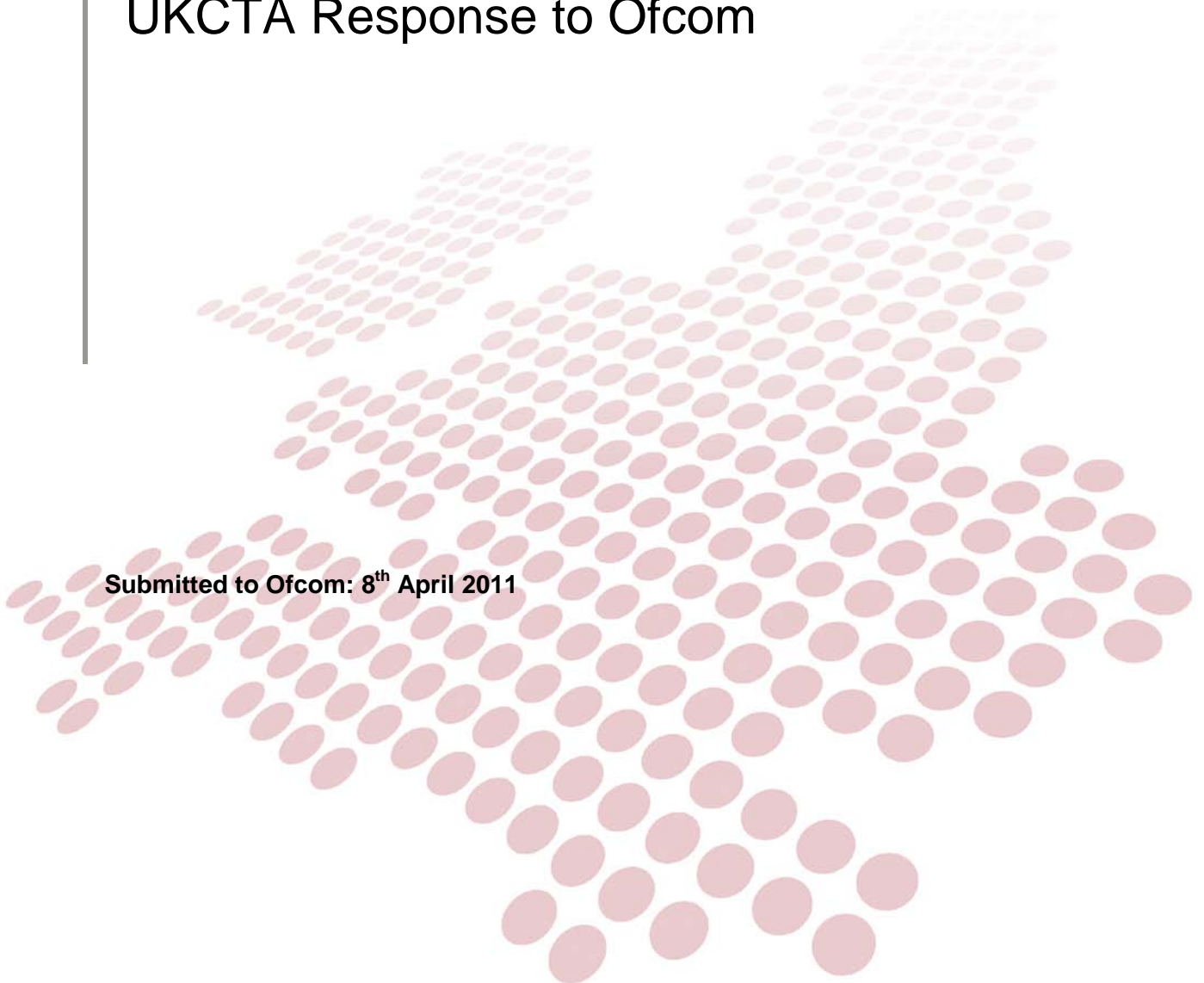


Changes to General Terms and
Conditions and Universal Service

UKCTA Response to Ofcom

Submitted to Ofcom: 8th April 2011



Introduction

UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.org.uk. UKCTA welcomes the opportunity to respond to this consultation since the subject matters which it encompasses are of fundamental importance to our member companies.

While UKCTA generally supports the pragmatic approach Ofcom is proposing to the changes necessary to the General Condition and the Universal Service Conditions there are a number of areas where we believe further consideration of the practical effect of the impacts is necessary. For example, we have concerns that the introduction of a new definition of “Public Electronic Communications Network” broadens the scope of the GCs and USCs without this being fully explored or clarified in the consultation document.

