



Changes to General Conditions and Universal Service Conditions

Implementing the revised EU Framework

Statement

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Contents

Section		Page
1	Executive Summary	1
2	Introduction	5
3	Definition changes affecting GCs and USCs	11
4	Change to General Condition 2	21
5	Changes to General Condition 3	23
6	Changes to General Condition 4	27
7	Changes to General Condition 9	35
8	Change to General Condition 15	48
9	Changes to General Condition 17	57
10	Changes to General Condition 18	63
11	Changes to General Condition 20	81
12	Changes to Universal Service Conditions	91
13	Other issues raised by respondents	93
Annex		Page
1	List of consultation respondents	95

Section 1

Executive Summary

Implementation of the revised EU Framework

- 1.1 On 24 February, we issued our consultation on the changes we needed to make to certain General Conditions ('GCs') and Universal Service Conditions ('USCs') by 25 May 2011¹ in order to implement the revised EU Electronic Communications Framework² ('the Framework') in the UK.
- 1.2 Thirty three stakeholders responded to our consultation, which closed on 7 April. Having fully considered their responses, this statement sets out our conclusions and changes to the GCs and USCs.
- 1.3 We have also taken account of the conclusion of the UK Government's (the Department for Culture, Media and Sport - DCMS) recent statement which set out its own approach to making amendments to the Communications Act 2003 (the 'Act'), the Wireless Telegraphy Act 2006 and the Privacy and Electronic Communications Regulations 2003, in order to implement the Framework³. Some of our proposed changes depended upon their alterations to the legal framework – in particular the changes made to the Act via the statutory instrument laid in Parliament on 5 May 2011⁴.

The General Conditions and Universal Service Conditions

- 1.4 The GCs apply mainly to Communications Providers ('CPs') such as companies providing phone and broadband services as well as the networks supporting them. There are currently 24 GCs and the applicability of particular conditions varies depending on the type of network or service a CP is providing.
- 1.5 The USCs apply only to BT⁵ and to Kingston Communications⁶. They ensure that basic fixed line telecoms services are available at an affordable price to citizens across the UK.

Our consultation

- 1.6 In our consultation, we noted that the changes we proposed had to be transposed in accordance with the revised EU Directives and that we had limited discretion in terms

¹ Ofcom *Changes to the General Conditions and Universal Service Conditions – Implementing the revised EU Framework, Consultation*, 24 February 2011, <http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/summary/gc-usc.pdf>.

² The Framework consists of five Directives: the Framework Directive (2002/21/EC), *Authorisation Directive* (2002/20/EC), *Access Directive* (2002/19/EC), *Universal Service Directive* (2002/22/EC), *Privacy and Electronic Communications* (2002/58/EC); all as amended by the *Better Regulation Directive* (2009/140/EC) and *Citizens' Rights Directive* (2009/136/EC).

³ *Implementing the revised EU Electronic Communications Framework* - HMG response to its consultation on proposals and overall approach including its consultation on specific issues, April 2011, http://www.culture.gov.uk/images/publications/FWR_implementation_Governmentresponse.pdf

⁴ The Electronic Communications and Wireless Telegraphy Regulations 2011 – Statutory Instrument 2011 No. 1210 <http://www.legislation.gov.uk/uksi/2011/1210/introduction/made>.

⁵ In the UK, excluding the Hull area.

⁶ In the Hull area.

of how we implemented many of the requirements. In all cases, we set out the amendments we proposed to make and described any likely impacts, where possible.

- 1.7 We also provided more details in those cases where we considered that changes were likely to be more significant:
- **GC9** where we proposed a number of changes in order to implement requirements relating to the provision of additional contract information, the length of contracts and the conditions for termination;
 - **GC15** where we proposed mandating emergency SMS to help promote equivalent access to emergency services for disabled end-users; and
 - **GC18** where we proposed implementation of a requirement to port phone numbers within one working day and for CPs to provide compensation for subscribers experiencing a fault or abuse with porting.

Our conclusions

Number portability

- 1.8 The amended Universal Service Directive ('USD') requires that, where subscribers have concluded an agreement to port a number to a new provider, they shall have their number activated within one working day and that CPs must provide compensation to subscribers in the event of delay or fault with the porting process.
- 1.9 We have implemented this requirement as proposed in our consultation⁷. For fixed numbers, port activation must take place within one working day⁸ from when a subscriber's new provider requests activation from the subscriber's existing provider – which is after the necessary consumer protection measures⁹ and any physical line provisioning have been completed. For bulk mobile ports the one working day timetable starts when a subscriber gives their porting authorisation code ('PAC') to their new provider¹⁰.
- 1.10 CPs must put in place schemes which give reasonable compensation to subscribers following any porting delay or abuse. CPs are able to design the details of the schemes themselves, however, we have set out guidance on the operation of such schemes and the meaning of an 'abuse' of porting. We intend to review these schemes in 12 months' time.

⁷ The one day requirement on the porting of non-bulk mobile numbers was not part of our consultation as we already concluded our implementation of this issue last year, as set out in our statement *Ofcom Changes to the Mobile Number Porting Process* 8 July 2010 <http://stakeholders.ofcom.org.uk/binaries/consultations/mnp/statement/mnp.pdf> . It was applied from 11 April 2011.

⁸ Which we have defined as *one business day* in the GC itself and – which as noted in Section 10 of this document – is in line with our statement last year on (non-bulk) mobile number portability.

⁹ The consumer protection measures were explained in paragraph 10.37 of our consultation.

¹⁰ We note that the subscriber for bulk mobile ports may however request an alternative port date that is later than the default date if they so choose.

Mandating emergency SMS to help promote equivalent access to emergency services

- 1.11 The new Framework also requires access to emergency services via 112 (and in the UK, 999 as the national emergency call number) for disabled people to be “*equivalent to that enjoyed by other end-users*”.
- 1.12 We have proceeded to implement our proposal to mandate the provision of an emergency SMS service on both 999 and 112, via General Condition 15 to help promote such equivalence for disabled end-users. CPs will be required to offer this service to hearing and speech-impaired people. Although access to emergency SMS is currently provided on a voluntary basis, mandating access to the service helps ensure that the service is maintained and the requirement for equivalence continues to be met.

Changes to Contract terms

- 1.13 The amended USD requires us to make a number of changes in order to implement its new contract related requirements. We are now implementing the following requirements:
- CPs must provide additional information to consumers¹¹ for contracts concluded after 25 May 2011 and make this information available to other end-users¹² on request;
 - subscribers must be able to withdraw from contracts penalty-free following a notice of materially detrimental contract modifications;
 - contract termination conditions and procedures for termination via must not act as a disincentive to end-users from switching their providers; and
 - users generally must be offered a contract option, for the provision of public electronic communication services¹³, whose duration is no more than 12 months.
- 1.14 In addition, we are implementing one further provision on contract duration – which is a rule that ‘initial commitment periods’¹⁴ cannot exceed 24 months¹⁵. This rule is applicable to all consumer contracts concluded by CPs (under the scope of GC9) after 25 May 2011 and therefore does not apply to existing consumer contracts.

¹¹ The definition of *consumer* at Article 2 FD is: “any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession.” In our consultation and statement, any reference to this term is a reference to this FD definition. (The definition of the term ‘Consumer’ in the Act at s405 (5) is wider than the term as defined in the FD because it applies not just to natural persons but also includes businesses).

¹² ‘end-user’ is defined in the FD as “a user not providing public communications networks or publicly available electronic communications services”.

¹³ This is abbreviated as ‘PECS’. It means any electronic communications service that is provided so as to be available for use by members of the public.

¹⁴ Our consultation referred to ‘initial consumer contracts’ which we have now amended to ‘initial commitment period’ to directly reflect the precise wording used in the USD.

¹⁵ The commitment period begins on the commencement date of the contract and ends on the last date on which the consumer cannot leave its contract without penalty.

Other GC and USC changes

- 1.15 We are also making changes in relation to definitions affecting many GCs and USCs, modifications to GC2(which relates to technical standards), GC3(on maintaining network and service availability), GC4(emergency call numbers), two telephone numbering related GCs (17 and 20) as well as a few minor changes to the USCs.

Implementation date for CPs

- 1.16 Member States are required to adopt and publish the laws, regulations and administrative provisions (such as, in the UK, the GCs and USCs) necessary to comply with the changed framework, by 25 May 2011. Such measures must then be applied from 26 May 2011 and so our changes to both the GCs and USCs set out in this document will take effect from this date.
- 1.17 Our modifications to the GCs and USCs are set out in Annexes 2 and 4¹⁶ and CPs must therefore ensure compliance with the amended conditions which apply to them, as they come into force on 26 May 2011.

¹⁶ http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/Annex_2.pdf,
http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/Annex_4.pdf

Section 2

Introduction

2.1 In this Section, we summarise the overarching legal context for the amendments we need to make to certain GCs and USCs in order to implement the revised Framework.

The Electronic Communications Framework

2.2 The Framework is the regulatory framework that applies to all communications networks and services (including access) for electronic communications, including to telecommunications (fixed and mobile), e-mail and access to the internet. It consists of five Directives¹⁷:

- Directive 2002/21/EC (the 'Framework Directive' – referred to in the rest of this document as 'FD');
- Directive 2002/19/EC (the 'Access Directive');
- Directive 2002/20/EC (the 'Authorisation Directive' – referred to as 'AuD');
- Directive 2002/22/EC (the 'Universal Services Directive' – referred to as 'USD'); and
- Directive 2002/58/EC (the 'E-Privacy Directive' – referred to as 'EPriv').

2.3 Revisions to the Framework were agreed in November 2009 (and published on 18 December 2009¹⁸) through the EU legislator's adoption of the so-called Better Regulation Directive (2009/140/EC) (the "BRD") and, Citizens' Rights Directive (2009/136/EC) (the "CRD"). Member States have until 25 May 2011 to transpose the changes into national law and resulting domestic measures must apply from 26 May 2011 to ensure a consistent and harmonised approach is taken throughout the Community.

2.4 Implementation of many of the amendments is mandatory for Member States and, for the most part, the UK has little discretion in terms of making these changes. Some of the implementation of the revised Framework requires changes to GCs and USCs.

¹⁷ Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services, and Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

¹⁸ The full text of the amended Directives can be found at http://ec.europa.eu/information_society/policy/ecomms/doc/library/regframeforec_dec2009.pdf within the publication European Commission – Information Society and Media *Regulatory framework for electronic communications in the European Union - Situation December 2009*.

