv) the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;
- v) the needs of persons with disabilities, of the elderly and of those on low incomes;
- vi) the opinions of consumers in relevant markets and of members of the public generally; and

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<sup>7</sup> The regulatory framework consists of the Framework Directive and four Specific Directives:

- (a) Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities,
- (b) Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services,
- (c) Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, and
- (d) Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services; and
- (e) Directive 1997/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector.

vii) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsection 3(1) and 3(2) is reasonably practicable.

2.18 In addition, Section 3(5) of the Act requires Ofcom, when performing its duty to further the interests of consumers, to have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

2.19 Consumer is defined in Section 405(5) of the Act, and includes people acting in their personal capacity or for the purposes of, or in connection with, a business.

### **European Community requirements for regulation**

2.20 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements. In summary, these requirements are to:

- i) promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- ii) contribute to the development of the European internal market;
- iii) promote the interests of all persons who are citizens of the European Union;
- iv) take account of the desirability of carrying out its functions in a manner which, so far as practicable, does not favour one form of or means of providing electronic communications networks or services over another, i.e. to be technologically neutral;
- v) encourage the provision of network access and service interoperability for the purpose of securing:
  - o efficient and sustainable competition;
  - o efficient investment and innovation; and
  - o the maximum benefit for customers of CPs.
- vi) encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of CPs.

2.21 In doing so, Ofcom has to read these requirements in accordance with the requirements of Article 8 of the Framework Directive. Article 8 sets out a number of objectives (reflected in section 4 of the Act - above) among which are, for example, the objective of promoting the interests of the citizen - this is stated specifically to include ensuring a high level of protection for consumers in their dealings with suppliers, promoting the provision of clear information and contributing to ensuring a high level of protection of personal data and privacy<sup>8</sup>. Under Article 8, national authorities are also required to ensure that when they carry out the regulatory tasks specified in the European Framework, they take all reasonable measures which are aimed at achieving those objectives and are proportionate to them.

2.22 The Authorisation Directive sets out a general authorisation scheme for the regulation of electronic communications networks and services. Article 6 of that Directive allows conditions to be set which include 'consumer protection rules specific

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<sup>8</sup> See Article 8 paragraph 4 (b) (c) and (d)



to the electronic communications sector, including conditions in conformity with Directive 2002/22/EC ('Universal Service Directive'). The latter include obligations to protect consumers throughout the switching process (see further below). In all cases, the conditions that are imposed must be non-discriminatory, proportionate and transparent<sup>9</sup> and limited to what is strictly necessary to ensure compliance with the requirements and obligations under Community law and national law in accordance with Community law<sup>10</sup>. However, in ensuring a high level of protection for consumers, Ofcom's power to set conditions relating to consumer protection is not limited to the measures set out in the Universal Service Directive<sup>11</sup>.

## **Powers and duties in relation to General Conditions**

- 2.23 Under the Framework, sector specific obligations may be set that apply generally to all electronic communications services or to specific types of such services. Accordingly, in setting conditions on CPs under section 45 of the Act, Ofcom has the power to set conditions on all CPs or all CPs providing services of a particular description specified in the condition (section 46 (1) and (2)) - for example providers of publicly available telephone services). The specific requirements will largely depend on the nature of the service and the extent of the harm or potential harm that has been identified in relation to that service.
- 2.24 Section 45 of the Act gives Ofcom the power to set GCs which can only contain provisions authorised or required by one or more of Sections 51, 52, 57, 58 or 64 of the Act. Section 47 governs the circumstances in which Ofcom can set or modify a GC. It states that a condition can be set or modified where that is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - b) not such as to discriminate unduly against particular persons or against a particular description of persons;
  - c) proportionate to what the condition or modification is intended to achieve; and
  - d) in relation to what it is intended to achieve, transparent.
- 2.25 Under Section 51(1)(a) of the Act, Ofcom can set GCs which make such provision as we consider appropriate for the purpose of protecting the interests of end-users of public electronic communications services. Under Section 51(2) this power includes the power to set conditions for that purpose which:
- i) relate to the supply, provision or making available of goods, services or facilities in association with the provision of public electronic communications services
  - ii) give effect to Community obligations to provide protection for such end-users in relation to the supply, provision, or making available of those goods, services or facilities;
  - iii) require the provision, free of charge, of specified information, or information of a specified kind, to end-users; and

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<sup>9</sup> See Article 6(1)

<sup>10</sup> See Recital 15

<sup>11</sup> See Article 1(4) of the Universal Service Directive

- iv) ensure that conditions and procedures for the termination of a contract do not act as a disincentive to an end-user changing CP.
- 2.26 Ofcom's power to set conditions which give effect to Community obligations under (ii) above include those contained in Article 30 of the Universal Service Directive. As indicated earlier, these include, amongst other things, particular obligations requiring Member States to protect consumers throughout the switching process, including facilitating number portability and subsequent activation within specified time limits and ensuring that consumers are not switched to another CP against their will. However, Ofcom's power to set conditions in order to protect end-users is not limited to the list of purposes set out in 51(2)<sup>12</sup>.

### **Application of the legal framework to switching processes**

- 2.27 Ofcom's principal duty, in carrying out our functions, is to further the interests of citizens in communications matters, and consumers in relevant markets, where appropriate by promoting competition.
- 2.28 In the current context, our primary objective is to further the interests of consumers by protecting their interests as end-users of voice and broadband products delivered over the KCOM copper network. This document is primarily concerned with how Ofcom should seek to protect those interests where a consumer wishes to switch supplier.

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<sup>12</sup> Article 1(4) of the Universal Service Directive provides that the provisions of that Directive concerning end users' rights apply without prejudice to consumer protection (in particular Directives 93/13/EC and 97/7/EC and national rules in conformity with Community law).

## Section 3

# Harmonisation to GPL NoT+

## Introduction

3.1 In this section we provide our final assessment and conclusions on our proposals for changes to the processes used for switching fixed voice and broadband services on the KCOM network. These proposals were to:

- Harmonise to a single switching process.
- Adopt the existing gaining provider led Notification of Transfer ('NoT') process as the single harmonised process.
- Implement the 'NoT+' consumer protection enhancements to the NoT process.

## Harmonise to a single switching process

### Summary of our October consultation

3.2 Two formal switching processes are currently available to help consumers in the Hull area who wish to move from KC to a reseller, from a reseller to KC, or between resellers.

- **The Notice of Transfer (NoT) process** is used for switching fixed voice services on the KCOM copper network.<sup>13</sup> This is a gaining provider led (GPL) process, where the consumer need only contact their (new) Gaining Provider to switch. The GP then places an order via an email to initiate the transfer process and all provisioning activity is undertaken via KCOM's systems.

The consumer receives letters from both providers confirming the planned switch before it happens. This gives them an opportunity to stop the order going ahead in cases where they change their mind, or have no knowledge of (or did not consent to) the attempted switch. Migration of fixed-line services provided on the KCOM copper network using the NoT process are subject to the provisions of GC 22.3 to GC 22.15 and Annex 1 of GC 22.

- **The Migration Authorisation Code (MAC) process.** This is a Losing Provider Led (LPL) process which applies to DSL broadband switches. A consumer wishing to change provider requests a code (a reference number generated by KCOM systems) from their Losing Provider, who carries out checks to confirm that the request has been made by the legitimate account holder. The Losing Provider may discuss the implications of switching with the consumer during this time. The consumer must then supply the code to their GP, who places an order via email to initiate the transfer process. Switches of broadband services over

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<sup>13</sup> On the Openreach network the NoT process is also used for switching broadband services where either the gaining or losing provider uses Metallic Path Facility ('MPF') technology, and for fixed voice services where both gaining and losing providers use Wholesale Line Rental ('WLR') technology. MPF is the product sold by Openreach which allows providers to gain full control of the local loop to deliver both voice and broadband to end users. WLR is the product offered by Openreach which allows providers to offer fixed voice services to end users without having to fully manage the line.

KCOM's Access Network are subject to the existing requirements as set out in Annex 3 of GC 22.

All voice and broadband switches over the KCOM network can be executed using one of these two processes, depending on the service or combination of services being switched. However, the consumer may instead elect to co-ordinate the transfer themselves, by contacting their current provider to terminate their existing contract, and requesting a new service from their new provider. Under this arrangement it is the consumer who manages the stopping and starting of the two services. This arrangement does not constitute a formal process; we describe it as **Cease and Re-provide**.

- 3.3 In our consultation (paragraphs 3.10 to 3.11) we stated our belief that there is a risk that the existence of two formal processes on the KCOM copper network may increase the perception among consumers that switching is difficult. We highlighted evidence from the August 2013 consultation on Openreach switching processes (paragraph 4.13)<sup>14</sup> that suggests multiple processes may deter some consumers from switching. We noted that this perception was more common where the switch involved the navigation of two processes simultaneously, as with the migration of a bundle of fixed voice and broadband services on the KCOM copper network.
- 3.4 We proposed that, in light of the benefits to consumers of a single switching process, and because the maintenance of separate processes does not in itself generate material consumer benefits, processes for switching communications services over the KCOM copper network should be harmonised.

### Stakeholder responses

- 3.5 All four respondents to our consultation broadly accepted that our proposal to harmonise the switching process would benefit CPs and consumers.
- 3.6 KCOM's key concern was that the geography of service provision should not be used to determine the relevant switching process. In particular, it would be an unnecessary burden if the LPL MAC process remained in the Hull area for broadband switches, while a GPL process was used elsewhere in the UK.<sup>15</sup> KCOM stated that the use of different processes would 'simply create confusion and inefficiencies that are unhelpful for customers, ourselves and other providers'.<sup>16</sup> It saw consistency between the KCOM and Openreach GC 22 requirements as the best way to achieve a proportionate and efficient switching process in Hull.
- 3.7 SSE stated its support for the harmonisation of switching processes in a range of situations, including the KCOM copper network.

<sup>14</sup> For example our research found that around one third (34%) of those who had not switched or had not considered switching provider in the last 12 months, and felt switching providers was too much hassle, raised concerns about knowing which steps they needed to take to switch provider. Furthermore, 8% of those considering switching broadband as a standalone service or as part of a bundle decided not to switch as they were 'worried about the process'.

<sup>15</sup> KCOM referred to its responses to earlier consultations that identified potential harm with multiple switching processes. KCOM expressed support for 'a common process across services and network infrastructures'. See second paragraph, Response by KCOM, 4 May 2012, <http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/responses/KCOM.pdf>

<sup>16</sup> Page 2, 'Response by KCOM', <http://stakeholders.ofcom.org.uk/binaries/consultations/gpl-harmonisation/responses/KCOM.pdf>

- 3.8 The Consumer Communications Panel ('The Panel')<sup>17</sup> and SSE agreed that the problems we identified in relation to switches on the Openreach network, including those associated with the use of different processes, are also likely to exist in relation to switching processes on the KCOM network.

### **Our assessment and conclusion**

- 3.9 Having considered the responses to our proposal, and in light of our initial assessment, we have decided to maintain our provisional conclusion, as set out in our October consultation.
- 3.10 We think we should act to protect consumers from the harm that is likely to be caused by the existence of multiple switching processes. Furthermore, we believe that the maintenance of separate processes does not in itself generate material benefits for consumers. As KCOM points out, this could lead to confusion and inefficiencies that are unhelpful for KCOM, providers and consumers.
- 3.11 Accordingly, for the reasons set out above, having weighed the benefits identified in our consultation against the likely costs of implementation, taking into account stakeholder responses, we have decided, consistent with the position set out in our October consultation, that it is appropriate and proportionate to harmonise to a single switching process for broadband and fixed voice switches over the KCOM copper network, and we consider that the proposed changes to the GCs meet the test at Section 47(2) of the Act.

