



**BT's response to Ofcom's consultation:
"Changes to General Conditions and Universal Service Conditions
Implementing the revised EU Framework"**

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Contents

Section		Page
1	Executive Summary	3
2	Introduction	4
3	Answers to Ofcom's questions	5
4	Points not covered within Ofcom's questions	15

1. Executive Summary

- 1.1. We welcome Ofcom's attempt to transpose the relevant revised EU Framework Directives¹ into UK regulation within such challenging timescales. It is also pleasing to note that Ofcom proposes further debate with industry and separate, future consultations for those policy issues that need greater analysis and consideration. We fully support Ofcom's objectives that changes should be proportionate, transparent, objectively justifiable and not unduly discriminatory.
- 1.2. Within the proposed amendments, we believe that some areas need further clarification if Communications Providers are to ensure compliance with the revised regulations. The definitions applied for different users of communications services along with the networks and services themselves all need to be reviewed to ensure they are fit for the purpose that Ofcom intends. A Public Electronic Communications Network (PECN) has wider implications for compliance than the Public Telephone Network that it replaces and it is not the intention of the underlying Framework Directives for transposition to extend regulation to products and services outside the scope of the Universal Service Directive 2009 (USD).
- 1.3. This need for clarity is particularly critical where PECN is referenced in General Condition 3 regarding network resilience, as once coupled to the removal of "at a fixed location" the amendment has the potential to greatly extend those services to which the regulation applies. We don't believe that this is Ofcom's intention, but if it is, we think the amendment needs urgent review.
- 1.4. We appreciate Ofcom's continuing commitment to ensuring the safety of people calling the emergency services and the recognition that this can be maximised with accurate location data. However, we believe that the definitions proposed under General Condition 4 for identifying the location of mobile users need to be revisited and we would welcome the opportunity to add our own expertise as an emergency Call Handling Agent to ensure these accurately reflect what is technically feasible.
- 1.5. The European Commission is to be congratulated in recognising that some small businesses may benefit from the additional contract measures now in place for consumers. However, Ofcom's amendments, whilst generally reflective of the letter of the underlying legislation, extend these rights to all business customers including those businesses and corporations enjoying non-standard terms. We believe that Ofcom must revisit the recitals within the USD and make whatever amendments are necessary to General Condition 9 to ensure that those choosing non-standard contracts are not unnecessarily brought into the scope of General Condition 9.
- 1.6. We also believe that industry and Ofcom must work together to agree criteria and parameters for the scheme proposed to compensate customers subject to delay or abuse when porting their telephone number. The proposed date of 25th May 2011 for CPs for this scheme to be operational is unworkable given the complexity of the porting process and ongoing industry work on customer migrations. We would welcome the opportunity to begin this work at Ofcom and industry's earliest convenience.
- 1.7. Alone amongst the Member States, a functionally separated incumbent helps the UK communications sector to flourish, making it the most competitive in Europe. This unique environment must also be taken into account when imposing regulation at a retail level to ensure an even-handed approach and a level playing field for the delivery of services to end-users.

¹ Specifically the Universal Service and Users' Rights Directive:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0011:0036:En:PDF>

2. Introduction

- 2.1. It is worth remembering that in positioning the proposed changes to the Comms Act, as part of their own transposition of the EU Framework Directives, the UK Government stressed the need to ensure regulation had a light touch and did not exceed what Europe had intended for the revisions within the Framework. We believe this approach must be used for Ofcom's transposition of the Directives and any subsequent consultations that seek to implement revisions to the General Conditions as the regulation develops.
- 2.2. Not seeking to go beyond the spirit of the underlying directives is fundamental to their successful implementation in the UK. A light touch will allow communications markets to thrive, free from the unwieldy constraints of an over-prescribed or heavy-handed interpretation and enabling the delivery of better, cheaper services to users. However to achieve compliance the regulation must be easy to understand and clear in its application. The Universal Service and Users' Rights Directive 2009 (USD) from which these changes flow has limited scope, applying only to the first narrowband connection, and whilst it is sensible to future-proof the proposed amendments wherever possible, this should not exceed the remit of the Directive itself. Regulation applying to the first narrowband connection should:
 - a) Apply regardless of the technology used to achieve the connection,
 - b) Set out clear responsibilities for ensuring compliance (wherever possible we believe this should lie with the voice service provider), and
 - c) Operate under effective investigation and dissuasive enforcement processes to better safeguard consumers and encourage competition.
- 2.3. Any ambiguity within the regulation that has the potential to expand the range of services subject to the General Conditions may fall outside the scope of the USD or run counter to the underlying intention of the Directive. To ensure this does not happen we believe Ofcom should revisit the definitions and state clearly which services are within the scope of each General Condition.
- 2.4. Once Ofcom has implemented and published the revised General Conditions, we suggest the table located at the URL below is updated to add further clarity of where and to whom these apply:
<http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/general-conditions/general-conditions-guidelines/>

3. Response to questions

Q1. Do you agree with our proposed approach to definitions?