The Government recently concluded its approach to implementing the revised Framework including making required legal changes

- 2.5 The proper implementation of the revised Framework in the UK requires, firstly, certain legislative amendments to the Act – and also to the Universal Service Order. Such amended legislation is necessary also to confer on us new or amended enabling powers, so that we can in turn take appropriate regulatory action to set or modify conditions under section 45 of the Act, such as GCs and USCs.
- 2.6 The UK Government issued a consultation on 13 September 2010 setting out its approach to implementing the revised Framework, noting the key legislative changes needed to implement the revised Framework (where these were not already captured in UK legislation)¹⁹.
- 2.7 In our February consultation, we noted that a few of our proposed changes to GCs and USCs relied on their anticipated changes to our enabling powers in the Act.
- 2.8 On 15 April 2011, the Government published its response to its consultation on its proposals and overall approach³. This response provided clarity on the formal issues on which the Government consulted.
- 2.9 On 4 May 2011, the Secretary of State made The Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011/2010)(the ‘ECWT Regulations 2011’), together with The Electronic Communications (Universal Service) (Amendment) Order 2011 (SI 2011/1209). These instruments were laid before Parliament on 5 May 2011 (and come into force on 26 May 2011)⁴.
- 2.10 The ECWT Regulations 2011 (‘ECWR’) have now provided us with the necessary detailed changes to our enabling powers under the Act in order to take forward the proposals we set out in our February consultation.
- 2.11 Whilst those Regulations come into force on 26 May, we have now been able to proceed to make decisions in the anticipatory exercise of our new or amended powers, as provided for in section 13 of the Interpretation Act 1978, in order to meet the Community law transposition deadline of 25 May 2011.
- 2.12 The ECWR includes the following changes to our enabling powers in setting GCs under the Act (on which we have relied in making our decisions set out in this statement, additionally to those enabling powers that we already have under the Act):
- we may specify requirements in relation to the provision of services to disabled end-users;
 - we may require the provision, free of charge, of specified information, or information of a specified kind, to end-users;
 - we may impose a limit on the duration of a contract between an end-user and a communications provider;

¹⁹ BIS *Implementing the revised EU Electronic Communications Framework – Overall approach and consultation on specific issues* September 2010, <http://www.bis.gov.uk/Consultations/revised-eu-electronic-communications-framework>. The consultation closed in December 2010.

- we may ensure that conditions and procedures for the termination of a contract do not act as a disincentive to an end-user changing communications provider; and
- we may require the payment of compensation to a person in respect of delay in porting a number to another public communications provider, or abuse of the process for porting a number.

General Conditions

- 2.13 The 'General Conditions of Entitlement' are the main regulatory regime for undertakings that provide electronic communications networks and services in the UK. As noted above, it is under section 45 of the Act that Ofcom has the authority to set the GCs which place obligations on, and require compliance from, these communication providers.
- 2.14 We again note that, while we use the term 'CPs' as shorthand for 'communication providers' throughout this document, the applicability of particular GCs (on CPs) depends on the types of networks or services that are being provided.

Universal Service Conditions

- 2.15 The USCs act as a 'safety net' by ensuring basic fixed line telecoms services are available at an affordable price to all citizens and customers across the UK. Amongst other things, the conditions cover meeting reasonable requests for connection at a fixed location, a social (low cost) tariff, reasonable access to payphones and access for end-users with a disability (including provision of a Text Relay service).
- 2.16 The scope of the USCs is defined by the USD. Under the Act, it is the duty of the relevant Secretary of State in the UK Government to make an order, the Universal Service Order, setting out the general requirements which must be provided as Universal Services in the UK²⁰.
- 2.17 Ofcom gives effect to the obligations set out by Government through specific USCs on BT and Kingston Communications who we have designated as the universal service providers ('USPs') in the UK²¹. These are supplemented by GCs.

Modifications to the GCs and USCs

- 2.18 This statement sets out the modifications we have made to the GCs and USCs.
- 2.19 We are changing 21 GCs – of which 13 relate to revisions to definitions only (in particular the replacement of 'Director' with 'Ofcom' and 'Public Telephone Network' with 'Public Communications Network').

²⁰ The Order was made in 2003 - The Electronic Communications (Universal Service) Order 2003 available at <http://www.legislation.gov.uk/ukxi/2003/1904/contents/made> and will be amended by the Electronic Communications (Universal Service) (Amendment) Order 2011 which comes into force on 26 May <http://www.legislation.gov.uk/ukxi/2011/1209/introduction/made> .

²¹ The designations were applied on BT and Kingston by Oftel - Oftel *Designation of BT and Kingston as universal service providers, and the specific universal service conditions - A statement and Notification issued by the Director General of Telecommunications on the implementation of the Universal Service Directive* 22 July 2003 - http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/uso0703.pdf .

- 2.20 In addition, we are amending individual USCs that apply to BT and Kingston, mainly as a result of the same definitional changes. However, only the 'disposal of local network assets notification' involves a new requirement for these USPs.
- 2.21 We consider that the most substantive changes relate to our modifications to GC9, GC15 and GC18.

Implementation date for CPs

- 2.22 Member States are required to adopt and publish the laws, regulations and administrative provisions (such as, in the UK, the GCs and USCs) necessary to comply with the revised framework by 25 May 2011. Such measures must then be applied from 26 May 2011 and so our changes to both the GCs and USCs set out in this document will take effect from this date. CPs must ensure compliance with the amended conditions which apply to them, as they come into force on 26 May 2011.
- 2.23 We understand that, since our consultation was published in February, many CPs have already taken measures to ensure their implementation of the changes so this timeline could be achieved.
- 2.24 However, we recognise that a number of industry stakeholders felt that the practicalities of implementation make it appropriate for us to provide for a transitional period and/or to refrain from enforcement for a period.
- 2.25 In cases where it is clear that the Community obligations must apply from 26 May 2011, it is not possible for us to allow a transitional period without breaching Community law. It is not therefore an option available to us to grant a transitional period for compliance and end-users will rightly expect that they can take advantage of corresponding rights as of that date.

Legal framework and our duties

Section 3 – general duties of Ofcom

- 2.26 When considering the appropriateness of our own modifications to the GCs and USCs, we have had regard to our duties under the Act.
- 2.27 In particular, section 3(1) of the Act sets out the principal duty of Ofcom, in carrying out its functions under the Act:
- to further the interests of citizens in relation to communications matters; and
 - to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.28 We have also considered, amongst other things, the requirements in section 3(2) of the Act to secure the availability throughout the UK of a wide range of electronic communications services; and section 3(4) of the Act (which covers the promotion of investment and innovation, promoting competition, and considering the different interests of consumers).

Section 4 – European Community requirements for regulation

- 2.29 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation. These should be read in light of the policy

objectives and regulatory principles as set out in Article 8 of the amended FD. Those particularly relevant to this review include promoting the interests of the citizen by:

- ensuring all citizens have access to a universal service;
- ensuring a high level of protection for consumers in their dealings with suppliers;
- promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using public electronic communication services; and
- addressing the needs of specific social groups, in particular disabled users, elderly users and users with special needs.

Section 47 tests

2.30 We also note that under section 47 of the Act, Ofcom can set or modify a GC or USC only where it considers that the test set out in section 47(2) is satisfied. We have set out at the end of each section of this document why we consider this test has been fulfilled for each change. The test is that the setting of a new condition or modification of an existing one should be:

- objectively justifiable in relation to the networks, services, facilities, apparatus or directories which Ofcom regulates (however, this aspect of the test will no longer apply to the setting of a GC as a result of the changes made to the Act by the ECWR, hence the reason why we have not addressed it at the end of each section for the GCs in the anticipatory exercise of our amended powers);
- not such as to discriminate unduly against particular persons or against a description of persons;
- proportionate to what the condition or modification is intended to achieve; and
- in relation to what it is intended to achieve, transparent.

The structure of this document

2.31 The remainder of this document is laid out as follows:

- **Section 3** sets out our approach to definitions which affect the GCs and USCs;
- **Section 4** sets out a minor change to GC2 on standardisation and specified interfaces by adding a new body to the list of relevant standardisation bodies;
- **Section 5** sets out our two changes to GC3 on the proper and effective functioning of the network;
- **Section 6** sets out our changes in relation to GC4 on emergency call numbers, which are essentially in relation to caller location information;
- **Section 7** sets out several modifications to GC9 on contracts relating to the provision of additional information, contract duration and commitment periods, notices of materially detrimental modifications and conditions for termination;

- **Section 8** sets out our change to GC15 on special measures for end-users with disabilities which is the requirement to provide emergency SMS access;
- **Section 9** sets out a few changes to GC17 on the allocation, adoption and use of telephone numbers;
- **Section 10** sets out our changes to GC18 on number portability to implement the one-day requirement for porting for bulk mobile and fixed lines and also the new requirement for CPs to put in place a porting compensation scheme for subscribers experiencing a delay or abuse with the porting process;
- **Section 11** sets out our changes to GC20 (newly titled 'Access to numbers and services') which includes a new obligation to ensure users can call the hotline for missing children on 116000;
- **Section 12** sets out changes to the USCs, including a new requirement for BT and Kingston to give us advance notice on their disposal of local access network assets;
- **Section 13** sets out our views to other issues that were raised by stakeholders (not linked to our proposals on specific GCs); and
- Finally, **Annexes 2 and 4** - available as standalone documents on our website - set out our notifications (the text of our modifications to the GCs and USCs).

Section 3

Definition changes affecting GCs and USCs

Changes to definitions affecting GCs and USCs

- 3.1 In the consultation document we proposed to make a few changes with regard to expressions defined for the purposes of the GCs and the USCs.
- 3.2 Our proposals covered two key aspects.
- 3.3 Firstly, we proposed to delete some expressions corresponding to those used and defined in the Act. We note that the approach taken by Ofcom in 2003 to expressions generally used throughout the GCs and the USCs was to define them in Part 1 of the Schedule to the respective 2003 notifications²², even if the expressions were already defined in the Act. However, Part 1 of the Schedule to those notifications also included a general interpretation clause, so that expressions should be interpreted as having the same meaning as they have in the Act if not defined for the purposes of the GCs and the USCs.
- 3.4 When the Framework was introduced in 2003, it was new to everyone and it was considered appropriate to copy out many of the definitions in full in those notifications, even where they were identical to those in the Act. However, we believe stakeholders should now be familiar with these expressions.
- 3.5 Furthermore, as the ECWR (amending the Act) was only made on 4 May 2011, we were unable to include in our consultation in February the changes to the Act's definitions as a result of the amended EU directives. To ensure a consistent approach, we therefore proposed to delete those expressions as currently defined in the GCs and the USCs and instead rely on the Act's definitions, when amended by the Government, in reliance on the general interpretation clause.
- 3.6 Our second key proposal was to make changes to a few definitions not used and defined in the Act, nor expected to be so used and defined in the Act following the Government's changes. Those definitions would, however, be affected as a result of amendments to corresponding concepts used in the EU Directives and were therefore required to be changed for the purposes of the GCs and the USCs.
- 3.7 We discuss below the changes we have decided to make in relation to these definitional issues, taking account of stakeholder responses and of the Government's decision on amendments to expressions used in the Act as set out in the ECWR.

Deleting definitions from GCs and USCs which are set out in the Act

- 3.8 We proposed to delete the following definitions in the GCs and the USCs and to rely instead on the above-mentioned general interpretation clause:
- 'Apparatus';

²² See, for example, Part 1 of the Schedule to the Notification under section 48(1) of the Act 2003 published by the Director General on 22 July 2003:
http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/cond_final0703.pdf

- ‘Associated Facility’;
- ‘Consumer Panel’;
- ‘Content Service’;
- ‘Electronic Communications Network’;
- ‘Electronic Communications Service’;
- ‘End-User’;
- ‘Framework Directive’;
- ‘Interconnection’;
- ‘National Telephone Numbering Plan’;
- ‘Network Access’;
- ‘Public Electronic Communications Network’;
- ‘Public Electronic Communications Service’;
- ‘Signal’; and
- ‘Wireless Telegraphy’.

