

*Representing the Communication Services Industry*



**Ofcom consultation on  
Changes to the General Conditions and Universal Service Conditions**

**FCS response**

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## Introduction

The Federation of Communication Services, FCS, is the UK trade association for the communication services industry representing 320 members who deliver connectivity and products by means of copper, fibre and wireless. A directory of our members can be found on the website [www.fcs.org.uk](http://www.fcs.org.uk).

We are pleased to respond to the consultation as changes to the General Conditions impact a large proportion of our members. Many of our comments are from the perspective of service providers and resellers of fixed, mobile and broadband connectivity and numbers, who sell services to business customers as well as individual consumers/natural persons.

## Key concerns

We have identified some key concerns arising from the consultation

- The delay in sending out the consultation when Ofcom has been aware of the new Framework since December 2009; even a set of preliminary ideas would have been more helpful at an earlier date
- The short timescale for response to some very new proposals for industry, that were not clear in the EU documents; it has not been possible to fully engage with all of our members in this short time period, which has limited the detail of this response
- Almost impossible deadlines for implementation of new responsibilities- such as
  - GC9 more information in contracts;
  - GC9 establish a new 12 month contract if a supplier does not already have one
  - GC18- setting up a compensation scheme for failed/delayed number ports;

This appears to challenge the Government's thrust for [reducing regulation and red tape](#) and its business friendly agenda.

Each of these proposals would take time for CPs to establish; they would not be a legal certainty until Ofcom publishes its statement following this consultation. As the implementation date for the Directive is 25 May we suggest at least a 3 month implementation period.

- It is not clear that the telecoms distribution chain has been accommodated in the proposals nor what impact there might be on resellers who resell services delivered by a wholesaler; for example a carrier is able to change traffic profiles but not the reseller.
- There continues to be confusion about terminology, which this review might have taken the opportunity to clarify
- We confine our response specifically GC9, customer contracts, and GC 18 number portability

Please can Ofcom regularly update the GCs in full on the Ofcom website

## Specific issues

### GC9- Requirement to offer contracts with minimum terms

We welcome the clarification that a "consumer" is a natural person and not the definition in the Communications Act 2003 which extends to small business.

The information to be provided in new GC9.2 is not available to some CPs. For example 9.2 (e) "procedures to measure and shape traffic..." only applies to carriers providing services to end users. Resellers delivering services to End Users that are businesses are not able to shape traffic.

As an example: if any one service has major surge and uses up the entire network, the carrier will take actions to reject traffic to this service to maintain the services of the majority. An example is Take That ticketing phone number last year which overloaded the Virgin and Opal networks. BT took drastic action to reject the calls to protect the backbone transit layer to try and allow the Opal network to recover. BT can be asked to carry out such measures by a carrier or BT may indeed decide itself to install such measures. Each carrier might also instigate measures within their own network to control such traffic. Resellers do not have this control.

These measures are well understood within the OCP and TCP industry and have been in effect for many years. We are not sure why Ofcom suggest they now need to be described in consumer contracts. This might well confuse and alarm customers in general and does not appear to be suitable for individual consumers.

Similarly 9.2 (m) appears to relate to the internet and not telephone calls

We welcome new GC 9.3 as a pro competition measure. We would welcome clarification as what might be considered a disincentive. As the losing provider is allowed to recover reasonable cost for instigating the port, this could be considered as a disincentive to the consumer.

As we put forward in our answer to Qu 1 below we firmly suggest that a review of GCs is undertaken now to clarify who does what in the supply chain and where GCs apply.

The list of information in new GC9, once clarified following this consultation, will not necessarily be available to every CP and an implementation period will be needed for CPs to adjust their processes.

## **GC18 number portability**

FCS has reported to Ofcom on regular occasions that number portability processes can be problematic. Mobile number portability will be an improved when a gaining provider led process is put in place. As Consumer Focus [reported](#) in November 2010

Despite improvements to the PAC and the MNP process, we feel that until all communications switching processes are led by the gaining provider, the ability of the provider to frustrate the switching process will continue to be an issue. As originally highlighted in our response to the August 2009 consultation on mobile number portability, we stated that recipient-led MNP is simpler for consumers, involving fewer consumer-prompted interactions with Mobile Network Operators (MNOs), and avoiding retention activity, which can be unpleasant for consumers.