We also have serious concerns regarding the timescales for compliance with some of the revised GCs. Our understanding of Ofcom’s proposals is that the intention is for all CPs to be compliant with the new GCs by 25 May 2011. While we appreciate the need for the revised Framework to be transposed into UK law by that date, some of the new requirements will involve significant changes for CPs which will take time to implement. For example, the revised GC9 will require a review of CPs contracts to ensure that they contain the minimum terms now specified. This is no small task, particularly given the changes impact not only on consumer contracts but also, in some instances, to contracts offered to “Users” and “Subscribers”, a point on which we are also seeking clarification. Given Ofcom’s final statement is unlikely to be published until very near to 25 May we do not believe it is reasonable to require compliance by that date and suggest that an implementation period of at least 3 months is necessary.

More generally, UKCTA is aware that Ofcom had previously intended to undertake a more wide-ranging review of the General Conditions. That work was shelved due to other priorities. Given the extent of the changes which the revised Framework introduces we believe that it would be appropriate for Ofcom to reprioritise this work. It is vitally important that CPs are assured that they are operating under a clear and consistent set of regulatory requirements and an overall review of the General Conditions would help provide that comfort.

Finally, we note that DCMS has yet to publish a final statement on implementation of the revised Framework so our comments are necessarily subject to confirmation of the Government’s detailed approach to transposition.

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

Subject to a review of any changes to definitions which are identified in the final DCMS statement on implementation, UKCTA agrees that the identified definitions which have the same meaning as in the Communications Act should be deleted from the General Conditions, relying on the general stated rule of interpretation that, except in so far as the context requires, words or expressions shall have the same meaning as in the Act. However, for ease of reference it would be useful for Ofcom to provide a consolidated list of definitions alongside the GCs. Definitions are placed throughout the Communications Act which can make it difficult to quickly find the meanings of terms.

UKCTA does have some concerns over the introduction of a new definition of “Public Electronic Communications Network” or “PECN”. It is very important for there to be clarity as to the scope and application of the GCs. We note that the scope of the current definition of “Public Telephone Network” is limited to the provision of PATS services and that following revisions to the ECF this limitation will no longer apply. Instead, the GCs will apply to the provision of PECNs defined by reference to the definition of PECN provided in section 151 of the Act. As Ofcom recognises this will broaden the scope of the affected GCs. We consider that Ofcom should clarify and provide additional guidance as to the intended scope of the new requirements.

UKCTA also notes that the revised ECF amended the definition of “Public Communications Network” to include the additional words “which support the transfer of information between network termination points” (Article 2(d) of the revised Framework Directive). This amendment is important and does limit the potential scope of the PECN so as to require the transfer of information between subscribers which is an important limitation. Ofcom notes at paragraph 3.7 of the Consultation that the definition of PECN is likely to change following the Government’s transposition of the revised ECF. However, industry seeks Ofcom’s assurance that the scope and application of the GCs and USCs will be limited to reflect the revised ECF requirements.

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

UKCTA agrees with Ofcom’s proposal to add CEPT to the list of standardisation bodies referenced in GC2.2.

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?

UKCTA notes that the requirements of the revised ECF (Article 23 of the USD) requires Member States to take all necessary measures to ensure the fullest possible availability of telephony services in the event catastrophic network breakdown or in cases of force majeure.

In particular, we note that the requirements of Article 23 of the USD are limited to ensure the “availability of PATS provided over public communications networks”. Accordingly, we consider that the scope of GC3 should be limited to the provision of **PATS over a PECN**. However, with the proposed revised definition of PECN (discussed above) it appears that the scope of GC3 may extend beyond the provision of PATS.

In addition, UKCTA notes that revised wording of GC 3 appears to adopt this broader position with the definition of “Communications Provider” extending to a person who provides a “PECN” and/or a PATS. Equally, revised GC3.1 (a) applies to “the proper and effective functioning of the PECN” without any limitation to PATS. This goes beyond the requirements of Article 23. UKCTA seeks clarification from Ofcom as to the intended impact of the revisions to GC3 and requests that Ofcom limit the scope of GC3 to reflect the requirements of Article 23 of the USD.