3.9 We further noted that the definition of ‘Telephone Number’ in the GCs currently lists purposes which reflect exactly those set out in section 56(5) of the Act and consistent with our intended approach to definitions generally – i.e. by reference to the Act - we proposed to amend this definition to refer to “purposes listed in section 56(5) of the Act” rather than repeating the wording.

3.10 We explained in the consultation that our new approach to definition, i.e. by reference to the Act, would in the majority of cases, be merely a technical and non-material change to the definitions. However, in relation to four above-mentioned definitions (namely, ‘Associated Facility’, ‘Electronic Communications Network’, ‘Network Access’, ‘Public Electronic Communications Network’), we considered it possible that the Government would make some changes to the Act’s definitions. If so, such changes could affect the current meanings.

3.11 We have decided to proceed with the proposed deletions above. To assist stakeholders with understanding the substantive changes to the three definitions that the Government has changed in the Act, we have set out the amended (consolidated) meanings below (we discuss our modified approach to the “Public Electronic Communications Network” definition further below):

3.12 **‘Associated Facility’** (section 32(3) of the Act as substituted by paragraph 9(b) of Schedule 1 to the ECWT regulations 2011):

(3) In this Act “associated facility” means a facility, element or service which is available for use, or has the potential to be used, in association with the use of an electronic communications network or electronic communications service (whether or not one provided by

the person making the facility, element or service available) for the purpose of—

- (a) making the provision of that network or service possible;
- (b) making possible the provision of other services provided by means of that network or service; or
- (c) supporting the provision of such other services.

3.13 **‘Electronic Communications Network’** (section 32(1) of the Act as amended, see emphasis added, by paragraph 9(a) of Schedule 1 to the ECWT regulations 2011):

(1) In this Act “electronic communications network” means—

(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—

- (i) apparatus comprised in the system;
- (ii) apparatus used for the switching or routing of the signals; **and**
- (iii) software and stored data; **and**

(iv) (except for the purposes of sections 125 to 127) other resources, including network elements which are not active.

3.14 **‘Network Access’** (section 151 of the Act as amended, see emphasis added, by paragraph 90(b)-(d) of Schedule 1 to the ECWT regulations 2011):

(3) In this Chapter references to network access are references to—

(a) interconnection of public electronic communications networks; or

(b) any services, facilities or arrangements which—

- (i) are not comprised in interconnection; but
- (ii) are services, facilities or arrangements by means of which **a person a communications provider or person making available associated facilities** is able, for the purposes of the provision of an electronic communications service (whether by him or by another), to make use of anything mentioned in subsection (4);

and references to providing network access include references to providing any such services, making available any such facilities or entering into any such arrangements.

(4) The things referred to in subsection (3)(b) are—

(a) any electronic communications network or electronic communications service provided by another communications provider;

(b) any apparatus comprised in such a network or used for the purposes of such a network or service;

(ba) any electronic communications apparatus;

(c) any facilities made available by another that are associated facilities by reference to any network or service (whether one provided by that provider or by another); and

(d) any other services or facilities which are provided or made available by another person and are capable of being used for the provision of an electronic communications service.

(4A) In subsections (3)(b)(ii) and (4)(d), the references to an electronic communications service include the conveyance by means of an electronic communications network of signals, including an information society service or content service so conveyed.

(4B) In subsection (4A)—

‘content service’ has the meaning given by section 32(7), and

‘information society service’ has the meaning given by Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

Changes to four definitions in the GCs and USCs in order to implement the revised Framework and provide clarity

3.15 As explained above, we also noted in our consultation that there are a few definitions which are affected by the revised Framework and that these do not currently appear in the Act. They are:

- ‘Public Telephone Network’;
- ‘Publicly Available Telephone Service’; and
- ‘Relevant Data Protection Legislation’.

3.16 We therefore set out our proposals in relation to implementing these revised definitions via the GCs and the USCs. We explain below our conclusions in relation to these proposals.

3.17 We have also decided to proceed with our additional proposal to replace the definition of ‘Director’, with a definition of ‘Ofcom’ (which we considered useful to amend for clarity, even though it is not referred to in the revised Framework).

'Public Telephone Network' & 'Public Electronic Communications Network'

- 3.18 The expression 'Public Telephone Network' is currently defined for the purposes of the GCs and USCs as follows:

'Public Telephone Network' means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data;

- 3.19 Whilst this expression is not used and defined in the Act, it is identical to the definition of 'public telephone network' ('PTN') in Article 2(b) of the USD. It was therefore adopted by Oftel in 2003 for the purpose of the GCs and USCs. However, that Article has now been deleted by the revised Framework. In our understanding, this was because the EU legislator decided to make certain amendments to the definition of 'public communications network' in Article 2(d) of the FD, which definition was implemented in 2003 by the expression 'public electronic communications network' ('PECN') in section 151(1) of the Act. Thus, since 2003, those two definitions have read as follows:

'Public communications network' means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services; (Article 2(d) of the FD)

'Public electronic communications network' means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public; (section 151(1) of the Act)

- 3.20 The definition of 'public communications network' in Article 2(d) has been amended by the revised Framework, so that it reads similarly in many respects to the (now deleted) definition of "public telephone network" in Article 2(b) of the USD, namely:

'Public communications network' means an electronic communications network used wholly or mainly for the provision of ~~publicly available~~ electronic communications services available to the public which support the transfer of information between network termination points; (Article 2(d) as amended)

- 3.21 One notable difference is that the PTN definition refers to *publicly available telephone services* ('PATS'), whereas the now amended definition of 'public communications network' ('PCN') refers to *electronic communications services available to the public* - or public electronic communications services ('PECS'). However, both the PTN definition and the amended PCN definition concern the transfer of information between network termination points.

- 3.22 In anticipation that the Government would make some changes to the PECN definition in the Act (or possibly other changes to deal with the above), we proposed to delete the definitions of 'Public Electronic Communications Network' and 'Public Telephone Network'.

- 3.23 However, it is now clear from the ECWR that the Government has decided not to amend the PECN definition in section 151(1) of the Act.

- 3.24 We have therefore decided to make certain changes to our proposed approach to ensure that the Community obligations in the EU directives are properly implemented, including those new or amended Community obligations in the revised Framework.
- 3.25 Firstly, we have decided to proceed with deleting the definition of PECN. Any references to this expression in the GCs and USCs will have the PECN meaning set out in section 151(1) of the Act. This will be directly relevant to GC1 and GC17 and indirectly relevant where the terms 'Interconnection' or 'Network Termination Point' are referred to in the GCs and USCs, since these are themselves defined by reference to PECNs.
- 3.26 Secondly, we have decided to proceed with deleting the definition of 'Public Telephone Network'. However, in light of the above, we have decided to adopt a new definition of 'Public Communications Network' for the purpose of the GCs and the USCs to ensure that the affected obligations reflect the revised Framework. This definition will read:
- 'Public Communications Network' means an Electronic Communications Network used wholly or mainly for the provision of Public Electronic Communications Services which support the transfer of information between Network Termination Points.
- 3.27 This definition is relevant to the application of GC3, 4, 5, 9, 12, 14, 16, 17, 18, 24 and USC 5 (Kingston) and 6 (BT). In so doing, we have not sought to change the scope or application of these conditions, except where they are required by, or are needed to properly implement in the UK, the revised Framework.
- 3.28 In other words, on the whole, stakeholders will find that this modification to our proposal represents a minor change following the changes in the revised Framework. As noted above, those definitions read in similar terms, except for the PCN concept making reference to PECS (as opposed to PATS).

'Publicly Available Telephone Service'

- 3.29 The expression 'Publicly Available Telephone Service' appears across the GCs and the USCs (as well as in other definitions themselves). We explained in the consultation why its definition required amendment as a result of changes to the corresponding definition of 'publicly available telephone service' in Article 2(c) of the USD. Essentially, the scope of the PATS definition has been widened to include a service made available to the public for originating and receiving, *directly or indirectly*, national or national and international calls, and the inclusion of access to emergency services has been removed.
- 3.30 We have decided to adopt our proposed new definition, namely:
- 'Publicly Available Telephone Service' means a service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan.
- 3.31 This definition is relevant to GC 3, 4, 5, 8, 10, 11, 12, 15 and 18 and USC 2 and 5 (Kingston) and 2, 4, 5 and 6 (BT).

'Relevant Data Protection Legislation'

3.32 The expression 'Relevant Data Protection Legislation' is intended to link to regulations arising from the Privacy and Electronic Communications Directive, additionally to the Data Protection Act. Currently, this definition reads:

'Relevant Data Protection Legislation' means the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

3.33 We explained in our consultation that the amendments to the Privacy and Electronic Communications Directive will be transposed by the Government through amendment to the Privacy and Electronic Communications (EC Directive) Regulations 2003. We noted that, while the actual text of this definition would not require any change, stakeholders should refer to the regulations when they are amended.

3.34 On 4 May 2011, the Government made The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (2011/1208) – to amend The Privacy and Electronic Communications (EC Directive) Regulations 2003²³. This comes into force on 26 May 2011. The expression 'Relevant Data Protection Legislation' will therefore be read accordingly.

3.35 This definition concerns GC 8, 11, 16 and 19 and BT USC 7.

'Director General of Telecommunications' & 'Ofcom'

3.36 In our consultation, we noted that, since 2004, we have exercised all the functions of the Director General of Telecommunications, and we considered that it is an opportune time whilst revising these GCs to replace the expression of 'Director' with the expression of 'Ofcom'.

3.37 We did not consider this change would have any impact, since Ofcom exercises all the functions formerly fulfilled by the Director, but considered it would assist with clarity. We have therefore decided to proceed with this change. The change from 'Director' to 'Ofcom' is relevant throughout the GCs, and requires minor connected adjustments (e.g. replacements of 'he' with 'it' as required etc.) The one exception is GC11.7 where the reference to 'Director' remains valid and we proposed changing this reference to 'Director General of Telecommunications' given the loss of the general definition.

'National Telephone Numbering Plan'

3.38 Finally, we noted in our consultation that our definitional changes will have some consequential effects on the expression 'National Telephone Numbering Plan' ('NTNP'). These will involve the deletion of the definitions of 'Apparatus' and 'Wireless Telegraphy' (and reliance on the Communications Act definitions), the replacement of 'Public Telephone Network' with 'Public Electronic Communications Network' and its definition by reference to the Communications Act as set out above, and change to the definition of 'Publicly Available Telephone Service' as also set out above.

²³ See <http://www.legislation.gov.uk/ukxi/2011/1208/introduction/made> .