- 3.1. We agree in principle with Ofcom's proposed approach where amendments to the definitions originate in the revised Electronic Communications Framework Directives 2009. However, our response is based on the definitions as currently set out by Ofcom within the consultation document given the UK Government in their own implementation work has yet to publish any amendments to these. This is particularly relevant given the proposed replacement of Public Telephone Network with Public Electronic Communications Network, which we believe has potential to be applied to a broader base of communications services. Should the UK Government subsequently make changes to these definitions upon publication of the revised legislation we believe it appropriate for Ofcom to review use within the General Conditions and if necessary re-consult on their application within the regulation.

Q2. Do you agree with our proposal to add CEPT to the list of standardisation bodies?

- 3.2. Yes

Q3. Do you agree with our proposals to extend the requirements of GC3 beyond 'fixed locations' and to require CPs to 'take all necessary measures' to maintain their networks and services and access to emergency services?

- 3.3.1. We support Ofcom's intention to bring mobile into the scope of GC3 and recommend that Ofcom make no other major changes to the text of the General Condition. We believe that the current text of GC3 (the requirement to take "all reasonably practicable steps") achieves the appropriate balance between the interests of consumers and of the industry. Therefore, it would not be appropriate to impose additional measures on either infrastructure providers or Communications Providers.
- 3.3.2. To this extent, the regulation must clearly state those who must comply with the obligation and which services are outside scope. Any circumvention of the regulation or exploitation of potential loopholes which could be caused by ambiguities in the text, are therefore minimised and the industry as a whole should have a clear understanding of their obligations. This framework would then facilitate appropriate and fair action by Ofcom in the case of non-compliance.
- 3.3.3. Yet the new text does not offer the level of transparency required as to its scope and purpose. In particular:
- 3.3.3.1. We understand that Ofcom's rationale for replacing 'all reasonably practical steps' with 'all necessary measures' is only to mirror the current wording of Article 23 of the revised USD, but not to require any significant changes in infrastructure providers or Communications Providers' current practice. Yet the change could be interpreted otherwise, and therefore, Ofcom needs to make clear that the new wording will not require any changes from current practice. We also believe that the insertion of the term 'fullest possible' in relation to availability in the event of catastrophic network breakdown or in cases of force majeure could be interpreted as a highly significant change. It is hard not to see the insertion of these additional words as intending a substantially more onerous obligation on CPs; if this is not Ofcom's intention then it is vital for the avoidance of doubt or confusion that Ofcom provides an explanation of what its expectations are in practice.

- 3.3.3.2 We would like further clarity from Ofcom on which operators and services are brought into scope by the proposed amendment to GC3 (in particular further to the removal of 'fixed location'). We understand that Ofcom does not intend to extend GC3 scope to providers of email, Instant Messaging, data/broadband services (including data over voice channels) and secondary VoIP services over broadband, but Ofcom needs to make this clear.
- 3.3.3.3 We understand that the new GC3 does not apply to Private Networks and Virtual Private Networks (VPNs) but again this needs to be confirmed (this is particularly relevant where services break out into the public network and can therefore be deemed to be PATS). It should also be clear from the proposed text that GC3 applies only to paid for services.
- 3.3.4. We understand that Ofcom is planning to consult on the issue of power backup for voice services over NGA as part of work on Revised New Build Guidelines. However, we think it imperative that any battery backup requirements should apply across the entire industry. There are an increasing number of next generation infrastructure pockets across the UK served by a single provider and to which other CPs have limited or no commercially workable level of access. If users are to receive an adequate level of resilience and protections in this type of communications environment, obligations must be placed on all network and communications providers in equal measure. End Users should have the security of knowing that their main voice service would work in the event of a power failure, and enable access to 999 services, irrespective of the provider or technical specification. Services used as a complementary, secondary voice service, do not need the same level of resilience or back-up provision, as the primary voice service should deliver resilient access in these cases. Our expectation is that the revised wording proposed by Ofcom for GC3 will in itself have no material impact on the requirement for BBU in fibre scenarios.