UKCTA also notes that the revised Framework Directive includes new provisions relating to the security and integrity of networks and services (Article 13(a) and (b) of the FD). We consider that GC3 goes some way to ensure compliance with these requirements and this should be recognised by Ofcom. Disappointingly, any discussion of how Ofcom intends to implement these requirements is notably absent from the Consultation. We understand that Government and Ofcom are considering the impact of these proposals. UKCTA considers that when implementing these requirements a high materiality threshold should be applied and careful consideration should be given to existing obligations as well as the cost and burden that any new requirements may place on industry.

Finally, in relation to implementation of these requirements, UKCTA considers that, in accordance with its statutory obligations, it is essential for to Ofcom adopt a proportionate approach. There is no guidance or discussion in the Consultation as to how Ofcom intends to apply the new requirement of “all necessary measures” and “fullest possible”. UKCTA requests that Ofcom provide such guidance and also adopt a pragmatic approach to enforcement noting again the burden that this requirement could place on industry and also the steps already taken by a CPs to ensure their networks are robust. In any event, GC3 should only be applicable to network elements under the direct control of the CP in question.

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)?

Some UKCTA members provide a Call Handling Agency (CHA) service for both their own and a number of other fixed and mobile operators. We are concerned that whilst the proposals for CPs do appear initially to be workable, a number of potential difficulties have been created for CHAs if individual CPs were to decide to comply with the regulations outside of already existing processes. This is particularly concerning at a time when the scope of the regulations has been expanded to extend obligations to parts of the value chain not previously explicitly captured under General Condition 4.

As discussed previously it is of paramount importance that the General Conditions provide explicit guidance as well as ensures that 112 / 999 continues to provide a vital service to consumers and ensuring that operators will employ best practice and robust processes. In order to achieve this it is essential that the underlying regulation provides unambiguous guidance. To this end we welcome the unequivocal statement that IP PBX and Private Network operators are not the intended parties to be captured by the broader definition of General Condition 4 from PATS to PECS.

It is our understanding following this clarification that Ofcom intends the liability for providing accurate Caller Location Information to sit with resellers and providers of VoIP services as well as the Network Operators complying with the regulation today. We acknowledge that the existing circular PATS definition and failure to capture all parties with a relationship to the caller and the ability to provide accurate Caller Location Information is imperfect. UKCTA supports the regulation's extended scope, subject to Ofcom's clarification that IP PBX and private network operators are explicitly not covered by the regulation in much the same way as providers of Click to Call.

However we do have some concerns regarding the interrelationship between today's processes and Ofcom's new scope. We believe these are largely caused by the point to which Ofcom is choosing to extend its regulation. There are two similar instances where this is apparent. In the first Ofcom states in 6.10 "...that the reseller at the end of that supply chain also has the obligation to collect location information and pass it on to the emergency services either directly or pass it up through the supply chain". In the case of, for example, a reseller facing General Condition 4 liability for the first time this seems to suggest it is possible for them to simply upload their Location Information direct to the EAs. This may be a possible solution, but assume for a moment that the reseller has taken the unlikely decision to upload information directly to the multiple EAs, and that such a development falls short of introducing its own CHA. The reseller upon uploading its Location Information to the EAs is fully compliant with General Condition 4, however at the same time runs the risk of an incident with serious consequences unless the CHAs also have access to this information.

When a call is routed to the EAs it is not done so directly but via one of the CHA agencies (BT, Cable & Wireless Worldwide or Global Crossing). When a call is received by the CHA the relevant address information allows the Operator Services platform to automatically link the call to the nearest Emergency Authority. Were a reseller to pass information directly independently to the EAs the CHA would not be presented with any information and would be required to question the caller for their location before manually connecting to the relevant EA. This could not only introduce delay and the potential for misrouted calls, but in the case of a silent call would mean that the CHA has no ability to direct the EA to the relevant location.

This issue also affects the proposed amendments relating to the timeliness of updates. Paragraph 6.17 acknowledges the role of the CHA; the fact that CHA uses the location information to forward on the call to EA and 6.18 acknowledges the ALSEC/EISEC systems

created by CHAs for use by the EA. However 6.19 states that Ofcom is regulating that Location Information is to be available when the EA answers the call. This is a step in the process too late as the information is required by the CHA at the point which they handle the call and direct it to the appropriate EA.

We also draw Ofcom’s attention to the PECS guidelines which recommend CPs provide Caller Location Information within 24 hours of a site going live. This timescale accounts for the automated handover of data between CPs internal systems and then subsequent update to their chosen CHA. These updates are often completed in the early hours of the morning to protect the CHA platform’s performance during bulk uploads. As a result it is possible that an initial 999 call can be made before Caller Location Information is fully updated and that the CHA has to ask the caller for their location. UKCTA is concerned that Ofcom is inadvertently mandating real time updates of information and seeks clarity that this is not the case.