### **Adopt the existing Gaining Provider Led Notification of Transfer process**

- 3.12 Having decided to harmonise to a single switching process, we considered which form of process offers the most appropriate and proportionate way to enhance the consumer experience of switching, while continuing to promote competition. We set out below a summary of our consultation proposals and stakeholder responses, before setting out our decision.

### **Summary of our October consultation**

- 3.13 We explained in our October consultation (paragraph 3.13) that, in choosing between a harmonised single switching process led by either the Gaining or the Losing Provider, our aim was to find a proportionate solution which can enhance the consumer experience of switching while continuing to promote competition. We set out (in paragraph 3.14) four key factors which weighed in favour of adopting a GPL solution:
- i) We considered that LPL systems generally create higher switching costs and difficulties for consumers. Under LPL, consumers must go through a process involving the losing provider which the losing provider has little incentive to support. Harmonising to an LPL system therefore risks worsening the consumer experience of switching. By contrast, we highlighted previous research on the

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<sup>17</sup> The Panel referred to their views, which have not changed, expressed in the 2012 response to Ofcom's consultation on proposals to change switching fixed voice and broadband providers on the Openreach copper network. In this submission they expressed their support for harmonised switching processes for all communications services based on a GPL model. See paragraphs 13 and 11 respectively. <http://www.communicationsconsumerpanel.org.uk/downloads/Switching-response-080512.pdf>

Openreach network which found that GPL processes tend to support a positive consumer experience<sup>18</sup>. We stated that we are not aware of any reasons why GPL would not also support a better consumer experience on the KCOM copper network, given its similarities with the Openreach network.

- ii) We outlined our concerns over the impact which harmonisation to an LPL system could have on competition. We pointed to our previous analysis of Openreach switching systems which found that it was harder for CPs to acquire customers under LPL than GPL because consumers find the LPL process more difficult.<sup>19</sup> We explained that we considered this to be particularly important in the context of KC's large share of retail voice and broadband customers in the Kingston upon Hull area.
- iii) We explained that harmonising to a GPL system based on the Notice of Transfer (NoT) process is likely to be less disruptive for consumers, industry and competition, than adopting the LPL MAC process. This is because a large majority of switches over the KCOM copper network relate to voice services delivered over analogue lines. These switches use the GPL NoT process. By contrast, only a minority of switches relate solely to broadband, and therefore use the LPL MAC process.
- iv) Given that many CPs will have already adapted their switching processes to work with the GPL NoT process on the Openreach network, we considered that the costs of adopting a harmonised GPL NoT process on the KCOM network are not likely to be high.

3.14 We explained that, given these considerations, we believed that GPL processes are more likely than LPL to reduce switching costs and minimise difficulties for consumers, and are also more likely to support competition. Harmonisation to a GPL system should therefore be preferred.

### Stakeholder responses

- 3.15 All respondents to our consultation agreed with our proposal that the switching process on the KCOM network should follow a gaining provider-led process.
- 3.16 KCOM stated that it 'would represent an unnecessary regulatory burden to continue the MAC process in the Hull area'<sup>20</sup>. In light of the relatively low transfer volumes and the existence of manual switching processes, KCOM agreed that harmonisation to the NoT process would require limited systems development and be less onerous for operators than if multiple switching processes continue to co-exist.
- 3.17 SSE said it supports the move to GPL throughout the retail communications markets and agreed that consumers were likely to find switching easier under a GPL than an LPL process. Similarly, the Panel stated that, on the evidence presented, a GPL model should be the basis for all switching processes.

<sup>18</sup> See Figure 1 in the October consultation

<sup>19</sup> There may also be a risk to competition due to the ability of the LP to make a 'save' offer to each and every customer switching under the MAC process. However, we do not have information on how prevalent this activity is on the KCOM copper network and so have not analysed it further.

<sup>20</sup> Page 4, 'Response by KCOM', <http://stakeholders.ofcom.org.uk/binaries/consultations/gpl-harmonisation/responses/KCOM.pdf>

- 3.18 In addition, one respondent set out, on a confidential basis, concerns that the introduction of our proposals without further order automation could lead to more order errors. This respondent said [§<].

### **Our assessment and conclusion**

- 3.19 Having considered stakeholder views on whether we should harmonise to a GPL or LPL system on the KCOM network, and in light of our initial assessment, we have decided to maintain our provisional view, as set out in our October consultation.
- 3.20 We believe that LPL systems create higher switching costs and difficulty for consumers. We also remain concerned that harmonisation to an LPL system risks damaging competition, particularly in light of KC's large share of retail voice and broadband customers in the Kingston upon Hull area.
- 3.21 Moreover, given the vast majority of switches on the KC copper network already use the GPL NoT process, it is also a smaller and less interventionist step, in the context of the KCOM copper network, to harmonise to this process than to an LPL alternative. We maintain our view that, as most CPs on the KCOM network are already developing NoT switching processes for the Openreach network, and all already employ NoT for voice switches on the KCOM network, the costs of extending NoT to include broadband on the KCOM network are not likely to be high. We have also not seen evidence which leads us to conclude that using the GPL NoT process for broadband switches would lead to more order errors than under the current MAC process.
- 3.22 Accordingly, for the reasons given above, having weighed the benefits identified in our consultation against the likely costs of implementation, taking into account stakeholder responses, we have decided, consistent with the position set out in our October consultation, that it would be appropriate and proportionate to harmonise to the GPL NoT process for broadband and fixed voice switches over the KCOM copper network, and we consider that the proposed changes to the GCs meet the test at Section 47(2) of the Act.
- 3.23 As a result, following implementation of our decision, when a switching process is triggered by the customer, CPs providing voice or broadband services on the KCOM copper network will be obliged to follow the NoT process for transfers. This means they must comply, inter alia, with the following GCs: GC 22.3 on mis-selling, GC22.4 on information at the point of sale, GC 22.5 and GC 22.6 on customer's termination rights, GC 22.7 on records retention, GC22.10, 22.11 and 22.13 on Gaining and Losing Provider letters, GC 22.15 on reactive save, and Annex 1 on Notification of Transfer and Cancel Other.
- 3.24 GCs 22.8, 22.9, 22.12, 22.14, 22.22 and Annex 2 are known as the 'NoT+' consumer protection enhancements. We deal with the application of these GCs to KCOM providers separately in the section which follows.

### **Implement the 'NoT+' consumer protection enhancements**

- 3.25 We stated in our October consultation our view that there are significant advantages to adopting the existing Notice of Transfer (NoT) switching process for voice and broadband switches made over the KCOM network. We considered that this would be likely to deliver improvements for consumers more quickly, with lower implementation risk and at lower cost, than changing to a new form of a GPL process. We therefore did not consult on alternative GPL models.



- 3.26 However, we explained in paragraph 3.17 that, on the Openreach copper network, the NoT process is associated with four key switching-related problems:
- i) slamming;
  - ii) break in service;
  - iii) erroneous transfers; and
  - iv) lack of clarity over the implications of the switch.
- 3.27 Given its similarities with the Openreach network, we noted that some or all of these problems are also likely to exist on the KCOM network, although their impact and scale may differ.
- 3.28 The 'NoT+' consumer protection enhancements are intended to help address these issues. These measures currently apply to the migration of voice services over the Openreach network. From 20 June 2015, they will also apply to broadband migrations over the Openreach network. In our October consultation we proposed extending the enhancements to include fixed voice and broadband migrations over the KCOM copper network.
- 3.29 In this section we summarise each enhancement. We then provide an updated assessment of the implementation cost and the proportionality of the measure, and set out our final decision. We finish by outlining the expected timescales for implementing the full set of NoT+ enhancements, and set out how the proposed changes translate into GC modifications.

## **i) Obtain and store record of customer consent to switch**

### **Introduction**

- 3.30 Switching processes must include appropriate measures to ensure that the customer has consented to have their service transferred. Otherwise, they may find themselves switched to another provider without their explicit knowledge or consent (this is known as 'slamming').
- 3.31 GC 22.8 and GC 22.9 require CPs to obtain a record of customer consent to switch, and to store it for 12 months, irrespective of whether the contract for the provision of the Communications Services is subsequently cancelled or terminated. These requirements currently apply to Gaining Providers on the Openreach copper network for fixed voice migrations; from 20 June 2015 they will also apply to Openreach broadband migrations.
- 3.32 In our October consultation, we sought to extend the scope of GC 22.8 and GC 22.9 to include Gaining Providers on the KCOM copper network, for both voice and broadband switches. This section sets out our updated assessment of this proposal.
- 3.33 We begin by detailing the current GC 22.8 and GC 22.9 record of consent requirements. We then summarise our findings on the level of slamming and the standard of record keeping by CPs, which can impact our enforcement activities. We highlight the reasons why we considered that a requirement for KCOM CPs to record and store a customer's consent to switch their broadband service is proportionate. We then set out our final decision, taking into consideration stakeholder responses to our proposal.



- 3.34 In summary, we have decided to extend the scope of GC 22.8 and GC 22.9 to include Gaining Providers on the KCOM copper network. As a result, they must record each customer's consent to switch their fixed voice and/or their broadband service, and retain this record for 12 months.

## Summary of our October consultation

### Current GC requirement on customer consent to switch

- 3.35 GC 22.8 currently places a requirement on Gaining Providers on the Openreach copper network to obtain from each consumer a clear 'record of consent' to switch. A record is currently required for each contract entered into by a GP with an end user. Each record must be retrievable on an individual basis, and must be retained for a 12-month period; GC 22.9 requires this even where the transfer is subsequently cancelled or terminated by the customer.

- 3.36 In our October consultation, we said that each of the following could constitute a record of consent:

- for telesales, a call recording of the customer's consent to the transfer. This could either be an individual element of the telesales process (i.e. a verification stage), or achieved by putting the consumer through to a separate person (e.g. internal verifier) who records the consent;
- for retail/shop and doorstep sales, a written record of consent signed by the customer to transfer; or
- for online sales, screen shots of order systems or account interactions relating to the sale in question. For example, by clicking the 'I Agree' button at the bottom of a record of consent page.<sup>21</sup>

- 3.37 A key aspect of the requirement is the ability to demonstrate that express consent was given by the customer and to make clear which service they consented to. To help achieve this, GC 22.8 requires that each record must contain the following information:

- a direct record of consent from the customer to migrate services to the Gaining Provider or to begin acquiring services over the target line;
- an explanation from the CP that they are required to create a record of the customer's consent;
- the name and address of the customer;
- the time, date and means by which the consent was given;
- where appropriate, the place where consent was given and the salesperson(s) involved;
- the address where the target line is situated; and

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<sup>21</sup> Additional clarifications arising from an Industry meeting in March 2014 on what could constitute a record of consent were published here:

[http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/statement/Additional\\_clarifications.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/statement/Additional_clarifications.pdf)

- where appropriate, the Caller Line Identification ('CLI' or telephone number) of the target line.