Q4. Do you agree with our proposals for emergency call numbers - which includes amending the definition of CP and requiring that location information is provided free of charge, as soon as the call reaches the emergency organisations and is accurate and reliable (in line with our proposed high level criteria)?

- 3.4.1 In responding to Ofcom's question we have tried to take into account the different roles that BT plays in the provision of 999 services;
- as a Call Handling Agent for the industry (with Cable and Wireless),
 - as a provider of retail communications services to end-users,
 - as a wholesaler of access services to other CPs and
 - as a supplier of business private network solutions to large corporations.
- 3.4.2 Ofcom's proposed amendments to GC4.2 accurately reflect what CPs can already do with help from a CHA. We believe the change to the definition of a CP is helpful in clarifying that Resellers are responsible for providing caller location. However, the definition of CP needs to be clearer. In line with Ofcom's clarification in Appendix 1 (below) it should state Public Electronic Communication Service to avoid any confusion over the inclusion of private ECSs provided by larger enterprises/organisations for their employees.
- 3.4.2.1 It would be helpful to acknowledge that other CPs have a role to play in assisting CPs providing end users with an ECS. Those providing the PECN for example, including access network providers and Internet Service Providers used by VoIP Service Providers and WLR or VoIP resellers, may need to help ensure that accurate customer data is collected and collated by the CHAs.

- 3.4.2.2 We note Ofcom’s intent in paragraph 6.30 to monitor international standards for locating nomadic VoIP users and ask that Ofcom clarify the role of the NICC who has already published standards for this area. In addition, we are aware that a survey of emergency organisations (Eos) in 2009 indicated that, even when a caller was nomadic, the EO preferred to have a default or normal address for the end users as long as this is clearly indicated as such. If Ofcom’s expectation is that international standards may take some years to be implemented and that meanwhile nomadic use increases, then this position would be helpful to consider adopting to assist EOs and help safeguard end users in an emergency.
- 3.4.2.3 We welcome Ofcom’s intent in paragraph 6.31 to consult separately on the creation of a more detailed set of accuracy and reliability criteria. This is likely to have a significant impact on CHAs and we would ask that the timescale for this work be made available at an early stage.
- 3.4.3 An exception (on technical feasibility grounds) needs to be made for limitations on what location a CP can provide while providing a Public ECS that is the public gateway for end users making emergency calls from within a private network. This is especially so, as private networks increasingly extend over wider areas and the enterprises that operate them choose to use a number of different CPs to deliver the various component parts:
- Public network access
 - PBX/iPBX
 - Private wide area network
- The person responsible for configuring a private network operated by an Enterprise on which the call originates may not provide the CP providing the Public ECS with caller location information. Additionally, there are no international standards in use by which such location information could be obtained; although some vendors are marketing bespoke solutions for IP based systems.
- 3.4.3.1 We believe additional clarity is needed for the term “full postal address”. It would certainly need to include the postcode for the 999 call routing by the CHA and a premises number/name to be useful to the serving EO.
- 3.4.4 We believe there is a typographical error in GC 4.3(b)
- (b) using a Mobile Network, the Caller Location Information must include, at least, the Call Identification of the cell from which the call is being made, or in exceptional circumstances the Zone Code.*
- We believe this should read **C**ell Identification.
- 3.4.5 The proposed definition² for **Cell Identification** should be checked with the mobile networks as we understand from NICC standard ND1013 that cell identification uses the coordinates of the centre of the coverage area of the cell rather than the hosting base station location.
- 3.4.6 It may be helpful to mention that **Zone Codes**³ correspond to groups of cells that are associated with a relevant regions defined for 999 call routing purposes.
- 3.4.7 We believe that additional clarity is needed on the definition of Communications Provider⁴ in line with Ofcom’s clarification in Appendix 1 below and should state Public Electronic

² “Cell Identification” –means the geographic coordinates of the mobile base station which is hosting the call, and where available, an indication of the radius of coverage of the cell;

³ “Zone Code” means a code which identifies the geographic region in which the call was originated.

Communication Service. This amendment would assist in avoiding any confusion that the obligations should apply to private ECSs provided by larger enterprises or organisations for their employees.

Q5. Do you agree with our proposed approach to contract related requirements relating to the provision of additional information, the length of contracts and the conditions for termination?