UKCTA welcomes the decision to retain the ‘technical feasibility’ assessment in terms of compliance with GC4. This is an area which, particularly in the business sphere, is subject to a number of challenges in an IP environment and we welcome the specific guidance in relation to nomadic and mobile VoIP. While we welcome the guidance which has been given in relation to VoIP users moving from one fixed location to another we would appreciate further clarification of the obligations where VoIP services are moving from being nomadic to fixed or fixed to nomadic. We welcome further Ofcom guidance in this area as the output from the ETSI and NICC work becomes apparent.

UKCTA agrees with Ofcom that the provision of Caller Location information at no charge and the current demanded level of Caller Location accuracy do not pose any change for operators. UKCTA looks forward to working with Ofcom to further refine the level of address accuracy.

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?

GC 9.1

UKCTA notes that the requirements of Article 20 of the revised USD apply to undertakings providing “public communications network and/or publicly available electronic communications services” and that Ofcom seeks to reflect this in the revised GC9 with the introduction of a wider definition of CP. This broadens the scope of the current requirements. UKCTA repeats its comments in relation to the definition of PECN above and would request confirmation from Ofcom that the application of GC9 will be similarly limited.

The revised USD has not only broadened the definition of CP but the requirements of GC 9 now also extend to a variety of “consumers”. GC 9 refers to “consumers”, “subscribers”, “end users” and “users”. UKCTA considers that it would be beneficial for Ofcom to provide

stakeholders with additional guidance on the scope and nature of the new requirements under GC9.

GC9.2

UKCTA acknowledges that Ofcom has little discretion in implementing the revised USD and in the main has copied the additional requirements as set out by Article 20. However, we note that GC 9.2 does not fully reflect Article 20 and does not include the wording “when subscribing”. Ofcom’s explanatory note 1 states that “CPs should include the additional information set out below in their contracts (both current and new)”. UKCTA considers that Ofcom should include the USD drafting “when subscribing”. The omission of this wording has the effect of requiring CPs to re-issue all contracts to current customers. Ofcom considers this obligation is of “limited impact” however UKCTA considers it to be burdensome. UKCTA acknowledges that Ofcom has indicated that CPs may wish to write, e-mail or text customers to advise them of the changes to their terms and conditions or direct customers to their website. However, we would welcome clarification on what Ofcom means by “actively communicate”. Is Ofcom expecting CPs to send out a specific communication to customers to advise of the additional requirements or would CPs be able to communicate the changes in a clear and transparent way at the same time as communicating other messages to customers? The cost of communicating changes to our members’ customers is not insignificant and UKCTA is eager to ensure that the costs of the USD implementation are kept to a minimum.

UKCTA is also concerned that the changes required under GC 9.2 are expected to be implemented by 25 May 2011. This is an unrealistic timeframe and UKCTA requests that Ofcom clarify how they anticipate the changes to be implemented in practice and to confirm that they will have a flexible approach to enforcement whilst CPs make the necessary changes within a reasonable timeframe. Ideally we think it would be reasonable for an implementation period to be specified during which Ofcom will not take enforcement action.

When considering the impact of the changes to GC 9.2 Ofcom states that it believes the impact is limited although it notes that information on traffic management and security or integrity incidents are not normally included in CPs’ contracts or terms and conditions. This suggests that Ofcom is envisaging that traffic management policies and similar customer information should be included within the contract terms. There are a number of new requirements which CPs would not normally include in their contracts or terms and conditions but which would usually be found on the website, for example on a “Help” or customer services page. UKCTA seeks clarification from Ofcom that it is acceptable that the contract terms refer to such policies but that the policies are separate from the contract terms. To require CPs to include such policies with the terms and conditions would be incredibly burdensome and it is questionable whether this proposal would fulfil transparency requirements - consumers are more likely to be able to find information in dedicated policies/web pages than they are if this information is added to increasingly lengthy terms and conditions. Equally, for the same reason that tariff guides are separate documents so that when prices change it is not necessary to amend the contracts, it is also necessary to keep

¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/summary/gc-usc.pdf> p27

traffic management and other matters subject to regular change outside of the contract. Including all information in terms and conditions is not an efficient or proportionate requirement.