Stakeholder responses

3.39 We asked stakeholders if they agreed with our proposed approach to definitions.

Cross-referral to the Act

3.40 Several stakeholders agreed that it was useful to cross refer, where possible, to definitions in the Act, both because of the timing of implementation which meant that changes to the GCs needed to run concurrently with changes to the Act, and in order to ensure consistency. However, two stakeholders – Cable & Wireless Worldwide ('C&W') and Everything Everywhere ('EE') - raised concerns in relation to clarity where definitions exist in the Act rather than the GCs. In particular, they raised concerns about the clarity and transparency of this approach given the relative complexity of definitions within the Act. While we acknowledge the benefits of definitions existing together in one place, both the Act and the GCs are relevant to stakeholders and we consider the advantages of consistency outweigh these.

Request for a consolidated version of the GCs

3.41 Stakeholders also expressed the more general wish for Ofcom to produce a consolidated version of the GCs in the interests of clarity and usability. Whilst not part of this implementation process as such, we are aware that these changes affect the majority of GCs in some way and it is our aim to publish an updated consolidated version shortly.

Replacing defined terms and the scope of the GCs

3.42 BT, C&W, the Federation of Communications Services ('FCS'), Sky, Skype, UKCTA and one confidential respondent all had concerns with the proposal to replace references to 'Public Telephone Network' with 'Public Electronic Communications Network', defined by reference to the Act. Stakeholders were concerned that, depending on how the Act defined PECNs going forward, this may lead to a broader application of the GCs (particularly to broadcasting services) than had been intended. Sky's submission summarised the issue as follows:

"Sky also notes that the revised ECF [European Communications Framework] amended the definition of "Public Communications Network" to include the additional words "which support the transfer of information between network termination points"... this amendment is important and serves to limit the scope of 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, Sky seeks Ofcom's assurance that the scope and application of the GCs and USCs will be limited to reflect the revised ECF requirements."
Sky – p.2

3.43 We do not consider that there would be lack of clarity or an unintended broadening of scope for the purposes of the relevant GCs and the USCs, had the expression of PECN been changed in the Act as we anticipated at the time of the consultation. However, as noted above, such changes will not now take place. We will therefore include a definition of 'Public Communications Network' in the GCs and USCs and, instead of changing references to 'Public Telephone Network' to 'Public Electronic Communications Network', we will change them to 'Public Communications Network'.

We believe this addresses stakeholder concerns in relation to the relevant GCs/USCs having any broader scope than we intended.

- 3.44 In relation to the changes to the definition of 'Public Telephone Network', stakeholders noted that, even if it aligned with the Framework's definition of 'Public Communications Network', it may broaden the scope beyond PATS. We agree that this is the case, in that a PCN is not limited by the nature of the service carried between network termination points, and this was indeed an intention of the change to the Framework definition. We noted this at paragraph 3.13 of our consultation.
- 3.45 One stakeholder (EE) considered the changes would have an unintended consequence of making data services including broadband subject to the requirement for itemised billing in GC12 and that this would require significant changes to billing systems and no proportionate benefit to consumers.
- 3.46 The requirement for itemised billing in GC12 only applies to CPs providing PATS. Providers therefore need to consider whether the service in question provided to subscribers constitute such services, having regard to the criteria of the PATS definition. This may depend on nature of the services provided. In any event, we note that GC12 merely requires that subscribers should be provided with a sufficient level of detail to allow them to verify and control charges incurred and to monitor usage and expenditure. This obligation applies to various types of services constituting PATS and what constitutes a sufficient level of detail therefore needs to be considered in the light of the nature of the service being provided and the way in which charges relate to usage. It may therefore not have any impact in relation to the services to which EE refers.
- 3.47 Skype considered GC 5.4(a), and 16 should remain limited to the provision of PATS. We do not agree this is the case within the meaning of the underlying Directive provisions which refer to the provision of PCNs and/or PATS. As noted in paragraphs 3.21 and 3.28 above, the definition of PCN refers to the provision of PECS (rather than PATS).

The applicability of GCs to business end-users

- 3.48 A confidential respondent was concerned about the application to business end users and resellers within the definitions, for example where subscriber appears to cover an intermediate reseller.
- 3.49 The expression 'Subscriber' (which reflects the definition of corresponding concept in Article 2(k) the FD) is currently defined as "*any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services*" (which definition is unaffected by our modifications). Whether (or not) an intermediate reseller is the provider of PECS for the purposes of that definition needs to be construed in accordance with section 32(4) of the Act. This is a question of fact and it may depend on the circumstances in each case. The answer is likely to depend on an analysis of the contractual arrangements between the parties. However, in principle, it is possible that a CP is employed or engaged to provide the PECS under the direction or control of another person, i.e. the intermediate reseller. In those circumstances, the intermediate reseller would be treated as the provider of PECS.
- 3.50 Another respondent, in a confidential response, noted it would like a review of the differences in obligations for CPs serving large business customers rather than the residential base and SMEs. It noted that large business users are typically well

informed and represented whereas the average consumer had to rely on standard offers and that therefore a similar level of protection for both groups was not required. We would note that the USD indeed recognises that some provisions are only relevant to consumers (for example, Article 30(5) on initial commitment periods exceeding 24 months) and this is reflected in the GCs. Where USD provisions are not limited to consumers, the intention was clearly that they would apply to business users.

Our conclusions

- 3.51 In summary, we have decided to make the changes to our approach and relevant definitions as discussed above. The changes are noted in Annex 2 (for the GCs), Annex 3 (for the NTNP)²⁴ and Annex 4 (for the USCs).
- 3.52 We consider that the changes meet the criteria set out in section 47(2) of the Act, including that they are transparent as the purpose of the changes is clear and, to the extent the definitional changes alter the substantive requirements on CPs, the revised requirements will be clear to CPs on the face of the GCs and/or USCs themselves. We further address those criteria in relation to the substantive changes made to each affected GC and the USCs in the remainder of this document.

²⁴ http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/Annex_3.pdf .

Section 4

Change to General Condition 2

Standardisation and Specified Interfaces

- 4.1 The FD requires Member States to encourage the implementation of standards or recommendations by specified standardisation bodies.
- 4.2 In the UK, GC2 has been the vehicle for implementing this requirement and, at present, it requires CPs²⁵ to comply with relevant standards or specifications as listed in the Official Journal of the European Communities and (in the absence of compulsory standards) to take full account of voluntary standards and specifications adopted by the European Standards Organisations.
- 4.3 In the absence of such standards and/or specifications, GC2 requires CPs to take full account of international standards or recommendations adopted by the International Telecommunication Union, the International Organisation for Standardisation or the International Electrotechnical Committee. The revised Article 17(2) of the FD now refers to the European Conference of Postal and Telecommunications Administrations (CEPT) alongside these standardisation bodies.
- 4.4 In the rest of this section we set out our proposal with regard to implementing this requirement, stakeholder responses and our conclusions.

Adding CEPT to the list of standardisation bodies

- 4.5 We proposed to implement the revised Article 17(2) by adding CEPT to the existing list in GC2.2 and inserting the words, 'the European Conference of Postal and Telecommunications Administrations (CEPT)', between 'the International Telecommunication Union (ITU)', and 'the International Organisation for Standardisation (ISO)'. We also proposed to change the word 'or' to 'and' in GC2.2, again reflecting the wording of Article 17(2) and clarifying that this list is conjunctive.

Stakeholder responses

- 4.6 We asked stakeholders if they agreed with our proposal to add CEPT to the list of standardisation bodies.
- 4.7 Twelve stakeholders responded – BT, C&W, EE, FCS, PhoneAbility, Skype, TalkTalk, Three, Verizon Business ('Verizon'), Vodafone, UKCTA and one confidential respondent. All of these respondents either agreed with our proposal or did not raise any objections to the addition of CEPT to GC2.2.
- 4.8 A few respondents raised general points on GC2 not related to our specific proposal. C&W noted that it was "*disappointed that the UK primary technical standards agency, NICC does not share a similar formal recognition*". In response to this, we note that the NICC is not mentioned in the revised Framework and therefore we do not consider it is appropriate for us to include it in GC2.2 in this particular instance. However, we do recognise the important work of the NICC in the UK and note that it

²⁵ In GC2 and for the purposes of this section, a CP means a person who provides an Electronic Communications Network or provides an Electronic Communications Service.

can play a role in influencing the approach taken by the international standardisation bodies referred to in GC2.

- 4.9 Skype pointed out that Article 17(2) of the FD states that Members States should 'encourage' the implementation of international standards and recommendations adopted by specified bodies whereas our GC2.2 wording requires CPs to 'take full account' of them. They suggested that the text of GC2 should use softer language and avoid expressing this condition as a 'requirement'.
- 4.10 While Skype's suggestion does not relate to our specific proposal to add CEPT as a listed body, we should clarify that the wording of GC2.2 is intended to achieve a similar result to the requirement to encourage the use of standards etc. in Article 17 of the FD. GC2.2 has therefore been worded to ensure that corresponding obligations under UK law have been imposed on relevant providers and we do not think it is appropriate to change this approach. We note that, in practice, this obligation is only likely to require CPs to take account of the voluntary standards, which is appropriate and proportionate. In particular, it is not the intention that this condition should prevent an organisation from providing any services or technical interfaces it chooses, as long as the relevant standards are taken into account.

Conclusions

- 4.11 We have added CEPT to the list of standardised bodies in GC2.2. This will require CPs to take full account of standards or recommendations adopted by CEPT in the absence of standards or a specification referred to in GC2.1.
- 4.12 As set out in Annex 1 of our consultation, we believe that this is a minor change which will result in limited impacts on CPs.

Legal Framework

- 4.13 We consider that our change meets the criteria set out in section 47(2) of the Act. It is:
- **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC2 is relevant to them;
 - **proportionate** as the change is the minimum necessary to implement the revision of Article 17(2) and there is no less intrusive mechanism to achieve the intended purpose; and
 - **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

Section 5

Changes to General Condition 3

The proper and effective functioning of the network

- 5.1 GC3 requires CPs²⁶ to take all reasonably practicable steps to maintain, to the greatest extent possible, at fixed locations:
- the proper and effective functioning of its network;
 - in the event of network breakdown or force majeure the availability of its network and publicly available telephone services; and
 - uninterrupted access to emergency organisations.
- 5.2 Article 23 of the USD was amended so that it applies beyond fixed locations and now requires Member States to “take all necessary measures” to ensure the “fullest possible” availability of publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of force majeure. In addition, Member States must ensure that undertakings providing publicly available telephone services take all necessary measures to ensure uninterrupted access to emergency services.
- 5.3 In the rest of this section we set out our proposals with regard to implementing these requirements, stakeholder responses and our conclusions.

Applying the requirements beyond fixed locations and also for CPs to take ‘all necessary measures’ to maintain networks and services as well as access to emergency services

- 5.4 We set out two proposals in our consultation. Firstly, as GC3 currently only applies to networks and services at fixed locations, we proposed to remove references to “fixed location” or “fixed locations” to reflect the revised Article 23.
- 5.5 Secondly, GC3 currently requires CPs to take “all reasonably practicable steps” to maintain their networks and services and access to emergency services. We proposed to amend the wording of GC3 to reflect the new wording of Article 23. This change involved replacing the words “all reasonably practicable steps” with “all necessary measures”, and also adding the words “fullest possible” with reference to maintaining availability in the event of catastrophic network breakdown or in cases of force majeure.