### Rationale for extending the GC 22.8 and 22.9 requirements to the KCOM copper network

- 3.38 In our October consultation (paragraphs 3.23 to 3.24) we explained why slamming can cause significant harm for affected consumers. We also explained that the level of slamming in the Hull area is likely to be low. However, we stated that we are concerned to ensure that slamming does not become a problem in the future.
- 3.39 We noted that on the Openreach network we found evidence of poor and variable record keeping by Communication Providers (CPs) in relation to mis-selling and slamming<sup>22</sup>. We said that deficiencies in CP record keeping could impede our ability to investigate slamming and that the current framework for enforcement is not well suited to addressing slamming by the long tail of smaller CPs.
- 3.40 We then set out, in paragraphs 3.27 to 3.29, the benefits that we believe are realised by the current GC 22.8 and GC 22.9 requirements to capture and store a record of consent to switch. These were:
- It will act as a deterrent against slamming because sales agents will be aware that consent is recorded for each sale.
  - It will help in any investigations made by a CP or as part of a dispute resolution process following a complaint from a consumer, to establish whether consent was given for a particular sale.
  - It will enhance our enforcement capabilities by improving the ease with which we can classify cases that are the result of slamming or other causes. This will ensure that we can target our resources at incidences of non-compliance and will enable prompt enforcement against CPs.
  - Where a CP fails to provide records, we have to identify other forms of evidence to determine whether there is non-compliance, including witness statements, questionnaires, and call notes. It takes significant resource to collect this evidence; freeing this up helps us focus on other complaints.
  - It will enable us to establish the extent of non-compliance more effectively by comparing transfer requests from the network provider with CPs records of consent, rather than basing our investigation only on complaints that we receive.
- 3.41 We also explained why we believed a 12-month retention period was necessary.

### Impact of the new requirement

- 3.42 We noted (in paragraphs 3.33 to 3.35) that the impact of our proposal to extend this requirement was likely to be felt most by smaller providers operating on the KCOM copper network, especially where they do not have call recording systems in place. We noted that costs may also be incurred by providers that do have call recording

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<sup>22</sup> Study by Mott McDonald, see paragraphs 5.35 to 5.39 of the August 2013 Openreach switching statement and consultation <http://stakeholders.ofcom.org.uk/consultations/consumer-switching-review/>

systems in place, but where these require additional systems configuration or hardware in order to store these recordings for the required time and retrieve them.

- 3.43 Although we did not assess the likely scale of these costs, we considered that they were not likely to be high, given the relatively straightforward nature of the systems and hardware that CPs would need to put in place in order to comply with the requirement. Furthermore, we noted that many resellers on the KCOM copper network also operate on the Openreach network. These providers should therefore already have appropriate recording systems in place in order to comply with the identical GC requirement for Openreach providers.

### Provisional view

- 3.44 Based on our assessment of the potentially serious nature of the harm caused to consumers by slamming, the consumer benefits of this enhancement if, as we would expect, it helps reduce slamming, and the likely low level of costs that would be incurred, we proposed that it was justified and proportionate to require this enhancement to be implemented on the KCOM copper network.

### **Stakeholder responses**

- 3.45 KCOM stated its support for the record of consent requirement and did not see issues in implementing it. It said that it has already implemented this for fixed-line transfers both within and outside the Hull area. Similarly, SSE saw no reason why there should be different requirements for the KCOM and Openreach copper networks.
- 3.46 While the Panel did not respond to individual NoT+ enhancements on the KCOM network, they noted their previous support for identical GC amendments on the Openreach network.<sup>23</sup>

### **Our assessment and conclusion**

- 3.47 We have considered stakeholder views on whether the requirement to obtain a record of consumer consent to switch, and store it for 12 months, should apply to voice and broadband migrations on the KCOM copper network. In light of this, and our initial assessment, we have decided to maintain our provisional view, as set out in our October consultation.
- 3.48 We believe that slamming can cause serious harm to consumers. Although the current incidence of slamming on the KCOM copper network appears to be low - we have not received any evidence to the contrary - we are concerned to ensure that it does not become a problem for consumers in the future. We also expect that requiring the consent of the customer consent will help reduce slamming. We think that the costs of implementing the requirement are likely to be low and, again, have not received any evidence suggesting this is not the case.
- 3.49 Accordingly, for the reasons given above, having weighed the benefits identified in our consultation against the likely costs of implementation, taking into account stakeholder responses, we have decided, consistent with the position set out in our October consultation, that requiring Gaining Providers on the KCOM network to

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<sup>23</sup> See 'Communications Consumer Panel response to Ofcom's consultation further to its statement on the processes for switching fixed voice and broadband providers on the Openreach copper network' <http://www.communicationsconsumerpanel.org.uk/downloads/switching-final-041013.pdf>

obtain a direct record of consent, and retain it for 12 months, is appropriate and proportionate; and we consider that the proposed changes to the GCs meet the test at Section 47(2) of the Act.

## ii) Minimising loss of service

### Introduction

- 3.50 An efficient switching process should minimise the risk of consumers experiencing breaks in, or loss of service, including where they switch multiple services (bundles) together. This continues to be a significant issue for consumers, particularly in light of increased take-up of bundled products and growing reliance on communication services for important functions such as banking and access to government services.
- 3.51 GC 22.14 sets out requirements in relation to the simultaneous transfer of voice and broadband services on the Openreach copper network. These requirements are intended to help minimise loss of service. This section describes the requirements in more detail. We then summarise our assessment of the nature and scale of problems relating to loss of service on the KCOM copper network, as set out in our October consultation. We go on to set out the reasons we gave for our proposal to address these issues by extending the scope of GC 22.14 to include CPs on the KCOM network, and explain why we believed this to be a proportionate measure. We then set out stakeholder views on our proposal before setting out our final decision.
- 3.52 In summary, we have decided to extend the scope of GC 22.14 to include CPs on the KCOM copper network.

### Summary of our October consultation

#### Current GC 22.14 requirement

- 3.53 Where a consumer requests a transfer of broadband and fixed voice services over the same line, and where a CP elects to co-ordinate the transfer, GC 22.14 mandates that the CP shall ensure that, where applicable, an order is submitted to Openreach, where available, for the simultaneous transfer with minimal loss of service of both communications services.
- 3.54 This requirement is intended to ensure that voice and broadband services can be switched together. It only applies where a consumer submits a single request to transfer broadband and fixed voice services, rather than multiple and non-simultaneous requests. It only applies to migrations on the Openreach network, and only where simultaneous transfer functionality is available to the CP.

#### Rationale for extending GC 22.14 requirement to the KCOM copper network

- 3.55 In our October consultation (paragraphs 3.74 - 3.77), we highlighted how our work on switching on the Openreach network had found that loss of service, particularly in respect of bundled services, was an important consumer issue. We found that the detriment suffered by those who experience loss of service can be significant. We noted that only some CPs had made use of industry developments intended to address this issue. Consequently, we introduced the GC 22.14 requirement, to help ensure the seamless transfer of bundled services on the Openreach network, and minimise the risk of loss of service.

- 3.56 We also explained (paragraph 3.78) that we had not examined in detail the extent of loss of service on the KCOM copper network. However, we said we believed that it is likely to be uncommon. This is because the number of switches is small, and they are managed using a manual process.
- 3.57 We set out our understanding that the simultaneous transfer of bundled communications services is currently available as a manual process on the KCOM network. Under this process, where the CP simultaneously submits the fixed voice and broadband components of an order, KCOM Wholesale should recognise it as a simultaneous order, and process it accordingly, with the aim of ensuring a seamless co-ordinated transfer. Nevertheless, we considered that consumers are likely to be best served by formalising this arrangement. We therefore proposed extending the scope of GC 22.14 to include KCOM copper network providers.

### Impact of the new requirement

- 3.58 We explained that, in the short term, we did not believe that CPs on the KCOM copper network would incur significant cost as a result of this requirement (paragraphs 3.80 to 3.81). This was because the existing process for migrating bundled fixed voice and broadband services is manual rather than automated, so CPs would not need to develop new systems before they were able to use it. One respondent, [S&K]. However, no evidence has been provided to contradict our provisional view that significant costs will not have to be incurred by CPs in the short term, as a result of this requirement.
- 3.59 We noted that, over the longer term, if a manual process were to become inefficient, for example following an increase in switching volumes, there might be scope for KCOM to develop simultaneous transfer functionality similar to that available on Openreach. In this event, we noted that most KCOM resellers will already have developed systems to enable them to use this functionality, in order to comply with their Openreach obligations. This should minimise the cost for them of complying with the new requirement on the KCOM network.

### Provisional view

- 3.60 In light of the harm suffered by consumers where bundled services are not transferred simultaneously, we stated that it was important to implement measures to address this. We stated our belief that extending the scope of the GC 22.14 requirements to include CPs on the KCOM copper network would achieve this. We considered that, in light of these likely benefits, this requirement would be proportionate when weighed against the costs, which are likely to be low.

### **Stakeholder responses**

- 3.61 SSE saw no reason why the requirement to use simultaneous transfer functionality where available should be different on the KCOM and Openreach copper networks.
- 3.62 KCOM agreed with our assessment that the incidence of loss of service was likely to be low on the Hull network, given the low volume of switches, and given they currently use a manual process to switch multiple services. KCOM said it did not anticipate the development of automated systems in the short-term, but said that if this was required in the future, it was likely to take place regardless of the need to use simultaneous transfer functionality. It therefore had no objection to the requirement.

## Our assessment and conclusion

- 3.63 We have considered stakeholder responses to our proposal to extend the application of GC 22.14 to CPs on the KCOM copper network. In light of these, and our initial assessment, we have decided to maintain our provisional conclusion, as set out in our October consultation.
- 3.64 We believe that consumers can suffer considerable harm where they experience loss of service. We think it is important to implement measures to ensure that services bundles can be transferred simultaneously, with a view to minimising loss of service. We continue to believe that extending the GC 22.14 requirements on simultaneous transfer to CPs on the KCOM copper network will help achieve this. Furthermore, we consider that the costs to CPs of implementation are likely to be low and we have received no evidence to the contrary.
- 3.65 Accordingly, we have decided to require that, where CPs on the KCOM copper network elect to co-ordinate a transfer of voice and broadband services over the same line, they must ensure that, where applicable, an order is submitted to KCOM where available, for the simultaneous transfer with minimal loss of service of both communications services, as required by GC 22.14. For the reasons given above, we maintain our provisional view, as set out in our October Consultation, and having weighed the benefits of this enhancement against the costs, that this measure would be justified and proportionate and we consider that the proposed changes to the GCs meet the test at Section 47(2) of the Act.

## iii) Reducing erroneous transfers under the Working Line Takeover process

### Introduction

- 3.66 Switching processes should ensure, as far as possible, that the correct customer has the correct service switched. Where a switching process does not operate as intended and a consumer's line or service is transferred in error, including when a consumer is moving home, this is known as an Erroneous Transfer (ET).
- 3.67 GC 22.22 and Annex 2 to GC 22 set out rules designed to minimise the incidence of ETs. These requirements currently apply where a Gaining Provider elects to carry out a working line takeover ('WLT') within the Openreach access network following a home move request.
- 3.68 In this section we detail the requirements of GC 22.22 and Annex 2. We then set out our assessment of the scale and nature of ETs that occur on the KCOM copper network as described in the October consultation. We also set out the reasons we gave for our provisional view that the incidence of ETs on the KCOM copper network could be reduced by including it within the scope of GC22.22 and Annex 2. We explain why we thought this proposal was proportionate. We then consider the responses we received from stakeholders on this issue, before setting out our final decision.
- 3.69 In summary, we have decided to extend the scope of GC22.22 and Annex 2 to GC 22 to include Gaining Providers on the KCOM copper network.

