

CHANGES TO GENERAL CONDITIONS AND UNIVERSAL SERVICE CONDITIONS

07.04.11

Cable&Wireless Worldwide has mixed feelings towards Ofcom's *Changes to General Conditions and Universal Service Conditions*. On the one hand Ofcom's proposals represent a pragmatic approach to implementation which Cable&Wireless Worldwide wholeheartedly endorses; on the other it is an incomplete consideration of practical implications and in our view represents a missed opportunity to rectify many of the failings of the current General Conditions text. This latter has been constantly postponed by Ofcom in favour of other priorities and we're disappointed that now the text has to be amended in a wholesale fashion, the opportunity to apply uniform definitions and terminology is still not to be taken.

We are also disappointed that Ofcom has chosen not to provide a marked up version showing the amended General Conditions. This would have made it far simpler for respondents to gauge the impact of the changes and would have also assisted Ofcom in maintaining at least a small level of consistency between General Conditions.

The General Conditions represent the rules and obligations under which Communications Providers must operate and as such clarity and consistency is of utmost importance. It is of paramount importance that these obligations are clear across industry and not subject to varying interpretation. Whilst we commend Ofcom on their timely intervention and guidance in relation to General Condition 4, we are concerned that the impact of the new broader definition of "Public Electronic Communications Network" has been applied in a siloed manner rather than being considered for consistency across the totality of the General Conditions: for example we see similar concerns in relation to General Condition 3.

The proposed timescales for certain areas of compliance are in our view unrealistic. We recognise that the UK has to transpose the new Framework into law by 25th May and note that the fact DCMS is still to publish its final statement requires Ofcom to push ahead in the absence of this implementation guidance, however the suggestion that CPs need to be

compliant with the new General Conditions by 25th May 2011 when they are still to be finalised is a major concern to us.

All of the issues above are crystallized within General Condition 9. There are a plethora of unclear and confusing definitions which make it unclear as to whom the regulation applies. If it does apply to Cable&Wireless Worldwide customers there will be a requirement for a major review of customer contracts to ensure compliance, and this is simply unrealistic to achieve by 25th May. Similarly whilst the porting arrangements appear pragmatic there are nuances and standard operational practices which will require time to implement. We seek assurances from Ofcom that it will allow an implementation period before it seeks to enforce compliance. We suggest a minimum period of three months is required.

Q1. DO YOU AGREE WITH OUR PROPOSED APPROACH TO DEFINITIONS?

No, Cable&Wireless Worldwide does not agree that definitions which have the same meaning as in the Communications Act should be removed from the General Conditions. Whilst we acknowledge that Ofcom does not wish to risk introducing contradictory definitions to those contained within the Communications Act and that referring to the Act allows legislative amendments to be made without necessarily requiring the General Conditions to be revisited, we would much prefer to see a common, clear list of definitions. These could be centrally held as an annex to the General Conditions, and make it clear where definitions are taken from the Communications Act rather than defined anew. Only a single document would be required to be updated in the light of future legislative changes, but more importantly it provides the opportunity for guidance as to a common understanding and Ofcom's interpretation of the definitions to be provided. This would not only assist the creation of consistency across the General Conditions but also to untangle the definitional soup of General Condition 9. The inconsistencies between the Framework Definitions set out in the footnote on page 26 of the consultation are symptomatic of the issue.

Cable&Wireless Worldwide has some concerns about the widening of the General Conditions' scope to cover the new definition of "Public Electronic Communications Network" or "PECN". We have already expressed our belief that there needs to be absolute clarity as regarding the scope and application of the General Conditions. 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 Framework Directive this limitation will no longer apply. Instead, the General Conditions will apply to the provision of PECNs defined by reference to the definition of PECN provided in section 151 of the Act. We ask Ofcom to clarify and provide additional guidance as to the intended scope of those General Condition affected by the new definition, in much the same way as has had to be done for General Condition 4.

Q2. DO YOU AGREE WITH OUR PROPOSAL TO ADD CEPT TO THE LIST OF STANDARDISATION BODIES?

Cable&Wireless Worldwide questions whether CEPT can be considered as meeting the criteria of being a standardisation body, but has no real concerns with the addition and believes it to be pragmatic given the ECF makes the addition. We are disappointed that the UK primary technical standards agency, NICC does not share a similar formal recognition.

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?