3.5.1 GC 9 should not apply to all business customers. Ofcom's proposed wording for GC 9 is too wide and goes beyond what was intended by the original drafting of the Directive. If Ofcom's proposed wording remains unedited then GC 9 will go beyond what was contemplated by the Directive and inadvertently apply to all business-to-business contracts which the Directive was never intended to cover.

3.5.1.1. To take each of these points in turn. Recital 21 of the USD 2009 reads as follows:

Recital (21) Provisions on contracts should apply not only to consumers but also to other end-users, primarily micro enterprises and small and medium-sized enterprises (SMEs), which may prefer a contract adapted to consumer needs. To avoid unnecessary administrative burdens for providers and the complexity related to the definition of SMEs, the provisions on contracts should not apply automatically to those other end-users, but only where they so request. Member States should take appropriate measures to promote awareness amongst SMEs of this possibility.

It must therefore be the case that any subsequent use of the term end-users in Article 20(1) refers to SMEs and micro businesses and does not refer to *all* business customers (as Ofcom assert at paragraph 7.5 of the Consultation). This would accurately reflect the intention behind the Directive as set out in Recital 21. Principally that consumers, SMEs and micro businesses are the intended customer segments as regards the provisions of Article 20 of the Directive. Negotiated contracts and contracts with larger businesses do not require any intervention under the General Conditions.

3.5.1.2. It therefore follows that the Directive is not intended to apply to all business customers. Nor should it. It would be quite inappropriate for the Directive to apply, in the form of a revised GC 9, to negotiated contracts for connection to a range of Public Electronic Communication Services by Communications Providers (CPs) for businesses.

3.5.1.3. By way of example how could GC 9 have any meaning in the context of a CP delivering on a complex Design Build and Operate contract for a business customer? Where a CP builds a non-standard PSTN, BB and mobile Virtual Private Network for a large business customer on negotiated commercial terms which the parties agree to be bound by GC 9 as currently worded can have no meaningful or beneficial effect for either the CP or the business customer.

3.5.1.4. As it is currently drafted 9.1 also suggests that CPs have to make available the information described in paragraphs 9.2 through to 9.7 to members of the public or

⁴ "Communications Provider" means a person who provides End-Users with an Electronic Communications Service, or provides access to such a service by means of a Pay Telephone, for originating calls to a number or numbers in the National Telephone Numbering Plan but shall exclude any Click to Call Service;

businesses generally who have no contractual relationship with the CPs. End Users as used in the context of the currently drafted 9.1 can be inferred to mean anyone who uses either a phone or an internet connection but who do not have a contractual relationship with the provider of the service in question. An End User could be using the service at the house of a relative but under GC 9 as drafted they would have the right to all the information set out in 9.2 through to 9.7.

- 3.5.1.5. It would appear that Ofcom have merely lifted and shifted the text from USD 20.1 but without the corresponding recital it becomes meaningless. Ofcom's duty as regulator is to apply the recital to the text of USD 20 in light of national conditions and reword it appropriately. By effectively doing nothing more than cutting and pasting Ofcom have failed to discharge their duty in a proportionate manner.
- 3.5.1.6. We don't believe this was intended by the underlying Directive and respectfully suggest that 9.1 as drafted is too wide. We would therefore recommend reducing the scope of 9.1 to the effect that it only applies in relation to End Users (meaning consumers and SME businesses) with whom the CPs already contract or with whom a CP is offering to contract and it should not apply to contracts for non Geographic numbers. It should not apply to the effect that CPs have to provide this information to absolutely anyone who asks for it.
- 3.5.1.7 To reflect this we have therefore re-written your proposed General Condition 9.1 with changes highlighted in red below. The changes are designed to make it clear that GC 9 only applies in relation to standard terms contracts under the terms of which consumers and micro businesses and SMEs are able to avail themselves of the new rights set out in Article 20 of the Directive. The Directive clearly does not apply and was never intended to apply to non-standard business contracts with micro businesses/SMEs or to any contracts for larger businesses. Equally, it should not apply where there is no or no intended contractual relationship between Communications Providers and End Users.