## Summary of our October consultation

### Current GC 22 requirement

- 3.70 GC 22.22 and Annex 2 to GC 22 set out requirements for CPs where a consumer moves home and seeks a 'Working Line Takeover' (WLT) on the Openreach network. A consumer may request a WLT where they are moving home and wish to transfer or establish a fixed line or broadband service at the new address where the 'target line' is situated.
- 3.71 To help avoid the wrong line being taken over in these circumstances (i.e. an ET occurring), GC 22 subjects CPs to two key requirements:
- They may place a WLT order only where there is an exact match for line identification. Where the target line cannot be identified the Gaining Provider is not permitted to submit the WLT order. GPs are required to take all reasonable steps to identify an exact match for the target line, in accordance with industry best practice.
  - When a WLT order has been placed, the losing (incumbent) CP must notify the incumbent end-user that an in-bound customer wishes to take over the target line. The letter must list the communications services, and where relevant the CLI, which will be directly affected by the transfer. It must also state the proposed migration date, and invite the incumbent end-user to contact the LP if they are not moving, or are moving at a later date than is specified in the letter. The notification should be a letter, in paper or another durable medium.
- 3.72 These requirements mandate two elements of an otherwise voluntary Best Practice Guide for industry, published and maintained by the OTA.<sup>24</sup> The Guide sets out recommended processes for CPs to follow in effecting transfers of services for customers. It aims, among other things, to minimise the occurrence of ETs, including where a WLT process is used.

### Rationale for extending the GC 22.22 and Annex 2 requirements to KCOM copper network

- 3.73 In our consultation document we explained in paragraphs 3.62 to 3.64 how erroneous transfers (ETs) can occur on the Openreach network where a CP inadvertently switches the wrong line. We described the harm this can cause both to the consumer whose line is incorrectly taken over, and to the consumer who requested the change. We also highlighted that CPs were likely to incur costs in seeking to resolve the issue. We then recalled our estimate of the number of households on the Openreach network affected by ETs, and the associated annual costs to consumers.
- 3.74 We said that we recognised that the risk of erroneous transfers occurring on the KCOM network (including any relating to WLT orders) is likely to be considerably less than on the Openreach network (paragraphs 3.66 to 3.67). The existence of only one database of lines and addresses, and the availability of CLIs under all switching scenarios, means errors are less likely. However, we considered there was still scope for ETs to occur on the KCOM network where several services are provided over a shared line or where the customer does not know the correct CLI for the

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<sup>24</sup> Best Practice Guide: Working Line Takeovers, Migrations & ELT avoidance, available at: <http://www.offta.org.uk/BPG-WLTs-Mgtns%20%20ELT%20Avoidance-v2.5.pdf>



address, e.g. in a home move context, and GPs find it difficult to identify the correct asset to switch.

- 3.75 We proposed to reduce or eliminate future ETs by extending the scope of GC 22 requirements on WLTs to KCOM copper network providers.

### Impact of the new requirement

- 3.76 We said that we thought the costs to CPs of implementing these requirements were likely to be low (paragraph 3.68). This was based on our understanding that, where a transfer on the KCOM copper network involves an active reseller line, it broadly already follows the OTA's Best Practice Guide for WLTs. Furthermore, many of the resellers that operate on the KCOM copper network are also present on the Openreach network, and are therefore already likely to have developed WLT processes in order to comply with the existing scope of GC 22.

### Provisional view

- 3.77 In view of the serious nature of the harm caused to consumers by ETs, and the costs incurred by CPs in dealing with them, we stated that it is important to implement measures to mitigate the risk of ETs occurring on the KCOM copper network. We stated our belief that extending the scope of the GC 22 WLT requirements would achieve this. We considered that in light of the likely benefits of the proposed requirements for exact match and notification, these enhancements would be proportionate when weighed against the costs, which are likely to be low.

### **Stakeholder responses**

- 3.78 SSE stated its broad support for GPL requirements that are the same for both the KCOM and Openreach copper networks. They were particularly supportive of the requirement to notify the end-user during a WLT as 'this forms a sensible backstop precaution against inadvertent erroneous transfers due to house moves'.<sup>25</sup>
- 3.79 SSE also supported our view that a single database (as in the case of KCOM) can be managed so as to eliminate confusion over which lines should be switched. They suggested that in these circumstances there may be less merit in regulatory intervention on exact match requirements. SSE stated its belief that switching systems require appropriate oversight and monitoring where there is a single authoritative view of the whole estate of switchable service points.
- 3.80 KCOM also agreed that the risk of ETs on the network in Hull were likely to be low as there is 'only one database of lines and addresses and CLIs are available under all switching scenarios'.<sup>26</sup> The incumbent provider stated it had no objection to the provisions of GC22.22 and Annex 2 of GC22 being extended to cover the Hull area.

### **Our assessment and conclusion**

- 3.81 We have considered stakeholder responses to our proposal to extend the application of GC 22.22 and Annex 2 to CPs on the KCOM copper network. In light of these

<sup>25</sup> See page 5, SSE response to KCOM Switching Consultation, <http://stakeholders.ofcom.org.uk/binaries/consultations/gpl-harmonisation/responses/SSE.pdf>  
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<sup>26</sup> Page 3, 'Response by KCOM', <http://stakeholders.ofcom.org.uk/binaries/consultations/gpl-harmonisation/responses/KCOM.pdf>



responses, and our initial assessment, we have decided to maintain our provisional conclusion, as set out in our October consultation, for the reasons set out below.

- 3.82 We believe that ETs can cause considerable harm to consumers and that CPs incur costs in resolving them – we have received no evidence to the contrary. We think it is important to implement measures to mitigate the risk of ETs occurring. We continue to believe that extending the GC 22 requirements on WLTs to CPs on the KCOM copper network is likely to help reduce the incidence of ETs in the Hull area. We consider that the costs to CPs of implementing this requirement are likely to be low, and, again, have received no evidence to the contrary.
- 3.83 Accordingly, we have decided to allow Gaining Providers on the KCOM copper network to place a WLT order only where there is an exact match for line identification, and to require Losing Providers to write to the incumbent consumer about the takeover, as specified under GC 22.22 and Annex 2. For the reasons given above, we maintain our view, as set out in our October Consultation, that having weighed the benefits of this enhancement against the costs, this measure is justified and proportionate and we consider that the proposed changes to the GCs meet the test at Section 47(2) of the Act.

## **iv) Provide better information on the implications of switching**

### **Introduction**

- 3.84 It is important that consumers are informed about the full financial and service implications of switching as part of the switching process. We believe that the best way to achieve this is through the letter sent to the consumer by the Losing Provider as part of the switching process.
- 3.85 Under GC 22.10, consumers entering into a new contract with a communications provider are sent letters by the GP detailing the services to be transferred, the date of the transfer, and setting out the customer's right to terminate the contract under GC 22.5. Under GC 22.11, they are also sent a similar letter by the LP which provides additional information on which services the LP reasonably thinks would be directly or indirectly affected or unaffected by the transfer.
- 3.86 Our 2012 Openreach switching consultation<sup>27</sup> found that the Losing Provider letter was effective, but did not always provide information relevant to the specific circumstances of each consumer. We found that this can cause confusion and may result in some consumers being inadequately informed or feeling compelled to contact the LP to find out more.
- 3.87 In order to address this, we added further requirements, under GC 22.12, for LP letters to provide better and more tailored information to consumers on the implications of their proposed switch. These requirements, which apply to LPs on the Openreach network only, came into force on 22 September 2014 for voice migrations, and will come into force on 20 June 2015 for broadband migrations.
- 3.88 In our October consultation, we sought to extend the scope of GC 22.12 to include KCOM copper network voice and broadband providers. This section sets out our updated assessment of this proposal.

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<sup>27</sup> See <http://stakeholders.ofcom.org.uk/consultations/switching-fixed-voice-broadband/>

- 3.89 We begin here by detailing the current GC 22.11 and GC 22.12 LP requirements. We then summarise our findings on the limitations of the GC 22.11 letter, and explain how we believe the GC 22.12 requirements address these. We highlight the reasons why we considered in our October consultation that extending these requirements to KCOM CPs is proportionate. We then summarise stakeholder responses to our consultation, before setting out our final decision.
- 3.90 In summary, we have decided to require LPs on the KCOM copper network to provide the information specified under GC 22.12 in their letter to consumers who are migrating their voice and/or broadband service.

## Summary of our October consultation

### Current GC 22 requirements

- 3.91 GC 22.11 requires Losing Providers on both the Openreach and the KCOM copper networks to provide information on the implications of switching by setting out the following in a letter to the end-user:
- the date of the letter;
  - that the End-User is transferring their Communications Service;
  - details of all Communications Services that will be transferred;
  - where relevant, the Calling Line Identification of all Communications Services that will be transferred;
  - details of all Communications Services or other types of services that the Losing Provider reasonably expects to be directly or indirectly affected by the transfer;
  - details of all Communications Services that the Losing Provider reasonably expects to remain unaffected by the transfer;
  - a reasonable estimate of the Migration Date (including date and time of the day); and
  - relevant contact details.

This information is currently required in respect of voice migrations on both the KCOM and Openreach copper networks, and for broadband migrations on Openreach from 20 June 2015. As a result of the decision set out in this document, use of the GPL NoT process will also be required from that same date in respect of all broadband service switches on the KCOM network.

- 3.92 Currently, GC 22.12 requires Losing Providers, on the Openreach copper network only, to provide the following additional information on the implications of switching in the letter to the consumer:
- an explanation that the transfer will automatically take effect on the Migration Date and that no contact is required with the Losing Provider to cancel their existing service;
  - an explanation that after the transfer, the Customer will receive a final bill including any Early Termination Charge that is due;

- an explanation of the applicable Early Termination Charge as set out in the contract;
- the means by which the Early Termination Charge must be paid;
- the amount of the Early Termination Charge due at the expected Migration Date; and
- where applicable, the impact of the transfer on the prices of all continuing Communications Services.

This information is currently required in respect of voice migrations on the Openreach copper network, and will be required for Openreach broadband migrations from 20 June 2015.

- 3.93 Information required by both GC 22.11 and GC 22.12 should be set out in clear, intelligible and neutral terms. The letter should be specific to each consumer in order to provide them with the most accurate information before deciding to switch, and to remove the need to contact the LP for clarification. It must be sent by normal post, unless the customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call, or through electronic confirmation when ordering online.
- 3.94 In addition to these requirements, Ofcom encourages CPs to list, in clear, intelligible and neutral terms, services not provided by them but which they reasonably expect to be affected by the transfer. This applies in particular where these are of a critical nature in respect of security or health. We did not make changes to the General Conditions in order to make this requirement binding. However, we will monitor CP practice in this area, and may explore how any issues arising might be addressed.
- 3.95 Ofcom's Guidance on Unfair Terms in Contracts sets out our view on what we consider Best Practice<sup>28</sup> for the LP notification letter.
- 3.96 Two further GCs deal with Losing Provider contact with customers during the switching process:
- GC 1.2 states that where a CP acquires information from another CP in connection with arrangements relating to network access, it should use this information for the purpose for which it was supplied and shall respect its confidentiality at all times. Such information shall not be passed on to any other party for whom it could provide a competitive advantage. This GC applies to all CPs.
  - GC 22.15 requires that, where an LP communicates with a customer in order to comply with the provisions of GC 22, the LP must not make any marketing representations likely to encourage a customer to terminate their contract with the GP and/or stay in a contract with the LP. This GC currently applies to voice providers on both Openreach and KCOM, and will apply to Openreach broadband providers from 20 June 2015, and to KCOM broadband providers following implementation of our decision to require the use of the GPL NoT process.