Stakeholder responses

- 5.6 We asked stakeholders if they agreed 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.

²⁶ In GC3 and for the purposes of this section, a CP means a person who provides Publicly Available Telephone Services and/or provides a Public Communications Network over which a Publicly Available Telephone Service is provided.

- 5.7 Fourteen stakeholders responded – including BT, C&W, Colt, EE, FCS, PhoneAbility, Sky, Skype, TalkTalk, Three, Verizon, Vodafone, UKCTA and one confidential respondent. All of these respondents either agreed with our proposal or did not raise any objections to the extension of GC3 beyond “fixed locations” or the addition of “all necessary measures” and “fullest possible” availability.
- 5.8 However, respondents did raise a number of concerns as to what this would mean in practice. The first of these related to the scope of the revised GC3 and in particular whether it would apply beyond providers of PATS. Several respondents linked this back to the Recitals in the USD, which were put forward as providing clarity on the intended scope of the requirements.
- 5.9 In line with the revised approach to the definition of the relevant terms, discussed in Section 3, we believe this matter is now clarified. With the change from the proposed use of PECN to PCN, for the purposes of this Condition, “Communications Provider” means a person who provides PATS and/or provides a PCN over which PATS is provided.
- 5.10 Many respondents sought additional guidance from Ofcom on the interpretation and application of “all necessary measures” and/or “fullest possible availability”. Whilst this wording does represent a change to GC3, calls for similar guidance in relation to the previous wording were common. Ofcom does not consider therefore that the desire for guidance is as a result of any increase in uncertainty for operators due to the wording changes, but rather that these are reiterations of existing concerns.
- 5.11 As noted by C&W, Ofcom’s predecessor Oftel had published an interpretation of GC3 in the past but “*What guidance existed in this area (guidelines historically developed with NICC) was revoked some years ago under the auspices of technology neutrality*”.
- 5.12 It is the responsibility of CPs to whom GC3 applies to consider on the facts and the circumstances in each case whether they are complying with its obligations. We do not intend, at present, to issue any general guidance on the application of GC3. In particular, we have reservations as to whether any such general guidance is likely to be effective, noting especially the fast changing nature of services and underlying technologies. However, we consider that it may be appropriate from time to time to give guidance on specific matters relating to GC3 and we will keep monitoring the need for such specific guidance.
- 5.13 We note that industry, via the Electronic Communications Resilience and Response Group (EC-RRG), has developed best practice guidance, which we believe will continue to be relevant. We also reiterate that for most CPs, we expect the new wording to have limited or no impact on their current arrangements.
- 5.14 Several respondents linked GC3 to the new security and resilience obligations in Article 13a of the Framework Directive, which are now included in Section 105A & B of the Communications Act 2003. Colt, for example, believes that “*GC3 appears to comply with these requirements*”, whereas UKCTA “*consider that GC3 goes some way to ensure compliance with these requirements and this should be recognised by Ofcom.*” UKCTA goes on to express disappointment that the consultation did not address the Article 13a requirements.
- 5.15 While we are aware of the overlap between these issues, GC3 and the new requirements in Section 105A & B result from different requirements in the Framework, and different approaches to transposition. It was therefore not

appropriate to consider the requirements flowing from Article 13a in the consultation discussed here, because this related only to GCs. However, we are mindful of the need to develop an approach which is consistent in areas where the requirements overlap.

5.16 In particular, Section 105A(4) of the revised CA(2003) requires that:

“A network provider must take all appropriate steps to protect, so far as possible, the availability of the provider’s public electronic communications network.”

5.17 In relation to the subset of PECN providers within the scope of GC3, we consider that the steps taken to comply with GC3 are likely to be sufficient to also comply with 105A(4). However, the requirements of 105A & B go well beyond the requirements of GC3 in covering availability of other services and networks, security and reporting. Our guidance on these new requirements is available on our website²⁷.

5.18 Skype felt we should make clear reference to USD recitals which *“recognise that certain networks (e.g. IP networks) and certain services (e.g. network independent services, whether they are provided at a fixed location, nomadically or on mobile) may not, at present and for the foreseeable future, be able to deliver reliable access to emergency services”*. It was suggested that doing so would *“avoid imposing obligations with which new networks and new services and communication solutions will not be able to comply”*.

5.19 We believe that this issue was addressed in the consultation, for example by saying *“To ensure proportionality, any assessment of “all necessary measures” will need to take into account the costs and benefits of maintaining availability in the context of the network or service in question”*. As with the consideration of GC4, technically feasibility is implicitly read into the Directive, since maintaining availability can only be achieved to the extent it is technically feasible.

5.20 Some respondents felt that GC3 should only be applicable to network elements under their direct control. Others also asked whether GC3 applies to virtual service providers, i.e. those with no network of their own. We do not feel these issues are related to any of the proposed changes to the wording of GC3.

5.21 Whilst these questions do not relate to our specific proposals, we understand that they raise a similar issue as the response concerning intermediate resellers discussed towards the end of Section 3. Namely, in our understanding, the respondents essentially ask when they should be treated as CPs subject to the obligations under GC3. As we note at paragraph 3.49, the answer is likely to turn on construing the expression “provide” (and cognate expressions) in accordance with section 32(4) of the Act. For similar reasons explained at paragraph 3.43, it is possible that (say) virtual service providers would be treated as providers to whom GC3 applies, but this a question of fact and it may depend on the circumstances in each case.

²⁷ Ofcom *Guidance on security requirements in the revised Communications Act 2003 - Implementing the revised EU Framework* 10 May 2011, <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/851653/guidance.pdf>.

Conclusions

- 5.22 We have decided to give effect to the changes to GC3 as proposed by adopting the wording from Article 23 of the USD. GC3 will now apply to CPs beyond those providing fixed networks, but will continue to apply only to services defined as PATS and the networks supporting them. CPs will be required to take “all necessary measures” to maintain their networks and services and access to emergency services, and maintain the “fullest possible” availability in the event of catastrophic network breakdown or force majeure.
- 5.23 As set out in Annex 1 of our consultation, we believe that while the key change – that is the wider scope of GC3 beyond just fixed networks - may potentially encourage more providers to improve their network resilience, it should have no material impact on operators of fixed networks and telephone services and is likely to have limited impacts on those CPs that are now brought within the scope of this GC.

Legal Framework

- 5.24 We consider our change meets the criteria set out in section 47(2) of the Act. It is:
- **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC3 is relevant to them;
 - **proportionate** as the change is the minimum necessary to implement the revision of Article 23 and there is no less intrusive mechanism to achieve the intended purpose; and
 - **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

Section 6

Changes to General Condition 4

Emergency Call Numbers

- 6.1 In Section 6 of our consultation, we outlined the changes introduced by Article 26 of the USD that were relevant to emergency call numbers and set out our proposals for implementing these changes via GC4 (which sets obligations for CPs²⁸ to ensure access to the emergency services via the 112 and 999 numbers)²⁹.
- 6.2 We noted that the revised USD introduced several changes to the obligations applying to the single European emergency call number '112' and specified that these may be extended to national emergency numbers (which, in the UK, is '999' and hence references to 112 and 999). We proposed that the changes apply equally to both the numbers 112 and 999, as has been the case until now.
- 6.3 In summary, the key changes introduced by Article 26 (5) are in relation to caller location information, including :
- An obligation on 'undertakings concerned' to make caller location information available;
 - Making location information available free of charge to the authority handling the emergency call;
 - Providing location information 'as soon as' the call reaches the authority handling the call; and
 - (for 'competent regulatory authorities') to set out criteria for the 'accuracy and reliability' of caller location information.
- 6.4 In the rest of this section we set out our proposals with regard to implementing these requirements, stakeholder responses and our conclusions.

Amending the definition of the 'CP' who must provide location information

- 6.5 The revised Article 26(5) places an obligation on 'undertakings concerned' to make caller location information available. In our consultation, we noted that this is taken to mean the undertakings providing an electronic communications service and that this required a change in GC4.3(b) (renumbered to GC4.4(b)) to a single definition of 'Communications Provider' for both GC4.1 and GC4.2.

²⁸ In GC4 and for the purposes of this section, a CP 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.

²⁹ GC4 was last amended in 2007 following a consultation on VoIP access to emergency services that set out the policy position concerning GC4 obligations for VoIP service providers - Ofcom *Regulation of VoIP Services: Access to the Emergency Services* 5 Dec. 2007 see <http://stakeholders.ofcom.org.uk/binaries/consultations/voip/statement/voipstatement.pdf> .

- 6.6 We proposed to amend the definition of 'Communication Provider' in GC4.3(b) so that it instead of referring to providers of 'Public Telephone Networks', it would now refer to "A person who provides End-Users with an Electronic Communications Service, or provides access to such a Service by means of a Pay Telephone³⁰, for originating calls to a number or numbers in the National Telephone Numbering Plan but shall exclude any Click to Call Service"; and to delete the definition of 'Service' in GC4.3(d).
- 6.7 We stated that it was unlikely this change to the definition of CP would impact the current provision of location information. This is because the providers of PTNs who - under the existing GC4 - must provide location information, already have arrangements to gather that information from resellers further down the supply chain (who own the customer relationship and have access to such details). Our proposal would mean that the obligation to collect location information would rest directly with the resellers at the end of the supply chain and they must now give it to the emergency services either directly - or by passing it upwards through the supply chain (i.e. which is the existing current practice).
- 6.8 During the early part of our consultation period, some stakeholders asked whether we intended the revised GC4 to apply to providers of an electronic communications service wider than those who provide a "*public electronic communications service*". In particular, there were questions whether it was our intention that GC4 would now apply to organisations where an electronic communications service is provided over a private communications network that is not available to the public, such as a company using a private branch exchange ('PBX') to route calls to and from its employees.
- 6.9 We therefore issued a clarification on our website on 18 March 2011³¹ noting that our proposal was that the modifications to GC4 will only apply to providers of a public electronic communications service, which we considered was apparent from a reading of the proposed modifications³².

Providing location information free of charge, as soon as a call is answered by emergency organisations and in line with accuracy and reliability criteria

- 6.10 The USD previously required location information to be made available to emergency organisations "to the extent technically feasible". This caveat was removed from the revised USD and replaced with obligations that caller location information is to be provided: to "the authority handling emergency calls" free of charge; "as soon as the call reaches that authority"; and in accordance with criteria laid down by regulatory authorities (in this case, Ofcom) as to the accuracy and reliability of that information.
- 6.11 We explained that although the reference to the provision needing to be technically feasible has been removed, it is still implicitly read in to that Article, since the provision of location information is not possible if it is not technically feasible to do so

³⁰ Pay Telephone in GC4 means a telephone for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes. For the avoidance of any doubt, references to a Pay Telephone include references to a Public Pay Telephone (i.e. one available to the general public).

³¹ Ofcom *Clarification in relation to the proposed application of General Condition 4* – see <http://stakeholders.ofcom.org.uk/consultations/gc-usc/general-condition-4/> .