9.1 Communications Providers shall ~~when, in~~ offering to provide ~~and /;~~ or providing, connection to a Public Electronic Communications Network and/or Public Electronic Communications Services to;

(a) ~~a~~ Consumers; and;

(b) ~~and~~ other EndUsers on request who are seeking to contract with CPs;

~~offer to enter into a contract or vary an existing contract with that Consumer, or other End-User, which complies with the following paragraphs 9.2 through to 9.7 set out below. These paragraphs shall not apply however to any contract between any Communications Provider and any End User where the Public Electronic Communications Service has been provided not on a Communications Provider's standard terms but on a non-standard basis with terms and/or charges separately negotiated by the parties. Where such non-standard contracts exist then their terms shall take precedence and this General Condition 9 shall have no effect. This General Condition 9 shall only apply to contracts between Communication Providers and Consumers, Micro Businesses and SMEs for the provision of electronic communications services on standard terms that have not been subject to negotiation."~~

- 3.5.1.8. It would seem inequitable to permit all businesses, from a single home worker to a multi-national organisation, to opt for a contract adapted to consumer needs when consumers clearly should have greater protection.
- 3.5.2 It is apparent that the framing of the requirements in GC9.2 in large part follows precisely the wording of the Directives. We would suggest that in a number of cases (for example, information on procedures to manage traffic as required by GC9.2(e)) the specification of these "in a clear, comprehensive and easily accessible form" would be best achieved by

reference out from the end-user contracts to online websites. Aside from practical considerations, end-user contracts would become extremely lengthy if they were to incorporate directly all these new provisions. Referencing out would also seem to offer the flexibility for CPs to satisfy the different requirements in respect of consumers and businesses, the latter only being required 'on request'. It would also facilitate compliance with any future requirements Ofcom may direct, as provided by GC9.2(d). We would welcome Ofcom's confirmation that compliance with Condition 9 is capable of being fulfilled by means other than direct wording in the body of an end-user contract.

3.5.3 We agree that conditions or procedures for contract termination should not act as a disincentive to switching. We do not believe that BT's contract terms act as such a disincentive, taking due account of the discounts which attach to them.

3.5.4 We fully support the proposal to provide a maximum contract duration of 12 months. This requirement has not been interpreted so that the customer would face an automatic termination at the end of the 12 month contract period, as this would not be in the best interests of the customer, but rather that the customer would have the ability to terminate a contract on the expiry of a 12 month period without payment of any termination charges.

3.5.4.1. We do not however, understand the use of the word User in 9.5. Ofcom appends the standard Framework Directive definition for 'user' as follows:

"User" means a legal entity or natural person using or requesting a Public Electronic Communications Service

However, this term makes the right to contact for a 12 month term too broad. It was not the intention of the underlying Directive that this right apply to non-standard and/or business-to-business contracts, as already mentioned. In fact many non-standard B2B customers choose a much longer minimum period because a longer term enables CPs to recover their costs and gives the customer a lower monthly rental price. In this context therefore, your proposed 9.5 would be meaningless. We therefore recommend deleting 9.7(c) altogether and amending 9.5 to read as follows:

9.5 Communications Providers shall ensure that ~~Users~~ where Subscribers are contracting for or wish to contract for services on a CP's standard terms they are able to subscribe to a contract with a maximum duration of 12 months

3.5.5 We support the proposal to provide notice to subscribers. On-line resources and notifications provide a valuable resource to customers to access information and also contract for services using online services. To this end, it would be inappropriate to omit using websites as a legitimate means of communicating significant changes to the category of businesses that may be included in the GC9 obligations.

3.5.5.1. Equally, and as above with 9.5, it should be made clear in paragraph 9.6 that the provisions of 9.6 only apply to subscribers who are consumers or on request to businesses who are on standard terms contracts. As drafted, paragraph 9.6 is again too wide. It would be meaningless in the context of non-standard b2b negotiated contracts that will, inevitably have their own pricing and ADR mechanisms. We would therefore recommend re-wording 9.6 as follows:

9.6 Communications Providers shall:

(a) give its **Subscribers (who are consumers or businesses contracting for Public Electronic Communications Services from CPs on standard terms)** adequate notice not shorter than one month of any modifications likely to be of material detriment to that Subscriber;

(b) allow its **Subscribers, as defined in 9.6(a) above**, to withdraw from their contract without penalty upon such notice; and shall,

(c) **at the same time as giving the notice in condition 9.6 (a) above**, inform the **Subscriber, as defined in 9.6(a) above**, of their ability to terminate the contract without penalty if the proposed modification is not acceptable to the **Subscriber**.

Q6. Do you agree with our proposals to ensure equivalent access to the emergency services for disabled users and to mandate the provision of Emergency SMS?