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<sup>28</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/Guidance.pdf>

### Rationale for applying the GC 22.12 requirements to LPs on the KCOM copper network

- 3.97 In our October consultation (paragraphs 3.44 to 3.46) we highlighted evidence from the February 2012 and August 2013 Openreach consultations on the effectiveness of the letter sent by LPs under the NoT process. This suggested that the letters are effective in providing consumers with information on the implications of switching, and in ensuring that the vast majority of switchers either do not pay an Early Termination Charge ('ETC') or are prompted to find out whether they are liable for an ETC before they commit to switch.
- 3.98 However, we identified a number of weaknesses with the LP letter (paragraph 3.47). These included that it was sometimes used as a general prompt about the possibility of an ETC, as opposed to providing specific information about the charge. We also found that it was sometimes vague and confusing, and that it led some customers to contact their LP unnecessarily to cancel their service. In the light of these weaknesses, we introduced the additional requirements of GC 22.12. This was intended to improve the effectiveness of the LP letter and provide better information to consumers on the implications of switching
- 3.99 We explained that we were not aware of any reasons why consumers on the KCOM copper network should be in any different position to those on the Openreach network (paragraph 3.49). We considered that they would similarly be best served if the letter they receive from the LP provides good quality financial and service information about the implications of switching which are specifically relevant to their circumstances. We therefore proposed to extend the GC 22.12 requirements on implications of switching to KCOM copper network providers for both voice and broadband services.

### Impact of the new requirement

- 3.100 We noted (paragraphs 3.50 to 3.53) that all CPs on the KCOM copper network are likely to need to update their systems and processes in order to implement our proposed new requirement. We did not seek to estimate the costs of this, but we said we believed that these were not likely to be high.
- 3.101 We considered that most KCOM copper network CPs should already have updated their systems to comply with the identical requirement on the Openreach network and even those that did not operate on Openreach, already issued LP letters with the generic information required as part of the GPL NoT process (under GC 22.10 and GC 22.11). We considered that the new proposal did not constitute a significant change to the existing process for issuing these letters, and therefore did not believe that the associated costs were likely to be high.

### Provisional view

- 3.102 Based on the likely benefits to consumers of receiving better information on the implications of switching, the likely decrease in unwillingly paid ETCs, and in light of the expected low costs to industry of providing this information, we proposed that it was justified and proportionate to require that GC 22.12 be extended to include providers of voice and broadband services on the KCOM copper network.

## Stakeholder responses

- 3.103 KCOM agreed with our assessment that it is important for consumers to be provided with adequate information about the implications of switching. It noted that it has already updated the notification letters sent to customers switching fixed-line services. It did not believe there would be problems with implementing a similar requirement for broadband transfers.
- 3.104 SSE saw no reason why the requirement to provide information on the implications of switching should be different on the KCOM and Openreach networks.

## Our assessment and conclusion

- 3.105 We have considered stakeholder responses to our proposal to extend the application GC 22.12 to voice and broadband switches on the KCOM copper network. In light of these, and our initial assessment, we have decided to maintain our provisional view, as set out in our October consultation, that GC 22.12 be extended to include providers of voice and broadband services on the KCOM copper network.
- 3.106 The GC 22.11 requirements for the LP letter already apply to voice switches on the KCOM copper network and will apply to KCOM broadband switches following implementation of our GPL NoT decision. However, we think there are weaknesses with the letter. We consider that consumers would be better served with a letter which also sets out the implications of switching which are specifically relevant to their circumstances, as required under GC 22.12. We think this is likely to lead to a decrease in unwillingly paid ETCs, and to fewer consumers calling their LP to cancel their switch unnecessarily. We have received no evidence from respondents which causes us to change our provisional assessment that the costs to CPs of implementing this requirement are likely to be low.
- 3.107 Accordingly, we have decided to require Losing Providers on the KCOM copper network to provide information to consumers on the implications of their decision to switch, for both voice and broadband migrations, as specified under GC 22.12. For the reasons given above, we maintain our view, as set out in our October Consultation, that having weighed the benefits of this enhancement against the costs, this measure is justified and proportionate and we consider that the proposed changes to the GCs meet the test at Section 47(2) of the Act.

## Section 4

# Implementation

## Introduction

- 4.1 Some of the new requirements set out in this document will involve changes to systems and processes for KCOM and for resellers operating on the KCOM network. It is important that we set a timetable for implementing these requirements which is realistic and which will deliver the benefits of the proposals to consumers as soon as possible.

## Summary of our October consultation

- 4.2 In our October consultation, we noted in paragraph 4.2, the implementation timescales we had allowed on the Openreach network for the decommissioning of the MAC process and its replacement with NoT, and for the implementation of the NoT+ enhancements.
- 4.3 We considered that these activities should take less time on the KCOM network than on Openreach. This is because there is only one wholesale network in the Hull area, and a relatively small number of CPs providing services on this network (rather than several wholesalers and several thousand CPs on Openreach). This should make change significantly easier to co-ordinate.
- 4.4 Furthermore, we said that the manual nature of the current switching processes should reduce the need for complex systems development to meet the new requirements. We also set out our provisional view that many CPs will already have benefited from the experience of the Openreach NoT and NoT+ implementation programme, which is likely to make the transition on the KCOM network easier.
- 4.5 Based on our assessment we proposed a period of nine months in which to implement both the NoT process, and the NoT+ enhancements.

## Stakeholder responses

- 4.6 The Panel said that the proposed nine-month period appeared reasonable given that there was only one wholesale network and that many CPs will already have experience of implementing the changes on the Openreach network. However it asked Ofcom to consider requiring implementation as close as possible to the Openreach harmonisation date (20 June 2015). The Panel argued this would ensure consistency with the consumer experience on the Openreach copper network.
- 4.7 Similarly, KCOM stated they would accept an implementation deadline in line with the Openreach requirements, but recognised this was dependent on when Ofcom publishes this final statement and on the ability of resellers on the Hull network to implement these changes within a shorter timeframe.

## Our assessment and conclusion

- 4.8 Both stakeholders who responded to our proposed implementation date suggested that we bring it forward in order to align it more closely with the parallel changes required on the Openreach network that are to be implemented by 20 June 2015.

- 4.9 We agree that this is likely to make it easier to explain the changes to consumers, and would help deliver benefits to them more quickly. We also believe, consistent with the position we set out in our October consultation, and no evidence having been presented to the contrary, that, for most resellers on the KCOM network, there are likely to be some efficiencies to be derived from aligning implementation dates.
- 4.10 Whilst we are mindful that any impact of shortening the implementation timescales would be likely to be felt most keenly by smaller providers, we have received no evidence raising concerns to that effect in the responses to our consultation proposal. Moreover, all operators who offer voice services on the KCOM copper network - even those who are not active on Openreach - are already required to use the NoT process. We therefore believe that extending this process to include broadband services should not impose a significant additional burden. In particular, we do not believe that complex system development by CPs will be required in order to implement the NoT process, given that the number of switches on the KCOM copper network is relatively small, and that switches are largely manually managed. We believe that any system development that is required is mostly likely to be undertaken by KCOM itself, who is supportive of a shorter implementation timetable.
- 4.11 Similarly, we think that the costs of implementing the NoT+ enhancements are likely to be minimal for most CPs. Although some investment may be necessary for the requirement to capture and store a record of consumer consent, most CPs should already have undertaken this work as part of implementing the identical requirements on the Openreach network. The other enhancements should entail minimal costs.
- 4.12 In light of the above, the benefits highlighted by stakeholders, and that the requirements can be implemented relatively quickly and easily, we have decided to bring forward the implementation date for the harmonisation of all switches over the KCOM network to the NoT process, and for the implementation of the NoT+ consumer protection enhancements, to 20 June 2015. In order to give effect to our decision, modifications to GC 22 with regard to the KCOM network will come into effect on the 20 June 2015.
- 4.13 In order to meet the implementation deadline, we recommend that all CPs engage with KC Wholesale following the publication of this statement to ensure that they are ready to meet the new requirements when they come into effect.

## Section 5

# Next steps

- 5.1 In order to give effect to the decision set out in this document, Ofcom proposes to modify GC22 and now consults on those proposed modifications. A Notification of the proposed modifications under section 48A of the Act, together with the proposed wording of those modifications on which comments are invited, are set out in Annex 2 below.
- 5.2 The modifications are scheduled to come in to effect on 20 June 2015. Between the publication of this document, and this date, operators should work closely with KCOM in order to ensure that they are ready to meet the new requirements.



## Annex 1

# Other issues considered

- A1.1 SSE stated that ‘an important element in the design of amendments to wholesale switching arrangements in KCOM’s area is the development of ‘standard wholesale switching interfaces. SSE’s therefore suggested the introduction of standard interfaces that operate independently of the specific access network. i.e. ‘hub and spoke’ architecture.
- A1.2 KCOM stated that while it supports the mirroring of Openreach switching changes for voice and broadband over the KCOM copper network, were these obligations to be extended to additional services, or further enhancements introduced, these changes would need to be assessed as to whether they were proportionate and appropriate in each instance.
- A1.3 Other issues were raised confidentially concerning:  
[redacted].
- A1.4 These issues are not relevant to this document. We note that it is open to parties to raise formal disputes or complaints with Ofcom where other concerns arise.

## Annex 2

# Proposed modifications to the General Conditions of Entitlement

## Notification of proposed modifications to the General Conditions under section 48A(3) of the Act

### Proposal to modify General Conditions 22

1. Ofcom proposes to modify General Condition 22 of the General Conditions of Entitlement. The draft modifications are set out in Schedule 1 of this Notification<sup>29</sup>.
2. Ofcom's reasons for making these proposals, and the effect of the proposed modifications, are set out in the accompanying document.
3. Ofcom considers that the proposals comply with the requirements of sections 45 to 49C of the Act, insofar as they are applicable. Ofcom considers that the proposals are not of EU significance pursuant to section 150A(2) of the Act.
4. In making these proposals, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act, the six Community requirements set out in section 4 of the Act and its duty to take account of European Commission recommendations for harmonisation under section 4A of the Act.
5. Any representations about the proposals should be made to Ofcom by **5pm on 31 March 2015**.
6. If implemented, the modifications shall enter into force on a date to be specified in Ofcom's final statement in relation to these proposals.
7. A copy of this Notification is being sent to the Secretary of State.
8. In this Notification:
  - a. "the Act" means the Communications Act 2003;
  - b. "General Conditions of Entitlement" means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;
  - c. "Ofcom" means the Office of Communications

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<sup>29</sup> Proposed additions are marked in bold underlined red text; proposed deletions are marked in bold strikethrough text

9. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.

10. For the purposes of interpreting this Notification: (i) headings and titles shall be disregarded; and (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

11. The Schedules to this Notification shall form part of this Notification.

**Chris Taylor**  
**3 March 2015**

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

## SCHEDULE 1

22. SERVICE MIGRATIONS AND HOME-MOVES<sup>74</sup>**Communications Provider Migrations**Scope and Effect

- 22.1 Communications Providers shall comply with paragraphs 22.3 to 22.15, as applicable, in relation to Communications Provider Migrations of:
- (a) fixed-line Telecommunications Services provided within Openreach's Access Network;
  - (b) fixed-line Telecommunications Services provided within KCOM's Access Network.
- 22.2 From the Harmonization Date, Communications Providers shall comply with paragraphs 22.3 to 22.15, as applicable, in relation to Communications Provider Migrations of:
- (a) Broadband Services provided within Openreach's Access Network;**
  - (b) Broadband Services provided within KCOM's Access Network.**

Mis-selling Prohibition

- 22.3 When selling or marketing Communications Services, the Gaining Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
  - (b) engage in aggressive conduct;
  - (c) contact the Customer in an inappropriate manner; or
  - (d) engage in Slamming.