³² This is explained further in paragraphs 6.18-6.20.

and also for the reasons set out in paragraphs 6.12-6.13 of our consultation, we proposed retaining the reference to technical feasibility in GC4.2.

6.12 Our proposed modifications to implement the new requirements were as follows:

- We proposed amending GC4 to require caller location information to be provided to emergency organisations free of charge. We noted that this is current practice in the UK, so we did not envisage this to have an impact on CPs;
- We proposed to amend GC4.2 to require location information to be provided to emergency organisations at the time the call is answered by those organisations (whether it chooses to receive the information electronically or verbally). Again, we noted that for the vast majority of calls, this already occurs and so we did not expect this to require any change on the part of the CPs or Call Handling Agents ('CHAs')³³; and
- We proposed a modification to GC4.2 to include that CPs (as defined for the purposes of this GC) should make accurate and reliable caller location information available; and a (new requirement) - GC4.3 – which defined high-level criteria for fixed and cellular mobile services respectively, in order to ensure the accuracy and reliability of caller location information. For the latter change, we proposed that providers of an electronic communications service at fixed locations be required to achieve the highest levels of accuracy by giving the full postal address of the customer's terminal equipment; and that cellular mobile service providers, in most circumstances, provide the geographic coordinates of the base station which is hosting the call, and where available, an indication of the radius of coverage of the cell³⁴.

Stakeholder responses

6.13 We asked stakeholders if they agreed 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).

6.14 Seventeen stakeholders responded – BT, C&W, Connexon, EE, FCS, ITSPA, PhoneAbility, Sky, Skype, TalkTalk, Three, UKCTA, Verizon, Vodafone, Voice on the Net Coalition Europe ('VON') and two confidential respondents. Most respondents welcomed, or did not raise any objections to the proposed changes. However, a number of issues were raised and these are discussed below.

³³ We noted that there are certain types of call (for example from overseas mobile customers roaming in the UK) where accurate location information is not usually available as soon as the call reaches the emergency organisation, but some time afterwards. To the extent it is technically feasible, location information will now be required to be available when the call is answered by the emergency organisation. We understand that in the case of international roamers, "as soon as" could present significant technical issues and addressing these may require standardisation or international cooperation. We thus propose to address this issue later - when considering detailed accuracy and reliability criteria in a further consultation next year.

³⁴ In exceptional circumstances where this information is not available, the Zone Code, which is used by emergency organisations to identify the geographic region in which the call was originated, may be provided instead. In addition, we noted that we intend to consult separately, later, on the creation of a more detailed set of accuracy and reliability criteria.

Definition of 'End-User' and applicability of GC4

- 6.15 All respondents, with the exception of Connexon, welcomed, or did not raise any objection to, our clarification that GC4 would only apply to CPs providing public electronic communications services. Connexon considered that electronic communications services provided over private networks - and IP PBX-based private networks in particular - should be included within the scope of GC4 and the requirement to provide accurate user location information.
- 6.16 In particular, Connexon argued that this was the intention of Article 26 of the USD because the new definition of Communications Provider includes undertakings that are providing any type of electronic communications service, rather than specifying that such services must be publicly available.
- 6.17 It was Connexon's view that, in line with its interpretation of Article 26, the term 'End-User' in GC4 is not used exclusively in relation to a public electronic communications service and that consequently it is not clear that the definition given to 'End-User' in section 151 of the Act (which relates only to publicly available service and previously appeared in identical terms in the definitions section of the GCs) would necessarily apply.
- 6.18 We do not agree with Connexon's view of Article 26. This is because of the way that 'End User' has been defined in Article 2 of the FD:
- an End-User is "*a user not providing public communications networks or publicly available electronic communications services*"; and
 - The term 'User' is itself defined to mean "*a legal entity or natural person using or requesting a publicly available electronic communications service*".
- 6.19 The combined effect of these two definitions **means that an 'End User' is a person who uses a publicly available electronic communications service, but who does not provide either such a service or a public communications network.**
- 6.20 It is therefore implicit that, in using the term 'End User', it has been intended that Article 26 should only apply to publicly available electronic communications services. This is why the Act only defines an End User with reference to a public electronic communications service, and not an electronic communications service more broadly.
- 6.21 In the course of considering the points that Connexon has made, we have however recognised that the use of the word 'caller' in the proposed GC 4.3 could cause confusion on the applicability of this GC because it is not clearly defined in this context, and that it should be changed to 'End User' in order to be consistent with the language used in the overall GC. This correction will be applied to the revised GC4 text.
- 6.22 Connexon also argue that our interpretation of End-User for GC4 purposes may be inconsistent with the approach adopted for GC2. This is because of the definition of 'End to End Connectivity' in GC2, which implies that an End-User may be someone who uses either a PECS or an ECS. We do not agree that this interpretation of GC2 is correct, or that GC2 and GC4 are inconsistent.
- 6.23 First, as set out above, 'End-User' can only be properly understood in the context of a public electronic communication services.

- 6.24 Secondly, the term 'End to End Connectivity' must be read in the overall context of GC 2.4. The purpose of that paragraph is for directions to be made that ensure that Network Interconnection Interfaces comply with specified standards. A Network Interconnection Interface means the technical characteristics of each interface at any Network Interconnection Point. A Network Interconnection Point is the physical location at which interconnection between different public communications networks takes place. It is implicit, in that context, that the reference to 'End to End Connectivity' means in relation to End Users of public electronic communications networks and services (rather than to private systems where individuals are using extensions to a PBX) where End-Users are able to communicate with one another regardless of who their respective CP may be.

Other defined terms in GC4

- 6.25 BT has also correctly pointed out an inadvertent typographical error in 4.3(b). The phrase '*Call* Identification' should instead read '*Cell* Identification'. This correction has been applied to the revised GC4 text in Annex 2.
- 6.26 BT also noted that the proposed definition of "Cell Identification" refers to the coordinates of the basestation, but that in practice mobile operators follow the approach set out in NICC standard ND1013, which refers to the centre of the cell's coverage area. It is not our intention to alter current industry practice in this area, and hence we will change the definition to read:
- '*Cell Identification*' means the geographic coordinates of the ~~mobile basestation~~ cell which is hosting the call, and where available, an indication of the radius of coverage of the cell
- 6.27 Three suggested that the definition of 'Mobile Network' to be included in GC4 risks being too narrow or becoming quickly obsolete as it refers only to networks conforming to GSM and UMTS standards. Three suggested using a similar approach to the definition of 'Mobile SMS Access' proposed for GC15.10, which includes GSM, UMTS and "*or any other standard for mobile communications that is, or may be, adopted in the UK*". We agree it would be helpful to adopt a more consistent and future-proof definition and will accordingly add this phrase to the definition of 'Mobile Network' in GC4.
- 6.28 One confidential respondent sought additional clarity on the definition of "customers' terminal equipment" used in GC4.3(a), and in particular in relation to users of private networks. We believe the issue is addressed in our clarification of the applicability of GC4 only to public networks.

Technical Feasibility

- 6.29 There was wide spread support for our proposal to retain the wording "to the extent technically feasible" in relation to the obligation to provide location information. However some respondents expressed concern about our discussion of some of the potential implications of this, which was specific to VoIP technology. EE were concerned that we should be more technology neutral, as the issues of technical feasibility may apply in situations other than VoIP, such as Femtocells.
- 6.30 VON also argued that limitations of technical feasibility might apply beyond the situations which we discussed, and that we should therefore take a technically neutral approach. In particular, they felt we should not distinguish between fixed and

non-fixed VoIP services when considering the technical feasibility of providing accurate location information.

- 6.31 Skype and one of the confidential respondents raised similar points, to the effect that it may not be technically feasible for some fixed VoIP service providers to maintain accurate location information. The reasons for which being that the customer may be able to relocate the service without the provider's knowledge, or that the location provided by the customer may be wrong, again without the provider's knowledge.
- 6.32 We do not consider that Recital 40 of the USD supports the idea that all 'network independent undertakings' should be exempted, as VON appear to be suggesting. In response to EE's point about Femtocells, the intention of the explanatory text in the consultation was not to give an exhaustive or definitive assessment of situations in which technical feasibility may be relevant. The recital makes it clear that technical feasibility is the key criteria, and we consider that this is correctly reflected in the revised text of GC4.
- 6.33 CPs to whom GC4 applies will, in each case and on the facts, always need to determine whether or not it is technically feasible for them to provide Caller Location Information, given the particular technology and the usage scenario that is being considered. We may also develop our thinking on this from time to time and, where appropriate, issue general guidance to stakeholders. For example, we currently take a view in general that, where a VoIP service is not mobile, nor mainly used in a nomadic way, it is technically feasible to provide caller location information in the form of the customers registered address, along with a VoIP flag³⁵.
- 6.34 In relation to our reference to international standards for VoIP location information, Skype pointed out the work of Internet Engineering Task Force (IETF) and the European Emergency Numbers Association (EENA) in this area and stressed the need for an international approach. In contrast, BT pointed out that UK's NICC has produced standards in this area.
- 6.35 Our reference to the standards work of European Standards Organisation (ESO)/European Telecommunications Standards Institute (ETSI) was in response to recital 40 of the USD which refers to availability of "*internationally-recognised standards*". We acknowledge that other international bodies, namely IETF and EENA, are undertaking relevant standards work in this area. In relation to UK standards, we continue to fully support the work NICC is undertaking in this area, which is important in the UK context. We also expect that NICC's work will influence the international standardisation referred to in the Directive. We expect to consider this issue and the role of the NICC and other standards more fully in our planned consultation on the creation of a more detailed set of accuracy and reliability criteria for caller location information (which we expect to issue next year).
- 6.36 This further consultation will also involve reviewing the need for potentially more stringent criteria in light of developments with location technology - for example, taking account of the increasing availability and use of GPS (Global Positioning System)-enabled handsets/devices whereby there may be scope for location information to include GPS co-ordinates in future.

³⁵ See Ofcom *Regulation of VoIP Services: Access to the Emergency Services* 5 December 2007 at <http://stakeholders.ofcom.org.uk/binaries/consultations/voip/statement/voipstatement.pdf> .

Providing caller location information at the time the call is answered

- 6.37 No respondents raised objections in principle to the requirement for location information to be available “at the time the call is answered” by the Emergency Organisations (EO). However, some did point to potential practical problems. Changes in the network, for example the introduction of new network sites, as pointed out by C&W and UKCTA, or new customer connections, highlighted by ITSPA, take time to be uploaded to the systems providing location information. In the former case, the PECS code of practice is cited as requiring that updates happen within 24 hours.
- 6.38 We acknowledge standard industry practice in this area involves regular ‘bulk updates’ of data and that real time updating is unlikely to be technically feasible. However, we do not expect that network or service changes of this type would usually affect the ability to provide accurate location information beyond the first 24 hours.
- 6.39 C&W and UKCTA raised a related issue, which also concerns the extension of the obligation on resellers to provide location information. They pointed out that, if resellers take the approach suggested in paragraph 6.10 of our consultation and pass location information directly to the EO, any intermediate CHA may be left without access to the information and hence unable to route the call to the correct EO.
- 6.40 Under the scenario outlined above, if a call failed or was delayed because of routing problems in the CHA, the reseller involved would be unlikely to have met their GC4 obligations. The existence of the CHA function is not directly regulated by GC4 – it is an industry solution to achieving the requirements for emergency calling. We consider the proposed wording correctly captures the objective, namely the timely delivery of location information to the EO, and that the need to ensure the correct operation of any intermediate steps which are chosen, of which potential call routing via a CHA is one, is implicit.