GC9.4

Whilst UKCTA acknowledges that Ofcom has reproduced the USD word for word, we would like to highlight that GC9.4 is inconsistent with Article 23a of the draft Consumer Rights Directive (“CRD”) which currently states: “Without prejudice of [sic] the provisions of this Directive on unfair terms, contracts concluded between consumers and traders shall not stipulate an initial commitment period of more than 12 months.” We understand that Ofcom’s position is that where there is conflict, sector-specific legislation (i.e. the USD) will outweigh any changes to horizontal consumer law introduced in the CRD but that it keen to understand any ways in which the Consumer Rights Directive may impact its powers and Ofcom’s duty to further the interests of consumers in communications market. UKCTA would be grateful for confirmation of Ofcom’s view in order that there is regulatory certainty with regards to minimum contract periods.

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?

UKCTA member companies take their existing obligations under Condition 15 of the General Conditions seriously and are supportive of amendment of the Communications Act 2003 to clarify Ofcom’s power to impose a General Condition in relation to equivalence. We also welcome Ofcom’s proposal to conduct a full review of the requirements of GC15 in light of the changes necessitated by the revised European Framework and recent social and technological trends. We believe that there are a number of areas in relation to the current GC15 obligations which could benefit from a more focused review.

We would also reiterate our concerns about the funding of the Text Relay service which we believe Ofcom should consider when reviewing GC15. While BT is obliged to fund the Text Relay service, the charges levied on other providers using the service contribute towards that funding. Charges are significant and the split of funding between BT and other providers is not particularly transparent to industry – in the past large increases in the wholesale charges levied by BT for Text Relay services have caused some concern for CPs. We stress that these charges are not passed onto customers but rather borne by providers.

We believe that there is very real merit in considering alternative funding models which extend beyond the communications industry and look to the wider business community. All businesses are subject to obligations under the Equality Act 2010 and we would therefore argue that it would be reasonable for the funding of services such as Text Relay to be provided by a wider range of businesses than simply communications providers as is the case at present. We are not suggesting any specific model and appreciate that Ofcom would not have the power to impose a wider obligation but believe that this is something which should

be considered in any review of the current GC15 obligations and recommendations made to Government as appropriate.

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?

UKCTA agrees that given the existing measures that are in place it is not necessary to make further changes to GC15 to help disabled users to access 116XXX services.

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?

UKCTA agrees with the proposals on conditions for transferring the rights of use of telephone numbers. The practice of sub allocation occurs today and the CP providing a sub allocation may attach additional conditions and commercial terms.

UKCTA also agrees with the granting of use for a limited time period however the withdrawal at the end of the time period should not be made without consideration of the CP representations for an extension of the time period or request to change to an indefinite allocation.

However, we would welcome discussion and clarification as to what Ofcom means by “effective and efficient” use of numbers as there are situations where ranges and numbers can appear dormant for a long time but are clearly allocated for good reason, for example where they are allocated to failover/disaster recovery call centres.

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?

UKCTA has a number of concerns with the current proposals regarding the one working day requirement in relation to fixed porting, particularly from those members operating in the B2B market.

There are fundamental differences between managing porting requests from consumers and those from businesses. Whereas the speed of a port may be of significant importance to a residential user, business customers consider it far more important that a successful port takes place at the time and on the date that they specify, to minimise risk to business continuity. Invariably, the time and date that is specified by a business customer will be in excess of one working day. This is in recognition of the fact that, in order to ensure that business ports are successful, the losing and gaining providers need adequate time to conduct the necessary checks and testing. It is not feasible, nor indeed possible, to conduct such preparatory work in one working day.

It is therefore encouraging that Ofcom states (at paragraph 10.39):

“Our interpretation of the Directive is that once an agreement to port

has concluded, the one working day requirement must commence from that point. In relation to fixed porting, this point must necessarily be after the consumer protection/verification measures have been completed and any necessary line provisioning has taken place”.

If this continues to be Ofcom’s view and any revisions to the industry process reflect this position, then UKCTA’s concerns would, to a great extent, be allayed. However, it would be helpful if Ofcom made reference to the ‘activation point’ being triggered after the necessary protection/verification measures has been completed in relation to fixed single and multi-line ports when issuing its final statement.

It would also be beneficial if Ofcom could provide further clarification in relation to multi-line porting (e.g. ISDN30 porting). We would welcome Ofcom’s recognition in their final statement of the complexities, and therefore the longer lead-time requirements, associated with multi-line ports.