Information at point of sale

- 22.4 The Gaining Provider must take all reasonable steps to ensure that before entering into a contract for the provision of Communications Services, the Customer who is requesting a Communications Provider Migration:
- (a) is authorised to do so;
  - (b) intends to enter into the contract; and
  - (c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:
    - i. the identity of the legal entity the Customer is contracting with and its telephone, website and/or e-mail contact details;

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<sup>74</sup> Current GC22 containing revisions introduced by Consumer Switching: A statement on the GPL NoT+ elements, 20 December 2013.

- ii. a description of the Communications Service requested; the key charges, including minimum contract charges, any early termination charges, if applicable and, from (and including) the Effective Date and if the Customer is a Consumer, the Access Charge; payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost from the point of sale to the completion of the Transfer Period; the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service and any minimum period of contract.<sup>75</sup>

#### Customer's termination rights

- 22.5 When the Customer enters into a contract for the provision of Communications Services, the Gaining Provider must allow the Customer to terminate the contract from the point of sale to the completion of the Transfer Period without charge or any other form of compensation being required to be given by the Customer to the Gaining Provider.
- 22.6 The Gaining Provider must have procedures in place to enable the Customer to exercise their right to terminate their contract pursuant to Condition 22.5 without unreasonable effort. These procedures must include the ability to contact the Gaining Provider to terminate the contract by any of the following contact methods:
- (a) telephone;
  - (b) e-mail;
  - (c) post.

#### Records Retention

- 22.7 Without prejudice to paragraph 22.8, the Gaining Provider must use reasonable endeavours to create and keep all records regarding the sale of its Communications Services, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

#### Record of consent

- 22.8 For each contract entered into with a Customer for the provision of Communications Services ~~within Openreach's Access Network~~, the Gaining Provider must create and keep individually retrievable records of the following, for a period of not less than twelve months:
- (a) a direct record of consent, as provided by the Customer, to:

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<sup>75</sup> Simplifying Non-Geographic Numbers, Statement, 12 December 2013, amended paragraph 22.6(c)(ii) with effect from 26 December 2013.

- i. migrate from the Communications Services supplied by the Losing Provider to the Communications Services supplied by the Gaining Provider; or, as relevant,
  - ii. begin acquiring Communications Services over the Target Line;
- (b) an explanation from the Communications Provider that they are required to create a record of the Customer's consent;
  - (c) the name and address of the Customer;
  - (d) the time, date and means by which the consent in sub-section (a) above was given;
  - (e) where appropriate, the place where the consent in sub-section (a) above was given and the salesperson(s) involved;
  - (f) the Target Address; and
  - (g) where appropriate, the Calling Line Identification of the Target Line.
- 22.9 The Gaining Provider shall keep the records required in paragraph 22.8 irrespective of whether the contract for the provision of the Communications Services is cancelled or terminated.

#### Notification Letters

- 22.10 When a Customer enters into a contract for the provision of Communications Services, the Gaining Provider must send that Customer a letter. The letter shall set out in clear and intelligible terms:
- (a) the date of the letter;
  - (b) that the Customer is transferring their Communications Service;
  - (c) all Communications Services that will be transferred;
  - (d) where relevant, the Calling Line Identification of all Communications Services that will be transferred;
  - (e) a reasonable estimate of the Migration Date;
  - (f) the right of the Customer to terminate the contract as set out in Condition 22.5, the means by which the right to terminate can be exercised and the date by which the right to terminate must be exercised; and
  - (g) relevant contact details.
- 22.11 The Losing Provider must, in accordance with the industry agreed process, send the End-User a letter. The letter shall set out in clear, intelligible and neutral terms:

- (a) the date of the letter;
- (b) that the End-User is transferring their Communications Service;
- (c) all Communications Services that will be transferred;
- (d) where relevant, the Calling Line Identification of all Communications Services that will be transferred;
- (e) all Communications Services or other types of services provided by the Losing Provider that the Losing Provider reasonably expects to be directly or indirectly affected by the transfer;
- (f) all Communications Services provided by the Losing Provider that the Losing Provider reasonably expects to remain unaffected by the transfer;
- (g) a reasonable estimate of the Migration Date;
- (h) relevant contact details.

22.12 Where a contract is entered into with a Customer for the provision of Communications Services ~~within Openreach's Access Network~~, the letter sent by the Losing Provider in accordance with paragraph 22.11 shall, in addition to the information listed therein, set out in clear, intelligible and neutral terms:

- (a) an explanation that the transfer will automatically take effect on the Migration Date and that no contact is required with the Losing Provider to cancel their existing service;
- (b) an explanation that after the transfer, the Customer will receive a final bill including any Early Termination Charge that is due;
- (c) an explanation of the applicable Early Termination Charge as set out in the contract;
- (d) the means by which the Early Termination Charge must be paid;
- (e) the amount of the Early Termination Charge due at the estimated Migration Date;
- (f) where applicable, the impact of the transfer on the prices of all continuing Communications Services; and

22.13 The letters under paragraphs 22.10 to 22.12 must be sent in paper or another Durable Medium. The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.

#### Simultaneous transfers

22.14 Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested a transfer of Broadband and Fixed-line Telecommunications Services to be provided by it over the same line, it shall ensure that, **where as** applicable, an order is submitted to Openreach **or to KCOM**, where available, for the simultaneous transfer with minimal loss of service of both Communications Services.

#### Reactive save

22.15 Where the Losing Provider communicates with the Customer in order to comply with this Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Provider and/or remain in a contract with the Losing Provider.

#### **Communications Provider Migrations without change of location within Openreach's or KCOM's Access Network**

22.16 In addition to paragraphs 22.1 to 22.15, as applicable, each Communications Provider shall comply with the provisions of Annex 1 to this Condition in each instance where it is a Gaining Provider which elects to co-ordinate a Communications Provider Migration on behalf of a Customer, involving:

- (a) fixed-line Telecommunications Services provided within Openreach's Access Network; or,
- (b) fixed-line Telecommunications Services provided within KCOM's Access Network.

22.17 From the Harmonisation Date, and in addition to paragraphs 22.1 to 22.15, as applicable, each Communications Provider shall comply with the provisions of Annex 1 to this Condition in each instance where it is a Gaining Provider which elects to co-ordinate a Communications Provider Migration on behalf of a Customer, involving Broadband Services provided within Openreach's **or KCOM's** Access Network.

22.18 Where paragraphs 22.16 and 22.17 apply, each Communications Provider shall ensure that the End-User is not required to make contact with the Losing Provider in order for a Communications Provider Migration to be put into effect.

22.19 Where paragraphs 22.16 and 22.17 apply, and without prejudice to the generality of paragraph 22.18, a Losing Provider shall not require, in particular, the granting of consent by it, nor the provision of any information (such as a MAC) by it to the End-User, in order for a Communications Provider Migration to be put into effect.

22.20 Paragraphs 22.16 to 22.19 only apply where the Communications Provider Migration does not involve a change of the location where the Communications Services are supplied.



### **Migrations of Broadband Services within the Openreach Access Network prior to the Harmonisation Date**

22.21 Prior to the Harmonisation Date, Communications Providers shall comply with the provisions of the MAC Broadband Migrations Process, at the request of an End-User to migrate (or where applicable, connect) a Broadband Service falling within paragraph A3.2 of Annex 3 to this Condition within Openreach's Access Network.

### **Home-moves within Openreach's or KCOM's Access Network**

22.22 In addition to paragraphs 22.1 to 22.15, each Communications Provider shall comply with the provisions of Annex 2 to this Condition, in each instance where it is a Gaining Provider which elects to carry out a Working Line Takeover within Openreach's or KCOM's Access Network (as applicable) pursuant to a Home-Move Request.

### **Migrations of Broadband Services within KCOM's Access Network prior to the Harmonisation Date**

22.23 Prior to the Harmonisation Date, Communications Providers shall, pursuant to a request by an End-User to migrate (or where applicable, connect) a Broadband Service provided over KCOM's Access Network, comply with the provisions of Annex 3 to this Condition.

### **Other Migrations of Broadband Services**

22.24 Prior to the Harmonisation Date, Communications Providers shall comply with the requirements set out in Condition A3.23 of Annex 3 to this Condition in relation to Migrations of Broadband Services not falling within the scope of paragraph 22.21.

22.25 From the Harmonisation Date, Communications Providers shall in relation to Migrations of Broadband Services not falling within the scope of paragraph 22.17:

- (a) facilitate the migration (or where applicable, connection) of the Broadband Service in a manner that is fair and reasonable;
- (b) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out within a reasonable period; and
- (c) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out with minimal loss of the Broadband Service.

### **General requirements**

#### **Responsibility**

22.26 Where Communications Providers engage representatives or agents, they shall procure that such representatives or agents comply with the requirements of this Condition.

Training

22.27 Communications Providers must ensure that their staff or any representatives of any agency engaged by them, are appropriately trained to comply with this Condition.

Monitoring

22.28 Communications Providers must monitor, including conducting regular audits, their compliance with this Condition, including compliance on their behalf by any representatives or agency engaged by them, and take appropriate steps to prevent the recurrence of any problem(s) identified.

Publication of Information

22.29 Communications Providers must:

- (a) publish a copy of this Condition, or a link to a copy of this Condition, published on Ofcom's website, in an easily accessible and reasonably prominent manner on their website or, where there is no such website, by making it available in their registered office during normal office hours for inspection free of charge by members of the general public; and
- (b) provide a copy of this Condition to the Customer free of charge upon reasonable request.

**Definitions**

22.30 For the purposes of this Condition and Annexes 1, 2 and 3 to this Condition:<sup>76</sup>

- (a) “**Access Charge**” means the rate to be charged by the Gaining Provider to the Customer in respect of the retail and origination of a call to an Unbundled Tariff Number in accordance with General Condition 17;
- (b) “**Access Network**” means the Electronic Communications Network which runs from a local access node to a network termination point on an End-User's premises and which supports the provision of copper-based access services and fibre-based access services to End-Users;
- (c) “**Address**” means a UK postal address;
- (d) “**BT**” means the BT Group plc;
- (e) “**Broadband Service**” means all DSL (including FTTC) services which are capable of supporting always-on services that provide the End-User with high data transfer speeds, excluding services provided over a Cable Network;
- (f) “**Cable Network**” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;

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<sup>76</sup> Simplifying Non-Geographic Numbers, Statement, 12 December 2013, inserted definitions of “Access Charge”, “Consumer”, “Effective Date” and “Unbundled Tariff Number”.