Conclusions

- 6.41 We have decided to give effect to the changes to GC4 as proposed in our consultation, subject to the minor modifications noted in paragraphs 6.25-6.27, in order to implement the changes required by Article 26 of the USD. This will result in changes to definitions and GC4.2, 4.3 and 4.4.
- 6.42 In summary, these changes place the obligation, on certain CPs, in relation to emergency calls to provide location information meeting specified accuracy and reliability criteria, to the Emergency Organisations at the time the call is answered by them and at no charge to them.
- 6.43 We continue to believe that these changes are likely to result in minimal costs on CPs given that they are already largely practiced in the UK.

Legal Framework

- 6.44 We consider that our changes meet the criteria set out in section 47(2) of the Act. They are:
- **not unduly discriminatory** as the revised requirements will apply to all CPs to the extent GC4 is relevant to them;

- **proportionate** as the changes represent the minimum necessary to implement the changes to Article 26 and there is no less intrusive mechanism to achieve the intended purpose; and
- **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

Section 7

Changes to General Condition 9

7.1 In Section 7 of our consultation, we set out a number of proposed modifications to GC 9 which covers requirements relating to contracts between CPs and consumers. GC9 sets out the minimum information that CPs should provide in their contracts including such things as: particulars of prices and tariffs; duration of the contract; and any applicable compensation and/or refund arrangements.

7.2 We noted that there are five key changes to Articles 20 and 30 of the USD:

- there is a wider definition of CP and certain obligations apply in respect of end-users;
- contracts will have to provide additional specific information to consumers, and such information will also have to be made available to other end-users on request (Article 20 (1) of the revised USD);
- subscribers must be able to withdraw from contracts penalty-free following a notice of proposed contract modifications. Additionally, Ofcom should be able to specify the format of such notifications (Article 20 (2) of the revised USD);
- the maximum duration of initial consumer contracts will be 24 months or less; and users (including consumers) shall be offered the possibility to contract for a maximum duration of 12 months (Article 30 (5) of the revised USD); and
- contract termination conditions and procedures should not act as a disincentive against switching providers (Article 30 (6) of the revised USD).

7.3 In the rest of this section we discuss our approach and proposals with regard to implementing each of these requirements, stakeholders' responses and our conclusions.

We set out several proposed modifications to GC9 to implement these requirements

7.4 In order to implement these requirements, we proposed the following changes:

- i) An amendment to our definition of CP for GC9. Currently, GC9 applies to CPs providing public electronic communications services. We proposed to extend this to apply to providers of public (electronic) communications networks, in addition to providers of publicly available electronic communication services in order to reflect the revised wording in the Article 20 (1)³⁶³⁷;
- ii) That contracts should give additional information to consumers (for both existing contracts and new ones) – the information is set out in paragraphs 7.5 and Annex 7 of our consultation – and that this should also be made available to other end-users on request (for the avoidance of doubt, end users includes all business

³⁶ 'Publicly available electronic communications service' is an EU Framework term which essentially equates to the term 'public electronic communications service' that we use in our conditions.

³⁷ In GC9 and for the purposes of this section, a CP means a person who provides Public Communications Networks and/or Public Electronic Communications Services.

customers). We also set out that CPs would be required to provide this particular defined information in a clear, comprehensive and easily accessible form;

- iii) That all subscribers – which includes businesses - should be notified of proposed modifications to their contracts and should be able to withdraw from their contract without penalty upon a notice of modification to the contractual conditions proposed by their CP. Previously, only residential consumers had this right under GC9. We proposed to retain the words ‘material detriment’ in the provision to ensure that this provision is used by subscribers for the purposes intended, and not as a way to exit contracts when any change, however minor is made. We gave some guidance on the format used to notify customers of changes;
- iv) To insert requirements into GC9 making the maximum term of initial contracts 24 months for consumers and requiring CPs to offer all users which includes all business customers, an option to contract for a maximum duration of 12 months; and
- v) To amend GC9 by inserting a high level requirement that CPs shall ensure that conditions or procedures for contract termination do not act as disincentives for all end-users against switching their CP. End users includes all customers and all businesses.

7.5 We asked stakeholders if they agreed with our proposed approach to contract related requirements relating to the provision of additional information, the length of contracts and the conditions for termination.

Stakeholder responses

Definitions and the scope of GC9

7.6 Almost all stakeholders commented that there should be more clarity around the definitions used in GC9. Comments were made by stakeholders including UKCTA, Verizon and Sky in relation to our proposal to extend the application of GC9 to undertakings providing public electronic communications networks (PECN) as indicated by the marked up text of GC9 in Annex 7 of our consultation. They sought clarity on this proposed change and the broadened scope of GC9 which it potentially implied.

7.7 In response, and as explained in paragraphs 3.18-3.28 of this statement, we are now inserting the term (Public Communications Network) PCN into GC9 which is defined as follows:

“Public Communications Network” means an Electronic Communications Network used wholly or mainly for the provision of Public Electronic Communications Services which support the transfer of information between Network Termination Points.

7.8 We see the inclusion of PCN into GC9 as largely technical and in most cases it is unlikely to mean that additional CPs are now captured by the scope of this GC³⁸.

³⁸ The terms “Consumer” and “User” in GC9.7 refer only to persons using or requesting a PECS, and it is difficult to envisage circumstances where there would be a contractual relationship between a CP providing a PCN but not a PECS and a User or Consumer (although we cannot completely rule out

- 7.9 Some stakeholders also submitted that as there was now a range of definitions being used as follows – ‘Consumer’, ‘Subscriber’, ‘End-User’ and ‘User’, clarity was needed on these terms and their application and individual meaning.
- 7.10 This terminology in GC9 will require stakeholders to have further regard to these terms in applying GC9 obligations. However, we consider that the terms are clearly expressed in the FD and so should be readily understood by stakeholders.

New contractual information

Contracts to give specific information to consumers which should also be made available to other end-users on request

- 7.11 We received twelve responses on this specific proposal and overall stakeholders sought clarification about its application. Stakeholders commented on the following issues: the potential expense which could be involved; which customers actually needed to be contacted, and by what method; and whether this provision applied to both existing and new contracts. Specific comments were also made about traffic shaping and personal data. We set out below our consideration of each issue.

Some stakeholders considered that this provision should only apply to new contracts

- 7.12 Five respondents – UKCTA, EE, Sky and two confidential respondents - suggested that this provision should only apply to new contracts concluded after 25 May 2011, meaning that CPs would only need to ensure that new contracts contained the additional information. UKCTA and one confidential respondent noted the words “when subscribing” (from Article 20(1)) and stated that Ofcom should reflect these words in GC 9.2 so that it is clear that these requirements only apply to new contracts.
- 7.13 Furthermore, UKCTA, TalkTalk, SSE, Sky and Vodafone all sought clarification on whether CPs actually needed to individually contact existing customers to notify them that additional information will be provided in their contracts. TalkTalk added that individually contacting all customers would not be proportionate. A number of respondents stressed that *if* CPs were required to re-issue all existing contracts to incorporate the additional information, then this would be an expensive exercise.
- 7.14 We have carefully considered these responses in light of our proposal that the additional contractual information should be provided in relation to both existing and the new consumer contracts. We based this proposal on our expectation that limited impacts would arise from the CPs providing this additional information in their consumer contracts. We have been persuaded that it is appropriate to modify our proposal. The obligation to provide the additionally new information (as compared to current GC9) will therefore apply only to contracts concluded after 25 May 2011.
- 7.15 We have reached this view by taking a consistent approach to the one taken to both contracts with a maximum duration of 12 months and contracts with a maximum commitment period of 24 months (which are discussed later in this Section). This approach is also consistent with the Government’s approach to transitional arrangements for applying the amended regime in the recent ECWR, unless the context otherwise requires. Although the USD does not provide for full harmonisation of consumer protection aspects (and thus it is open to Member States to provide

factual circumstances where a CP providing a PCN but not a PECS would be covered by the provisions of GC9).

additional protection), we now consider that Article 20(1) is sufficiently ambiguous as regards its application to existing contracts and it therefore allows less onerous obligations to be imposed on CPs at this stage. We nonetheless encourage CPs to provide this additional information for all contracts as the comparability of the information required may assist consumers to make informed decisions in competitive markets, whether or not they have already subscribed to specific services.

Communicating the new information to customers

- 7.16 TalkTalk, Sky and UKCTA queried what Ofcom meant by “actively communicating” the changes to customers. SSE stated that publicity about the changes by Ofcom might suffice along with CPs’ websites containing the required information. Vodafone sought confirmation that the additional information could be incorporated by reference into contracts, while EE commented that it did not consider that the best location for this information was the contract, but rather the FAQs on its website.
- 7.17 In response, we can confirm that the new information can be potentially conveyed by cross-referral e.g. to the CP websites, where appropriate. However, it must be made clear to the customer that the additional information now forms part of their existing contract (it is therefore not appropriate for these changes to appear, for example, in FAQs rather than the contract.) And overall, the information must be provided in a clear, comprehensive and easily accessible form.
- 7.18 One confidential respondent also submitted that there is likely to be a lag between the time when online terms and conditions are updated and when paper terms and conditions are updated. In such cases, it suggested that it should be sufficient that new subscribers are directed to the correct electronic terms and conditions even if paper terms and conditions they receive are not amended. This respondent added that to require all CPs to have new paper terms and conditions available by 25 May 2011 would be environmentally wasteful, in addition to being costly.
- 7.19 We appreciate that it may take longer for paper terms and conditions to be updated. However, CPs should not be sending outdated paper terms and conditions to their customers. We consider that CPs will have to direct new customers to amended electronic material while they update their printed material. But this should only be an interim solution. Where customers do not have internet access, they should be offered the option of being sent a hard copy of the updated electronic terms and conditions if they ask for it, which CPs could print and send to them.

Traffic Shaping Information

- 7.20 A number of stakeholders – FCS, UKCTA, VON, BT, Sky and a confidential respondent commented on the requirement to include information about traffic shaping in contracts. They generally shared a view that information about traffic shaping should not be located in the terms and conditions but would be better located on a dedicated page which would be accessible to customers.
- 7.21 We maintain that this information should form part of contracts. This information could be located on dedicated pages on CPs’ websites, however, it would be necessary for the terms and conditions to be linked to these pages so that the information about traffic shaping is incorporated into the contract.
- 7.22 VON, while agreeing with Ofcom’s view of transparency, believed that our proposed draft of GC 9.2 (e) which concerns traffic shaping did not fully reflect the wording of

Recital 28 of the USD. VON considered that the wording of GC9.2 (e) could be more substantive in light of current practices such as ‘tethering’, ‘throttling’ or ‘port blocking’³⁹.