3.6.1 We agree and support this proposal, however we believe the following amendment to the proposed wording for 15.7 [with proposed changes shown in red] is necessary to remove any ambiguity of where this obligation applies:

Mobile Communications Providers shall provide End-Users with hearing or speech impairments with Mobile SMS Access to Emergency Organisations by using the emergency call numbers "112" and "999" at no charge.

Q7. Do you agree that given the existing measures that are in place to help disabled users to access 116XXX services, it is not necessary to make further changes to GC15 in this respect?

3.7.1 Yes

Q8. Do you agree with our proposals on conditions for transferring the rights of use of telephone numbers and also for granting their use for a limited period of time?

3.8.1 We believe that as well as defining rights of use, Ofcom should perhaps make it clear that there are, and define, responsibilities of use. That is, insofar as range-holders sub-allocate the rights of use, they sub-allocate the responsibilities of use. This would mean that if the sub-allocation is somehow mis-used, it is the sole responsibility of the sub-allocatee and not the range-holder. This may make the sub-allocation of numbers more attractive to range-holders.

3.8.2 Ofcom indicates that it may make short-term allocations at the request of a CP, to serve the needs of that CP. Given that such numbers would (presumably) be portable, Ofcom would need to consider porting rights and their implications when allocating numbers on a short-term basis, noting that customers need not necessarily retain the same service once they have ported their number. For example, it would seem quite possible that the gaining provider may require the allocation to remain open beyond its sunset date. A proliferation of short duration allocations would also affect all CPs who would have to insert routings and then remove them for short duration allocations where they would not have to for standard allocations. In short, Ofcom should note that the duration of any allocation potentially affects all CPs, not just the applicant.

3.8.3 An observation – where numbers are sub-allocated to third parties, or where an allocation is hosted by a third party, it would seem likely to become more difficult for Ofcom to administer

the National Numbering Scheme efficiently as the direct communication link to the rangeholder would disappear.

Q9. Do you agree with our proposals on the one working day requirement in relation to bulk mobile ports and in relation to fixed porting? If not, please explain why?

- 3.9.1 We agree that the current consumer protection and verification rules must be maintained and that wider changes to the General Conditions should not precede the conclusion of Ofcom's switching review. We therefore agree that fulfilling the port activation request within one working/business day for confirmed orders as we do today would meet the requirement. We would be happy to work with Ofcom and industry to agree details of how the rules should be applied.
- 3.9.2 Where there is a requirement to port a large quantity of numbers for a large or complex business customer and regardless of any future definition, it may not be possible to complete this within one business day. Typically, this type of bulk port would be managed through an agreed schedule in order to best balance the needs of the customer with what is technically possible. We expect industry and customers to be able to find ways to allow numbers to be ported in the shortest possible time and would hope that the new requirements won't prove counter-productive and get in the way of efficient porting, with CPs paradoxically having to refuse to port because they know it cannot be done within a day. As Ofcom recognises, fixed number porting usually takes place within twenty minutes or so of the activation request. BT wonders whether it may be time for a (revised) Functional Specification to be re-introduced, and referred to within GC18.
- 3.9.3 We would be grateful if Ofcom could confirm whether mobile short numbers are subject to number portability and if not, what steps Ofcom would consider to bring such numbers into scope so customers using them have the same rights as other customers.

Q10. Do you agree with our proposed approach to the porting compensation scheme requirement?

- 3.10.1 We agree in principle with the proposed approach for the porting compensation scheme however, we cannot see how a sound customer focused scheme can be in place by 25 May 2011. Whilst it is right that CPs must put their own compensation schemes in place and for these to be reviewed after 12 months, there are many factors that need to be agreed within the industry to ensure that any the schemes are actually workable for the customer. For example, at the most basic level, it is not even clear which party the customer should go to for compensation, the gaining or losing party.
- 3.10.2 The porting process is complex and delays may arise for a variety of reasons. The problem could arise as a result of an action or inaction by the gaining provider, losing provider, rangeholder or any other sub-allocatee within the chain. For a scheme to be operational and meaningful, it must also be simple and easy to communicate to the consumer and fair to all providers in the new or previous supply chain. Some of the first issues that need to be resolved include the following:-
- 3.10.2.1 For customers to benefit from the compensation scheme there must be no disincentive to making a claim. It will need to be clear to customers who they can make a claim from, in which specific circumstances and how they go about it. The process must be straightforward. This will take time to develop.