- (g) **“Calling Line Identification”** means a facility that enables identification of the number from which a call is being made or to which a return call could be made;
- (h) **“Cancel Other”** means the industry term for a functionality that enables the Losing Provider to cancel, during the Transfer Period, wholesale orders placed by the Gaining Provider;
- (i) **“Communications Provider”** means a person who provides Communications Services;
- (j) **“Communications Provider Migration”** means a process by which an End-User or Customer transfers from Communications Services supplied by one Communications Provider to Communications Services provided by another Communications Provider;
- (k) **“Communications Service”** means a Broadband Service and/or a Fixed-line Telecommunications Service;
- (l) **“Consumer”** has the meaning given to that term in General Condition 17;
- (m) **“CPS” or “Carrier Pre-Selection”** means a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number;
- (n) **“Customer”** means a person who is an End-User of Communications Services provided by a different Communications Provider or a person who is seeking to become an End-User of a Communications Provider;
- (o) **“DSL” or “Digital Subscriber Line”** means a family of technologies generically referred to as DSL, or xDSL, capable of transforming ordinary phone lines (also known as ‘twisted copper pairs’) into high speed digital lines;
- (p) **“Durable Medium”** means any instrument, excluding SMS, which enables the Customer or End-User to store information addressed personally to him in a way accessible for future reference, for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored;
- (q) **“Early Termination Charge”** means the charge payable by the End-User for the termination of the contract before the end of the minimum contract period;
- (r) **“Effective Date”** has the meaning given to that term in General Condition 17;
- (s) **“End-User”** means a person, other than a Communications Provider, who:
  - (i) is party to a contract with the Communications Provider for the provision of Communications Services, and;

- (ii) is not acquiring the Communications Services in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);
- (t) “**Failure to Cancel**” means failure by the Gaining Provider to cancel a transfer, after a request from the Customer during the Transfer Period;
- (u) “**Fixed-line Telecommunications Service**” means Narrowband calls and lines services provided to an End-User or Customer that allow for the transfer of speech communications, and other forms of communications such as facsimile and data;
- (v) “**FTTC**” or “**Fibre-To-The-Cabinet**” means an Access Network consisting of optical fibre extending from the local access node to the street cabinet;
- (w) “**Gaining Provider**” means:
- i. the Communications Provider to whom the End-User or Customer is transferring; or
  - ii. the Communications Provider to whom the Inbound Customer or End-User makes a Home-Move Request;
- (x) “**Harmonisation Date**” means 20 June 2015.
- (y) “**Home-Move Request**” means a request by an Inbound Customer or End-User to begin acquiring one or several Communications Services over the Target Line;
- (z) “**Inbound Customer or End-User**” means the Customer or End-User who is moving into the Target Address;
- (aa) “**Incumbent Communications Provider**” means the Communications Provider who supplies Communications Services to the Incumbent End-User over the Target Line;
- (bb) “**Incumbent End-User**” means the End-User who is residing in the Target Address;
- (cc) “**KCOM**” means KCOM Group plc;
- (dd) “**Losing Provider**” means the Communications Provider from whom the End-User or Customer is transferring;
- (ee) “**MAC**” or “**Migration Authorisation Code**” means a unique code used to identify a Broadband Service that is intended to be transferred from one Communications Provider to another Communications Provider;
- (ff) “**MAC Broadband Migrations Process**” means the obligations and processes set out in paragraphs A3.1 to A3.22 of Annex 3 to this Condition;
- (gg) “**Migration**” means one or more of the following processes by which:

- i. the Communications Provider transfers from one Communications Service to another Communications Service;
  - ii. an End-User transfers from one Communications Service to another Communications Service;
  - iii. an End-User or Customer transfers from Communications Services supplied by one Communications Provider to Communications Services supplied by another Communications Provider ("**Communications Provider Migration**");
  - iv. an End-User or Customer transfers from Communications Services supplied by a Communications Provider at one location to Communications Services supplied by the same Communications Provider at a different location;
- (hh) "**Migration Date**" means the date on which the transfer of the Communications Service or takeover of the Target Line will be effected, at which point the End-User's Communications Service will commence being provided to the End-User by a different Communications Provider or at a different location;
- (ii) "**MPF**" or "**Metallic Path Facility**", means a circuit comprising a pair of twisted metal wires between an End-User's premises and a main distribution frame that employs electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an Electronic Communications Network;
- (jj) "**Narrowband**" means the services provided over a traditional Public Communications Network, excluding services provided over a Cable Network;
- (kk) "**Openreach**" means the BT group business offering Communications Providers' products and services that are linked to BT's nationwide Electronic Communications Network;
- (ll) "**Slamming**" means where a request for a CPS, WLR, SMPF and/or MPF has been made, or a Transfer Order or a Working Line Takeover Order has been placed on Openreach **or on KCOM (as applicable)**, without the Customer's express knowledge and/or consent; that is in the following circumstances:
- i. where the Customer has never contacted, or has never been contacted by, the Gaining Provider;
  - ii. where the Customer has contacted, or has been contacted by, the Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of their Communications Services;
  - iii. where the Customer has agreed to purchase a product or service from the Gaining Provider and the Gaining Provider has submitted an order for a different product or service which the Customer has not agreed to purchase;  
or

- iv. where the Customer has agreed to transfer some or all of their Communications Services to the Gaining Provider having understood as a result of a deliberate attempt by the Gaining Provider to mislead, that they are making an agreement with a different Communications Provider;
- (mm) **“SMPF” or “Shared Metallic Path Facility)** means access to the non-voiceband frequencies of the MPF;
- (nn) **“SMS” or “Short Message Service** means a text message delivered to the handset of an End-User or Customer who acquires Publicly Available Telephone Services, or, if SMS is superseded or withdrawn, an equivalent text communication sent directly to the handset of an End-User or Customer who acquires Publicly Available Telephone Services;
- (oo) **“Target Address”** means the Address where the Target Line is situated;
- (pp) **“Target Line”** means the working WLR, MPF or SMPF line to which a Customer request for a Migration, or a Home-Move Request, refers;
- (qq) **“Transfer Order”** means an order submitted by, or on behalf of, the Gaining Provider to Openreach, or other applicable wholesaler, requesting for the Target Line to be transferred from the Losing Provider to the Gaining Provider;
- (rr) **“Transfer Period”** means a period of 10 Working Days before a Customer’s order can be activated;
- (ss) **“Unbundled Tariff Number”** has the meaning given to that term in General Condition 17;
- (tt) **“WLR” or “Wholesale Line Rental** means a regulated wholesale service sold by BT or KCOM, which is used by the Communications Provider to provide retail customers with exchange lines and in turn, access to other Narrowband telephone services (for example, telephone calls, facsimile and dial-up);
- (uu) **“Working Day”** means the hours between 09.00 – 17.00 on Monday to Friday, with the exception of Bank Holidays;
- (vv) **“Working Line Takeover”** means a process by which a Communications Provider takes over a WLR or MPF line in order to provide Communications Services to the Inbound Customer or End User, where that line is being used by that same or a different Communications Provider to supply Communications Services to the Incumbent End-User; and
- (ww) **“Working Line Takeover Order”** means an order submitted by, or on behalf of, a Gaining Provider to Openreach **or to KCOM (as applicable)**, requesting for the Working Line Takeover of the Target Line.

## **Annex 1 to Condition 22**

### **Notification of Transfer**

A1.1 Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested to transfer to a Communications Service supplied by it, that Gaining Provider shall, within a reasonable time, ensure a Transfer Order is placed.

### **Cancel Other**

A1.2 The Losing Provider shall only be permitted to use Cancel Other in the following circumstances:

- (a) where Slamming has occurred;
- (b) at the Customer's request, where the Gaining Provider has failed to cancel the Transfer Order after being directed by the Customer to do so ("Failure to Cancel");
- (c) where the telephone line is or will be, ceased during the Transfer Period ("Line Cease");
- (d) for other specified reasons not related to a Customer's request to cancel a transfer, as agreed by the relevant industry forum and approved by Ofcom; and
- (e) in such other circumstances as defined by Ofcom.

A1.3 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Provider shall take reasonable steps to establish that Slamming and/or Failure to Cancel has actually taken place.

A1.4 After using Cancel Other, the Losing Provider shall confirm the cancellation of the order by Durable Medium to the Customer, unless this is not possible or appropriate, including where the Customer is deceased.

A1.5 The Losing Provider shall record its reasons for using Cancel Other in each case, selecting the appropriate reason code from a list corresponding to permitted use of Cancel Other and consistent with paragraphs 22.30 (II)(i) to (iv), as agreed by the industry and approved by Ofcom.

**Annex 2 to Condition 22****Working Line Takeovers**

A2.1 Subject to paragraphs A2.2 and A2.3, where a Gaining Provider elects to carry out a Working Line Takeover pursuant to a Home-Move Request that Gaining Provider shall ensure a Working Line Takeover Order is placed.

**Asset identification**

A2.2 Before a Working Line Takeover Order is placed, a Gaining Provider shall take reasonable steps, having regard to industry best practice, to identify the Target Line.

A2.3 A Gaining Provider may only place a Working Line Takeover Order if it has identified an exact match for the Target Line.

**Notification Letter**

A2.4 After being notified of the Working Line Takeover Order, the Incumbent Communications Provider shall send the Incumbent End-User a letter, in accordance with the industry agreed process, in paper or another Durable Medium, which clearly sets out:

- (a) the date of the letter;
- (b) a notification that an Inbound Customer or End-User wants to take over the Target Line;
- (c) all Communications Services directly affected by the Working Line Takeover;
- (d) where relevant, the Calling Line Identification of all Communications Services that are directly affected;
- (e) the expected Migration Date;
- (f) that the Incumbent End-User should notify the Incumbent Communications Provider if that Incumbent End-User is not moving out of the Target Address or expects to move at a later date than the expected Migration Date;
- (g) the relevant contact details.

A2.5 The letter must be sent by post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.



### **Annex 3 to Condition 22**

#### **MAC Broadband Migrations Process<sup>77</sup>**

A3.1 **Prior to the Harmonisation Date**, the Communications Provider shall, at the request of:

- (a) an End-User of the Communications Provider; or
- (b) another Communications Provider who acquires a Broadband Service from the Communications Provider,

issue a MAC for a Broadband Service where the Broadband Service is a service to which the MAC Broadband Migrations Process applies.

A3.2 The MAC Broadband Migrations Process applies to the supply by the Communications Provider of all DSL services, with the exception of those DSL services that are required to be migrated by means of a process that relates to the supply of a Fixed Line Telecommunications Service supplied in conjunction with the DSL service.

A3.3 The Communications Provider shall take reasonable steps to validate the identity of an End-User who has contacted the Communications Provider to request a MAC for a Broadband Service, before issuing a MAC to the End-User.

A3.4 The Communications Provider shall provide its End-Users with two or more of the following contact methods:

- (a) Telephone numbers;
- (b) Email address; and
- (c) Postal address,

for the purposes of an End-User contacting the Communications Provider to obtain a MAC,

#### **Issuing MACs to End-Users**

A3.5 The Communications Provider shall communicate the MAC to the End-User in writing by letter and/or by email within five working days of receipt of the End-User's request save for A3.6.

A3.6 Where the Communications Provider has issued the MAC to the End-User over the telephone (including details about the MAC validity period and expiry date and the Broadband Service to which the MAC relates), the Communications Provider is not required to communicate the MAC to the End-User in writing.

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<sup>77</sup> Broadband migrations: enabling consumer choice, Statement and notification, 13 December 2006.

- A3.7 The written response (email or letter) to the End-User containing the MAC shall clearly indicate:
- (a) The MAC (or MACs);
  - (b) The MAC validity period and expiry date; and
  - (c) The Broadband Service(s) to which the MAC(s) applies.
- A3.8 At any time prior to the expiry of the MAC validity period, the Communications Provider shall remind the End-User of the MAC if requested by the End-User.
- A3.9 Where a MAC has already been requested and provided, the Communications Provider shall not impose any limits on the number of additional times an End-User may request the provision of a new MAC in relation to the Broadband Service, following the expiry of any other MACs.
- A3.10 The Communications Provider shall issue a MAC to the End-User free of charge.