FCS members continue to report that there are problems with geo and non geo number porting. Our [submission to](#) Ofcom in November 2010 cited the major obstacles to be

- The porting process is long and protracted , often paper or fax based, with the potential for abuse
- by the losing CP
  - A lack of porting agreements between number range holders
- Accuracy of information such as whether the number is on a single or multiline service [ even very
- small business customers have multiline services]
- Rejects are not communicated adequately to the gaining provider

We have reported these problems to Ofcom for the past 2 years and the FCS member survey in February 2011 indicated little improvement.

We had hoped that in planning to implement the one day porting requirement of the Framework Directive Ofcom would have sought to tackle these problems with some urgency. It appears that the [customer switching project](#) that Ofcom has asked OTA to co-ordinate places no direct focus on number portability either.

The text in the proposed revision to GC18 18.3 (b) places a narrow definition to one day porting for geo and non geo numbers, but does not tackle the underlying problems cited above. Unhelpfully GC18 retains the term Subscriber rather than taking the opportunity to bring the “customer” term in line with other GCEs

In 18.8 Ofcom introduces a compensation scheme for delay or abuse of porting. However there is no clarification as to who has to set up such a scheme. Is it the losing or gaining provider? Or the culprit might lie further up the distribution chain, as evidenced by our list above, so how can they be identified and included in a scheme which seems to be for the CP contracting with the Subscriber

In a port you can have 3 parties, the losing CP, the range host CP and the gaining CP. Any of them could mess up a port. Let's say you want to move from X to Y, although the number was originally V. The number has got to be returned to V by X so that V can then forward to Y. V isn't gaining anything by doing the work, X is obviously losing a customer and Y will be keen to see the port work, but any one of them could cause a delay or a failed port. There are also occasions of partial ports where a customer's port goes nowhere.

The introduction of a compensation scheme may appear consumer [or is that subscriber?] friendly on the surface but Ofcom's proposal requires more detailed guidance for all parties in the number portability chain, ideally from Ofcom itself. On receipt of such guidance each company would need an implementation period to set up their own scheme

## **Answers to the consultation questions**

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

The applicability of some of the GCs has been extended with the removal of the PTN definition in favour of PECN and the extension of some conditions to CPs offering PECS as well as networks.

We are not clear what impact there will be on resellers i.e. those CPs that resell services purchased from a wholesaler. We suggest that to understand the how this policy is implemented a review of GCs is undertaken now to clarify who does what in the supply chain and where GCs apply.

There continues to be a range of terminologies for the end user customer of a CP in different GCEs, as a result of their historical development. We propose that Ofcom rationalises the terms:

- Consumer- to be an individual natural person,
- Business/small organisation customer with less than 10 employees or volunteers
- Large business customer with 11 employees or more

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

Yes we support the addition of CEPT, although its remit extends beyond the EU boundaries.

### ***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?***

CPs deliver services to customers and where CPs are solely resellers they have no networks to maintain. Our suggestion in our answer to Q1 that Ofcom clarifies what obligations are due to different parts of the communications distribution chain would assist both Ofcom and the industry to understand the implications of GC3 for them

***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)?***

Ofcom has indicated that there may be more consultation on emergency call handling but in GC4 resellers are now directly caught with obligation to provide caller location information, where previously this applied to CPs providing PTN. We are not clear how this would work. Will there be an obligation to include this in wholesale contracts? We suggest that more discussion takes place to understand how GC4 impacts different players in the distribution chain

***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?***

Please see our comments on GC 9 above

***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?***

Yes

***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?***

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?***

Ofcom's proposals appear reasonable and we would expect that Ofcom could use this GC to audit and recover unused numbers that were allocated in earlier years

***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?***

Please see our comments on GC 18 above

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

Please see our comment son GC 18 above

There is no clarification as to which party in the chain the compensation scheme should apply to Ofcom is aware of the serious concerns that FCS members have with geo and non geo number

portability; they and their end user customers frustrated by a system

*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?*

Yes

*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?*

Yes