- 3.10.2.2 Customers must not get caught up in intra-industry disagreements about how the delay was caused or by whom. We believe industry must agree a set of circumstances and criteria for the various types of porting delay such that any claim for compensation can be processed “behind the scenes” as quickly and easily as possible for the customer, with the culpable party recompensing whoever paid the customer where liable.
- 3.10.2.3 It is more efficient for CPs to credit customers via a phone bill, however it is unlikely that any claim against the losing provider would conclude in time for an adjustment of the final bill. It may therefore be more sensible for compensation to be paid by the gaining provider (assuming the port has completed) in all cases with an industry agreed mechanism for reimbursement from the appropriate party where the delay or abuse was outside of their control. We believe that further industry discussions are needed to ensure that compensation schemes work efficiently and effectively, cannot be arbitrated, and would welcome the opportunity to work with Ofcom and industry to progress this area as quickly as possible.
- 3.10.2.4 We agree that it is sensible to use existing complaint channels and processes wherever possible for processing porting compensation claims. However, there needs to be a mechanism in place for those cases that go to ADR and are won by the customer, to allow recovery of the costs and compensation from the CP responsible if this is not the party against whom the customer under the process has taken the dispute.

Q11. Do you agree with our proposed approach on requirements relating to ensuring access to all numbers within the Community, the charging of ETNS numbers and calling the hotline for missing children on 116000?

- 3.11.1 As acknowledged by Ofcom, all numbers are not the same. Within a national environment in addition to geographic numbers, there are non geographic numbers that themselves have a wide range of charging regimes associated with them (from freephone to premium rate) as well as national only numbers. Access to numbers in the community, from outside the country in which they are allocated, should only occur where they are part of the international numbering scheme (as defined in ITU-T Recommendation E.164). GC20 provides that access is required only where it is commercially and technically viable.
- 3.11.2 As the ITU has reclaimed the numbers associated with the ETNS, we believe it is unclear what numbers Ofcom is referring to, and therefore what the service would be. The recent consultation from the EC suggested the use of national-only numbers (e.g. 115xxx). Irrespective of the numbers used, calls to the ETNS should be based on commercial arrangements, market demand, and technical capability.
- 3.11.3 BT already ensures access to 116000. However, this is only one of a number 116 numbers aligned to social services which may need the support of the regulator to ensure access.
- 3.11.4 We believe that further discussion and possibly consultation is required for this area. A number of questions relating to technical feasibility, potential for arbitrage, fraud and misuse arise from these proposals as well as a need for agreed procedural arrangements for number blocking and notification. We would welcome the opportunity to discuss our concerns in more detail so as to help Ofcom in the implementation of ETNS amendments.

Q12. Do you agree with the proposed obligation on universal service providers to notify us when they are disposing of part or all their local access network assets?

- 3.12.1 It is clear that Ofcom requires notification of the disposal of local access network assets to be able to assess how and by who continued delivery of Universal Service will be achieved. However, the proposed text for the proposed Universal Service Condition 9 would benefit from clearer wording. The intention is that the new condition would apply in cases where legal ownership of the working assets is transferred to another legal entity, but should not apply in cases where, as part of BT's normal business, we dispose of or de-commission specific parts of our asset base.
- 3.12.2 We would welcome the opportunity to meet and discuss further, how this can best be achieved to meet our joint objectives.

4. Points not covered within Ofcom's questions

General Condition 8 – OPERATOR ASSISTANCE, DIRECTORIES AND DIRECTORY ENQUIRY FACILITIESⁱ

4.1. We agree the proposed amendment to GC 8 however note that Ofcom has not made any amendment following the repeal of Operator Assistance services from the USD. Recital 37 of the USD 2009 says:

Operator assistance services cover a range of different services for end-users. The provision of such services should be left to commercial negotiations between providers of public communications networks and operator assistance services, as is the case for any other customer support service, and it is not necessary to continue to mandate their provision. The corresponding obligation should therefore be repealed.

4.2. We believe therefore that Ofcom must remove Operator Assistance from General Condition 8 in any subsequent publication of the General Conditions after 25th May 2011.

ⁱ General Condition 8 – OPERATOR ASSISTANCE, DIRECTORIES AND DIRECTORY ENQUIRY FACILITIES

As a consequence of changes in the definitions and interpretation section, the word "Director" will be replaced by the word "Ofcom" in GC8.3.