Cable&Wireless Worldwide broadly agrees with the proposals, so long as the intent is clarified to relate to those PECNs providing PATS rather than PECNs generically. However, we are disappointed that Ofcom has not provided any guidance as to the criteria that would be used to assess compliance with the General Condition. The term "all necessary measures" is inherently a subjective metric, leaving it impossible for CPs to

assess whether they're meeting their regulatory obligation. What guidance existed in this area (guidelines historically developed with NICC) was revoked some years ago under the auspices of technology neutrality. We consider that it would be appropriate for Ofcom to develop, in co-operation with a body such as NICC, guidelines for communications providers to satisfy Ofcom's requirements in this area (this could take the form of endorsing an industry agreed standard). Whilst ND1643 could form a basis for this guidance, review is inevitably required as this standard is currently narrowly scoped to address only interconnect matters, and even within this excludes TDM/C7 connections.

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)?

Cable&Wireless Worldwide provides a Call Handling Agency (CHA) service for both its 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 Cable&Wireless as a CHA were individual CPs 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 ensure 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. Cable&Wireless Worldwide 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. 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. Cable&Wireless Worldwide 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.

Cable&Wireless Worldwide 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. We look forward to working with Ofcom and its agents 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?

General Condition 9 would also hugely benefit from additional guidance as to its scope and implications. References exist to “consumers”, “subscribers”, “end-users” and “users” within the General Condition and each definition itself is drawn from the Framework Directive. Cable&Wireless Worldwide is concerned that these base definitions themselves lack consistency. As an example “user” refers to “legal entity or natural person” and consumer refers to “natural person” whereas “subscriber” refers to “person”. The lack of clarity of the latter is an issue for business providers. We assume that “subscriber” is intended to include business, but this is an area in which we’d welcome clear guidance.

We refer Ofcom to the more detailed UKCTA consideration of General Condition 9.

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?

Cable&Wireless Worldwide also participated in the SMS trial for on behalf of our mobile customers and we continue to develop the offering’s capabilities. We are somewhat concerned that Ofcom has chosen to seize upon an existing co-regulatory initiative and

choose to mandate it as part of the General Conditions. We acknowledge that the Framework Directive requires equivalent access to the emergency services for disabled users, but we believe that this particular example is something which industry could have been allowed to implement on a self-regulatory basis. We have concerns that the implications will be for future voluntary trials to gain less widespread industry support if the perception exists that success will automatically feed into a mandatory requirement.

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?

Cable&Wireless Worldwide agrees that there is no need to introduce any measures in addition to General Condition 15 in respect of 116 xxx access.

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?

Cable&Wireless Worldwide agrees with these proposals and believes it recognises activity which already occurs within the industry.

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?

Cable&Wireless Worldwide broadly supports the pragmatic approach Ofcom has taken to implementing the EU requirements for bulk mobile porting and 1-day fixed line porting. However there are nuances to the porting processes that exist today that do not fall neatly into the approach Ofcom proposes and we remain concerned at how the obligations may be interpreted in these scenarios.

We have highlighted our confusion over the definition of a 'Subscriber' as set out in footnote 30 of Ofcom's consultation and Ofcom has confirmed that its intention is that this

term encompasses both residential and businesses in the context of General Condition 18 obligations. We accept this intention, however Ofcom's proposed approach and indeed its appreciation of the existing processes appears largely geared towards porting for residential consumers. This leaves us concerned that we – or indeed the industry generally – may find itself either in breach of the new obligations or alternatively in a position of having to make costly changes to systems and processes as a matter of urgency. This is particularly relevant in relation to multi-line porting where the complexities and therefore the associated longer lead-time requirements are recognised.

We echo UKCTA's concerns of the impact of these requirements in conjunction with reduced timescales resulting from the ongoing Switching Review and OTA2 work. As UKCTA highlights businesses demand extensive testing to ensure continuity of service and this activity must be preserved in any reduced timescales.

There is one specific scenario on which we would welcome further consideration and clarification, described below.

In large migration projects within the B2B market, the porting of the number(s) is often the last act in this phase and follows months of contract negotiation, service design and the laying of new fibre. Customers are increasingly requesting that the porting is done out of hours, to avoid any disruption to their business. When we submit a request for a number to be ported, we typically ask for this work to be done on a specific date and time, to dovetail with our own engineering work. Increasingly the request is for the work to be completed 'out of hours', i.e. for geographic numbers, after 6pm and before 8am. There is currently no industry agreed requirement to facilitate out of hours requests. Indeed, the engineers who complete this work are not generally contracted to work evenings and weekends and do so on a voluntary overtime basis. CPs ability to agree to an out of hours porting request is therefore down to the availability of an engineer willing to work overtime

on the date requested. In a scenario where a request was made at 9am for an out of hours port that evening, but no engineer was available, the losing CP could therefore be construed as having failed to port within one working day (even if they offered to carry out the port during normal business hours on the same working day).