This is particularly important given Ofcom’s reference to the potential changes for reduced timescales resulting from the ongoing Switching Review and OTA2 work. UKCTA would highlight the potential dangers that could result from any significant reductions in the time set aside for conducting the protection/verification measures, particularly for multi-line ports. Extensive testing is required to ensure continuity of service to business customers and any material reductions in the time allowed for such testing would jeopardise the continuity of service demanded by, particularly, business customers.

In summary, UKCTA is encouraged by Ofcom’s recognition that the one-day porting obligation in relation to fixed porting, must necessarily commence after the consumer protection/verification measures have been completed and any necessary line provisioning has taken place. If this were reflected in the final statement, then UKCTA would consider this to be a reasonable and pragmatic approach to implementing the porting requirements contained within the revised EU Framework.

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

UKCTA members do have some concerns with Ofcom’s proposals in relation to a mandatory porting compensation scheme.

From the information contained within the consultation, it is not clear precisely what is covered by the scheme and what isn’t as the term ‘abuse’ has not been defined. There are also potential complexities involved in determining who is responsible for any delay in porting, especially where more than two CPs are involved in the process.

Further, UKCTA notes that Ofcom decline to set out further details of the scheme, preferring instead that CPs design the scheme themselves. Whilst in principle this approach may appear sensible, without Ofcom setting out the basic scope of a scheme, there is a real danger that

within a short period of time, Ofcom will declare the scheme inadequate, which would result in further disruption as a replacement scheme is introduced. One particular issue is which provider a customer should complain to in the event of a port not taking place, particularly where there may be multiple CPs involved in the process. We note that Ombudsman Services: Communications (previously Otelco) recently issued a Guidance Note on which provider they should be taking a complaint against when a line or service has been taken over. We believe everyone, not least consumers, would benefit if similar guidance was available in relation to porting requests (especially as there could be situations where one provider is a member of Ombudsman Services and another a member of CISAS with the potential for two applicable sets of guidance which may conflict). UKCTA therefore considers that Ofcom should consider setting out basic guidance for industry on what it considers are the scope and essential elements of such a scheme. This would ensure that the scheme is implemented efficiently and appropriately at the first time of asking.

Guidance would also be welcome on the levels of compensation Ofcom considers would be appropriate. For example, UKCTA would consider that a delayed port has less impact on a customer than a failed port; with a delay the customer doesn't lose service whereas in the case of a fault, service is lost. Accordingly, it would seem appropriate for a case of delayed porting to attract less compensation than a failed port. However, this does not appear, from the consultation, to be Ofcom's view. UKCTA considers that such basic guidance should be provided before work commences on the design of a scheme.

Furthermore, UKCTA would question the need to extend such a compensation scheme to B2B providers? Such a compensation scheme could and probably would be in conflict with existing arrangements contained in service level agreements. At the very least, it could cause confusion and unnecessary duplication.

It would also be helpful if Ofcom could specify what is considered to be an acceptable mode of communication, for example would notification via an e-mail suffice?

Finally, Ofcom's current view is that a CP must have a compensation scheme in operation from 25 May 2011. UKCTA considers that this is not realistic, especially as the requirements of any such scheme will not be known until Ofcom publishes its final statement on the changes to the GCs. UKCTA would urge Ofcom to allow at least a 3 month period from the date of the publication of the final statement before considering enforcement of the revised obligation. As alluded to above, the more detail Ofcom can provide on its expectations of the compensation scheme, the easier it will be for industry to comply within a reasonable timescale.

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?

UKCTA agrees with the proposed approach for ensuring access to all numbers within the

Community and concurs the revisions do not represent significant implementation changes for CPs. It is worth noting that end-users can choose to restrict their access and CPs can remove access for commercial reasons.

Communications providers already assess the risk of fraud and block access to ranges and services where they consider the risk is significant and to protect their customers. The introduction of the proposed GC20.3 should not preclude CPs from undertaking their own intervention.

Given current information, UKCTA agrees with the proposals for ETNS charging yet note that GC20.4 may need to be revisiting if ETNS is launched and differs from expectations. UKCTA agrees with the access proposals for 116000.

The views expressed in response to this question do not reflect the views of Everything Everywhere who will be submitting their own response.

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?

UKCTA would expect that if there were plans for a USO provider to dispose of all or part of their local network access then they would engage in discussions with Ofcom prior to this happening. We therefore support the proposed obligation to provide no less than one month's notice of such a disposal.

- END -