**Refusal to issue a MAC**

- A3.11 The Communications Provider shall only refuse to issue a MAC to their End-User if:
- (a) the Communications Provider has, by taking reasonable steps, been unable to validate the identity of the person requesting the MAC as the End-User;
  - (b) the Broadband Service contract has already been terminated;
  - (c) a MAC which is still within its MAC validity period has already been requested and issued by the Communications Provider in relation to the Broadband Service;
  - (d) the Communications Provider has already submitted a Cease Request for the Broadband Service; and
  - (e) the Communications Provider is unable to obtain a MAC from a Broadband Network Communications Provider.
- A3.12 Where the Communications Provider is unable to, or refuses to, provide a MAC to the End-User, the Communications Provider shall provide the End-User with a clear explanation of why the MAC has not been provided.

**Cease requests and notice to terminate a Broadband Service**

- A3.13 The Communications Provider shall not issue a Cease Request for the Broadband Service unless the Communications Provider has established that the End-User does not wish to transfer the Broadband Service to another Communications Provider.

A3.14 The Communications Provider shall, when issuing a MAC, confirm to the End-User that any previous termination by the End-User has been revoked, and shall ensure that any current or pending termination actions are cancelled.

#### **MAC validity and migration dates**

A3.15 The Communications Provider shall not terminate the Broadband Service on account of the MAC validity period expiring unless the Communications Provider has received notification that the End-User's Broadband Service has been migrated to another Communications Provider.

A3.16 Where a Customer provides a MAC within its validity period, together with a request to effect a transfer of the Broadband Service to the Communications Provider, the Communications Provider shall proceed with the migration and inform the Customer of the Default Migration Date.

A3.17 The Communications Provider shall, at the request of a Customer up until one Working Day prior to the Default Migration Date:

- (a) accept a request to extend the Default Migration Date to a later Migration Date ("Requested Migration Date"), provided the MAC validity period has not expired within five days of the Requested Migration Date; or
- (b) cancel the Default Migration Date or Requested Migration Date.

#### **Erroneous MAC migrations**

A3.18 The Communications Provider shall provide a recovery process so that in the event of an erroneous migration effected by way of a MAC, the End-User's Broadband Service can be restored to the original Communications Provider with minimum disruption.

#### **Information about the MAC Broadband Migration Process**

A3.19 The Communications Provider shall publicise the availability of the MAC Broadband Migrations Process to End-Users, including providing the following information:

- (a) an explanation of how the MAC is used to facilitate the transfer of a Broadband Service to another Communications Provider;
- (b) details of how an End-User may request a MAC from the Communications Provider, such as telephone, email and postal contact details;
- (c) reasons why the Communications Provider may not be able to issue a MAC;
- (d) details of the complaints handling process for complaints about a failure by the Communications Provider to issue a MAC;

- (e) alternative migration options for an End-User if the Communications Provider cannot issue a MAC for the Broadband Service;
- (f) the default Migration Date that applies when a MAC is provided to the Communications Provider by a Customer for the purposes of transferring the Broadband Service to the Communications Provider; and
- (g) any options available to the End-User to request a Migration Date later than the Default Migration Date.

A3.20 Publication of the information set out in A3.19 above shall be effected by publishing the information on the Communications Provider's website, and by sending a copy of the information if so requested by an End-User.

### **Complaints about the MAC Broadband Migrations Process**

A3.21 The Communications Provider shall handle complaints from End-Users in relation to a decision to refuse, or a failure by, the Communications Provider to issue a MAC, as part of its existing complaints handling processes.

### **Broadband Network Services**

A3.22 Where the Communications Provider provides Broadband Network Services, the Communications Provider shall also ensure that it:

- (a) effects the transfer of a Broadband Service on the Default Migration Date, unless a later Migration Date has been requested by the Communications Provider for the transfer to be effected;
- (b) notifies the Communications Provider who formerly provided the Broadband Service of the date that the transfer has been effected to another Communications Provider; and
- (c) has a process that enables an erroneous service migration effected using a MAC to be reversed, so that the Broadband Service can be restored to the original Communications Provider who requested the MAC.

### **Broadband Migrations**

A3.23 All Communications Providers pursuant to a request by an End-User, a Customer or another Communications Provider to migrate (or where applicable, connect) a Broadband Service shall, where the provisions of the MAC Broadband Migrations Process do not apply to the Communications Provider in relation to this Broadband Service:

- (a) facilitate the migration (or where applicable, connection) of the Broadband Service in a manner that is fair and reasonable;

- (b) ensure the migration (or where applicable, connection) of the Broadband Service is carried out within a reasonable period;
- (c) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out with minimal loss of the Broadband Service
- (d) assist with, and facilitate requests for, the migration (or where applicable, connection) of a Broadband Service provided by another Communications Provider, in instances where the other Communications Provider has failed to, or refused to, comply with the MAC Broadband Migrations Process, in a manner that is fair and reasonable.

## Definitions

A3.24 For the purposes of this Annex:

- (a) **“Broadband Network Communications Provider”** means a Communications Provider that provides Broadband Network Services;
- (b) **“Broadband Network Services”** means services that:
  - i. generate a MAC in relation to a Broadband Service provided by the Communications Provider to an End-User or to another Communications Provider;
  - ii. effect a transfer of a Broadband Service from one Communications Provider to another Communications Provider using the MAC issued in relation to that Broadband Service; and
  - iii. effect the cease of a Broadband Service from the Communications Provider at the request of the Communications Provider;
- (c) **“Cease Request”** means a direction given by a Communications Provider to a Broadband Network Communications Provider in relation to a Broadband Service, with the intention being to terminate the provision of that Broadband Service;
- (d) **“Default Migration Date”** means five Working Days after the MAC is provided by a Communications Provider to a Broadband Network Communications Provider;
- (e) **MAC validity period”** means the period extending up to 17.00 on the thirtieth calendar day from issue (either verbally or in writing, whatever comes first) by the Communications Provider.

## Annex 3

# Responding to this consultation

## How to respond

- A3.1 Ofcom invites written views and comments concerning our proposed modifications to General Condition 22, to be received **by 5pm on 31 March 2015**.
- A3.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/kcom-switching/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 5), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A3.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [shaun.kent@ofcom.org.uk](mailto:shaun.kent@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A3.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Shaun Kent  
2<sup>nd</sup> Floor  
Consumer Affairs  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A3.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A3.6 It would be helpful if your response could include direct answers concerning our proposed modifications, which are set out in Annex 2, and set out your reasons including how Ofcom's proposed modifications would impact on you.

## Further information

- A3.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Shaun Kent on 020 7981 3000.

## Confidentiality

- A3.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A3.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A3.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

- A3.11 Following the end of the consultation period and having taken into account all stakeholder responses we receive, Ofcom intends to reach a decision on the final form of wording of the modifications to be made to General Conditions.
- A3.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

- A3.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 4.
- A3.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A3.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:
- A3.16 Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA
- Tel: 020 7981 3601
- Email [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Annex 4

# Ofcom's consultation principles

A4.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A4.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A4.3 We will be clear about who we are consulting, why, on what questions and for how long.

A4.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A4.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A4.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A4.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A4.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.



## Annex 5

# Consultation cover sheet

- A5.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A5.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A5.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A5.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A5.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 6

# Glossary

**Act** - The Communications Act 2003.

**Broadband** - Service or connection that is capable of supporting 'always on' services that provide the end user with high data transfer speeds.

**Bundle** - Where a consumer purchases two or more services from the same Provider on a single bill and considers this to be a package of services. The consumer may or may not receive a discount for purchasing the services together.

**CLI** - Consumer/ calling line identification (telephone number).

**Consumer** - Any person who uses or requests a publicly available Electronic Communications Service for purposes which are outside his or her trade, business or profession.

**CP** - Communications provider.<sup>30</sup> A person who provides an Electronic Communications Network or provides an Electronic Communications Service, as defined in the Communications Act 2003.

**DSL** - Digital subscriber line. A family of technologies generally referred to as DSL, xDSL, capable of transforming ordinary phone lines (also known as 'twister copper pairs') into high speed lines.

**ET** - Erroneous transfers.

**ETC** - Early termination charge. Charge for consumers who terminate their contract before the end of any Minimum Contract Period (or Subsequent Minimum Contract Period).

**Fixed-line** - Narrowband call and/or line rental services provided to consumers and small business consumers.

**GP** - Gaining provider. Provider to whom the customer is transferring.

**GPL NoT** - Gaining provider led Notification of Transfer process. A GPL process where the consumer only needs to contact their (new) Gaining Provider to switch. The Gaining Provider informs the (current) Losing Provider on behalf of the consumer in order to organise the transfer. The consumer receives letters from both Providers confirming the planned switch before it happens. This provides an opportunity for the consumer to stop the order going ahead where they change their mind or in cases where they have no knowledge or have not given their consent to the attempted switch.

**GCs** - General Conditions of Entitlement.

**GPL process** - Gaining provider led process. Switching process where the consumer only needs to contact the Provider they are transferring to in order to switch.

**LP** - Losing provider. Provider from whom the customer is transferring.

<sup>30</sup> Terms 'communications provider' and 'provider' are used interchangeably throughout this document.

**LPL MAC** - Losing provider led migration authorisation code process. A LPL process which applies to broadband only. It means that if a consumer wishes to change their provider, they need to obtain a code from the Losing Provider and give it to the Gaining Provider. On receiving a request for the code, the Losing Provider carries out checks to confirm that the consumer making the request is the legitimate account holder and has an opportunity to discuss the implications of switching with the consumer. The consumer must supply the code to their Gaining Provider to allow the switch to go ahead.

**LPL process** - Losing provider led process. Switching process where the consumer needs to contact the Provider they are transferring away from as well as the Provider they are transferring to in order to switch.

**MAC** - Migration authorisation code. Unique code that a customer obtains from the losing broadband service Provider and gives to the gaining provider, that allows the service to be transferred from an existing service Provider seamlessly and with little or no disruption of service.

**Mis-selling** - Irresponsible sales and marketing activities, such as the provision of false or misleading information, applying unacceptable pressure to change Providers and where customers are switched without their express consent.

**NoT** - Notification of Transfer

**Ofcom** - Office of Communications. The regulator for the communications industries, created by the Office of Communications Act 2002.

**Openreach** - BT's access services division.

**OTA** - Office of the Telecommunications Adjudicator. Acts independently from industry and the regulator. Seeks to facilitate the implementation of process improvements, particularly where multi-lateral engagement is necessary.

**Reactive save** - Also known as 'targeted save activity'. Where the LP is able to accurately identify, as a result of information the LP receives as part of the formal switching process, customers intending to switch and to make them a counteroffer not to switch. The LP is informed of the imminent switching either by the consumer via the code request under a LPL process or by the GP placing the order to transfer the service under a GPL process. The term does not refer to counteroffers requested by a consumer who explicitly contacts the LP with the purpose of obtaining a better offer.

**Slamming** - Where a CP has requested to take-over a fixed voice service without the customer's express knowledge and/or consent; that is in the following circumstances:

- i) Where the customer has never been contacted by the Gaining Communications Provider;
- ii) Where the customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;
- iii) Where the customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the customer has not agreed to purchase; or

iv) Where the customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider.

**Switching costs** - Costs incurred by changing supplier that are not incurred by remaining with the current provider. There are several types of switching costs, including transaction costs, compatibility costs, learning costs, contractual costs, equipment costs, uncertainty costs, psychological costs, shopping costs and search costs.

**WLT** - Working line takeover. A request to reuse a working telephone line for a new end user at an existing end user's address.