We do not believe that Ofcom's intention was to force a change to the terms and conditions of employment for the industry engineers involved in the porting process, nor do we believe it could be considered reasonable for a refusal for an out of hours request to be considered a breach of the revised General Condition 18, where an alternative date/time is offered during normal working hours within the 24 hour window. For business customers, the key priority is that the porting is carried out in a way that is least disruptive to their business. They would prefer that a port is delayed by a day or two so that it can be done after the business has closed for the day, rather than disrupting their business and its customers during trading hours. We would therefore encourage Ofcom to extend its pragmatic approach to the implementation of this requirement in the situation we have described, such that it is clear that where an out of hours port is requested, this is not subject to the 1 working day requirement.

We have also discussed with Ofcom the point at which the 1 day requirement is triggered in a situation where there is no consumer protection measure and Ofcom has confirmed that the validation of the porting request falls within the definition of the consumer protection /verification measures and as such, any request is triggered only after completion of this activity (and any line provisioning required). We welcome this clarification.

Q10. DO YOU AGREE WITH OUR PROPOSED APPROACH TO THE PORTING COMPENSATION SCHEME REQUIREMENT?

Whilst we recognise that the obligations to facilitate porting contained within General Condition 18, amended by the Framework Directive, relate to both residential and business subscribers, it appears wholly inappropriate for the proposed compensation scheme to equally apply to business customers (other than small businesses).

As we describe in our response to Q9 above, in the B2B environment the porting of a customer's number is often the final transaction in the migration of their voice services, but may be only a small part of the overall service offering to them. This service offering will be governed by a bespoke contract, with clear deliverables, deadlines and liquidated damages where these deadlines are missed. A delay in the porting beyond the 24 hours is unlikely to be significant in the overall context of the project – both the customer and the CP will have much greater issues to concern themselves with and any compensation due to the customer will be governed by the contract. In our view, it is unlikely that a compensation scheme for business customers will ever be utilised and therefore it is difficult to justify the costs and time required to implement such a scheme.

The situation is different with regard to residential and small business customers and we recognise that there may be some benefit to having the incentives of a compensation scheme. However, as with business customers, porting is only one part of the transfer jigsaw and our understanding is that the majority of incidents of failure or delay relate to problems with the transfer of the underlying copper, not the porting of the number. Where a customer experiences a delay or a fault with their service, we would question whether they will know the root cause of the failure – all they will know is that their service doesn't work as expected. If the problem is severe enough to generate a complaint to their provider, the provider should manage this within the scope of their existing complaints

process. And if the customer is aggrieved sufficiently to complain, one day's line rental for every day of delay as compensation is unlikely to pacify them.

Whilst it is unclear from the consultation, Ofcom has confirmed that it would expect any compensation scheme to roll through the contractual relationships of CPs up and down the chain. This will require changes to the existing contracts governing those relationships and potentially the industry porting process documents. Delivering these changes in time for 25th May start is unrealistic, even if the work began today. We would also question whether there is sufficient incentive for operators to try and recover compensation up the supply chain.

When we discussed some of our queries and concerns with Ofcom, we outlined a scenario whereby the porting is delayed because the underlying line transfer has failed (or is faulty) Ofcom's view was that this situation would attract a porting compensation payment. It is unclear to C&W Worldwide where the benefit lies in incentivising the port to go ahead in this scenario and causing loss of service, which is the natural conclusion of the proposals. A more pragmatic alternative is that porting is only deemed to have been delayed where it is more than 24 hours after the request AND the underlying service is operational. This approach has the advantage of being clear and unambiguous and will address any genuine issues with the porting process per se, which it would appear is the mandate that Ofcom has. In our view it is inappropriate for Ofcom to extend the scope of the compensation scheme to situations where there is an issue with the underlying service delivery.

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?

Cable&Wireless Worldwide agrees that there is no practical change to today's practices in relation to General Condition 20 and therefore support the proposals.

We are supportive of the requirements to ensure access is possible to 116000 and are supportive of the service's aims. However we do question why any single number in a range reserved for services of social value requires special treatment. We believe a more efficient approach would be to mandate access to the 116 services as a whole.

Cable&Wireless Worldwide reserves its position in relation to ETNS until such a time when the range has been adequately defined as we believe it to be inappropriate to comment on a *potential* scheme. Ofcom needs to revisit these principals once the purpose and nature of this range has been fully established.

We would further highlight that access to UIFNs is enabled on a country-by-country basis by the UIFN-holding-customer's communications provider. As such, if, on the instruction of the customer, that communications provider has enabled origination only from a subset of countries that does not include the UK, originating UK communications providers cannot be expected to provide access as suggested by the revised text of the General Condition.

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?

Cable&Wireless Worldwide supports the proposed obligation to provide no less than one month's notice of such a disposal.