- 7.23 We note VON’s comments. However we consider that Recital 28 is fully reflected in GC9.2 (c) and that GC 9.2(e), which concerns traffic shaping information, reflects Recital 34 of the USD.
- 7.24 FCS made the point that traffic shaping information is not available to all CPs. It explained that resellers, for example, are not able to shape traffic, whereas carriers only have such control. FCS further submitted that this distinction was understood in the industry, namely that carriers will sometimes take measures to protect and allow networks to recover when they have been overloaded. In addition, these measures are well understood within the industry and have been in effect for many years. FCS is not sure why Ofcom suggest they now need to be described in consumer contracts, and is concerned this might confuse consumers.
- 7.25 We acknowledge the comments made by FCS about the availability of traffic shaping information. However, in our view, this does not mean CPs who are not able to shape traffic should not include any information about this in their contracts. As reflected in FCS’ response, CPs (resellers) are aware of the measures taken by carriers which result in traffic shaping. Consequently, these CPs would need to explain to customers that there might be circumstances where they have no control over measures taken by carriers to shape traffic in the interest of the network and of all users. The fact that resellers themselves do not shape traffic does not mean that they do not need to communicate this information. Customers need to be told when this might happen and why. They also need to be informed of the potential impact to their connection when carriers take the measures referred to above.

Personal Data

- 7.26 One confidential respondent raised a query about GC 9.2. (h) which states that providers must include on contracts the “*Subscribers options as to whether or not to include his or her personal data in a directory, and the data concerned*”. This respondent stated that in its view USD Article 20 cross-refers to Article 25 and from there further cross-refers onto the Privacy Directive, and in particular to Article 5 of that Directive. As a result, they felt that our proposed GC 9.2(h) needed to be more prescriptive about the options in order to reflect the Directives.
- 7.27 Specifically, they felt that GC9.2 (h) should be expanded to cover the full range of options which are available to subscribers in relation to whether their personal data is included in directory databases; options which allow them to be included in such databases, but which prevent disclosure of the information to users of the database; and options available to subscribers to vary or modify data concerning them or to elect options previously not chosen by them.
- 7.28 We believe that GC9.2(h) is appropriately worded — “*the Subscribers options as to whether or not to include his or her personal data in a directory, and the data concerned*” - so as to fully encompass the USD requirement that “*where an obligation exists under Article 25, the subscriber’s options as to whether or not to include his or her personal data in a directory, and the data concerned*”. We would also point out that the Privacy Directive is being implemented via changes to the Privacy and

³⁹ Consumer Focus also asked us to do more on traffic shaping beyond measures related to improved transparency. We encourage them to engage with our net neutrality team on these points.

Electronic Communications Regulations²¹ and so we do not see a case for specifying further details via GC9.2(h).

Emergency Services

- 7.29 One confidential respondent commented that paragraph 9.2(b) should be amended so that the end of the paragraph reads as follows “*and any limitations on the provision of access to Emergency Services*”.
- 7.30 We note this comment and agree that for clarification the words “access to” should be inserted in paragraph 9.2 (b).

Conclusions on new contractual information

- 7.31 Having considered all the responses in relation to this issue, our views are largely unchanged from those set out in the consultation document:
- contracts will now have to give specific information to consumers which should also be made available to other end-users on request, as set out in Annex 2 – however this provision will now only apply to new contracts concluded after 25 May 2011;
 - we will also insert the words “access to” in GC 9.2(b) as noted above;
 - the information must be communicated to new customers in a clear, comprehensive and accessible form;
 - we accept that information – for example about traffic shaping - could be cross-referred through location on CPs’ websites, but that the terms and conditions should be directly linked; and
 - that customers who do not have online access should be offered the option of being sent a hard copy of the updated electronic terms and conditions.
- 7.32 We believe these changes should not have a major impact on providers, because they are only being required to add the information to new contracts and because they can use a wide range of methods to communicate the new information to their customers – for example, cross-referring to details on websites.

Subscribers to be able to withdraw from contracts penalty-free following a notice of contract modifications

- 7.33 Six respondents – BT, Vodafone, Sky, Ombudsman Services, EE and a confidential respondent commented on this proposal. Ombudsman Services noted that this provision has now been extended to cover Subscribers (which includes both residential and all business customers) who are in a contract with a provider of PECS and they welcomed this extension. While the other respondents did not indicate opposition to our proposal, they did seek clarifications on the application.
- 7.34 A confidential respondent was concerned that a Subscriber who has bargaining power, such as a business or government department who agreed to a bespoke contract, where specific changes to pricing or other terms by the CP are allowed, would be able to rely on this provision to exit the contract at no cost, should they consider that any proposed changes would cause them material detriment. BT also commented that the provision was drafted too wide, and that it should only capture

consumers and businesses on standard contracts. BT's view was that GC9 should only apply to consumers, SMEs and micro businesses.

- 7.35 We do not agree with BT that GC9 should only apply to consumers, SMEs and micro businesses. We are transposing the revised Framework requirements via GC9 and the Directives make it clear that new provisions like exiting penalty free following notice of contract modifications are now relevant for both consumers and businesses.
- 7.36 However, we note the points made in relation to bespoke contracts and material detriment for subscribers who may have bargaining power. Establishing whether a change is materially detrimental will ultimately depend on an assessment of the facts in such cases. Having said that, we do agree that in certain cases where there is an agreed change mechanism, such as in the case of business contracts, that changes captured by this mechanism are unlikely to be materially detrimental as they are likely to have been envisaged by the parties at the time the contract was agreed.
- 7.37 EE noted that Ofcom should not provide guidance on the format by which notices of changes are to be given. It considered that the CP was best placed to decide this and that Ofcom should avoid issuing guidance which can stifle innovation. It further suggested that Ofcom should either delete the proposed guidance provided in the consultation or that it should broaden it to include alternative and new forms of communication.
- 7.38 While we agree that CPs are well placed to decide on how to communicate with customers, we also consider that some guidance is necessary to ensure that customers are well informed. For example, we maintain that, notifications which require customers to regularly check CPs' websites for possible changes will not be sufficient. Our view is that CPs need to ensure that customers know how such changes will be communicated from the outset. This can include for example, letters, emails or other acceptable forms of communication.

Conclusions on penalty free withdrawal following a notice of contract modifications

- 7.39 Having considered all the responses in relation to this issue, our modifications remain unchanged from those set out in the consultation:
- subscribers – including now businesses – will be able to withdraw from contracts penalty-free following a notice of contract modifications; and
 - that we will maintain the words “material detriment” in 9.6(a) to make clear that notices must be provided in those cases where modifications are likely to be of *material detriment* to the Subscriber.
- 7.40 We continue to believe that the impacts of this change will be limited only to CP's business customers, who now gain the right to exit from a contract penalty free following a notice of modification which is likely to be materially detrimental to them. CPs will not be impacted further in terms of their residential customer base given consumers already had this right under the existing GC9.

The maximum term of initial contracts to be 2 years for consumers and for all users to be offered an option to contract for a maximum duration of 12 months

- 7.41 We received seven responses to this proposal. Vodafone accepted our proposal (on 12 month contract options) and Consumer Focus and BT supported our proposals

but with some reservations on the 12 month contract option. However the Mobile Broadband Group ('MBG'), Three and EE disagreed with our approach to implementing the 24 month limit for consumer contracts (largely because they believed it should only apply to contracts signed after 25 May).

Contracts with a maximum duration of 12 months

- 7.42 While Consumer Focus welcomed the obligation on CPs to provide at least one 12 month contract for each service they offer, they did not understand why our proposals did not require 12 month or less contracts to be offered for (high end) mobile handset-inclusive deals.
- 7.43 In response, we reiterate the view we expressed in the consultation, namely that 12 month contracts are meant to be an option to consumers in order to enable access to electronic communication services and give options to enable switching of service providers – i.e. it is not a requirement about facilitating access to specific (or the most expensive) devices.
- 7.44 As we said in paragraph 7.24 of the consultation, we consider that SIM-only contracts where contracts can be obtained for a duration of between 1 to 12 months - and which are already widely provided by many operators - would satisfy the requirements of this new provision. If a consumer wishes to secure a handset - and a contracted (post-pay) mobile service - without signing for a period in excess of a year, they always have the option to buy the handset separately (for example, from a third party retailer on the high street or online etc) and then to secure a SIM-only mobile contract for between a month and 12 months.
- 7.45 While BT also supported the provision requiring that a 12 month contract be offered, it further commented that this provision should not apply to business to business contracts, where longer contract terms are often chosen by customers in order to benefit from more attractive prices.
- 7.46 While we understand BT's comment in relation to the benefits associated with a longer business contract, in accordance with Article 30(5), all Users (defined as including legal and natural persons) should be given the option of a 12 month contract. The fact that such a contract is provided does not mean that customers are obliged to sign up for it or that the CP will not offer other contracts of different lengths.
- 7.47 A confidential respondent also commented that Ofcom should give some examples in relation to this new provision for the fixed sector. Moreover, this respondent considered that where a CP offers different services across different networks, it should be sufficient that it has one 12 month contract available on only one of its networks.
- 7.48 We do not agree that where a CP provides services on different networks, it only has to provide one 12 month contract on only one of its networks. The services provided on each network might not be accessible to all customers for geographical and technical reasons. Each group of customers should have the option of a 12 month contract.

Contracts with a maximum commitment period of 24 months

- 7.49 We proposed in the consultation that, when the obligation comes into force, an existing or new "initial contract" could not be longer than 2 years in duration. We

based this proposal in part on our understanding of the Directive wording and on our understanding that this would only affect a very small number of providers and their customers.

- 7.50 As noted above, we received responses on this matter from MBG, Three and EE. They considered that the 24 month limit on contracts should only apply to new contracts which are concluded after 25 May 2011. They disagreed with our consultation that this limit should also apply to existing contracts which exceed 24 months, and they argued that the law should not apply retrospectively.
- 7.51 MBG argued that the word “concluded” used in Article 30(5) of the USD suggests, in its view, that the 24 month limit should only apply to contracts agreed from the transposition date and not to all contracts. It was concerned that Ofcom was requiring providers to change their terms and conditions when the Directive is silent on this point.
- 7.52 We have reconsidered our proposal in light of these responses. We no longer consider it appropriate to apply this 24 month restriction to commitment periods agreed by consumers and providers before 26 May 2011 and have decided that it should only apply to agreements struck after 25 May 2011.
- 7.53 This is because we agree with MBG’s observation that Article 30(5) is sufficiently ambiguous in this regard as it simply provides that “*Member States shall ensure that contracts concluded between consumers and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months*”, without making it clear from what date this restriction should apply.
- 7.54 We consider that this ambiguity leaves it open to Member States to interpret that this restriction may be applied either to existing as well as new agreements or to new agreements only. We have now been persuaded that the latter option is more appropriate.
- 7.55 We disagree however with the suggestion that our proposal would have run contrary to the presumption against retrospective legislation – a rule is not retrospective simply because it interferes with existing rights, as most legislative measures have such an effect and there is no presumption that interference with existing rights cannot happen.
- 7.56 Nevertheless, we now understand that the impact of this proposal could have a material impact for a few CPs and some of their consumers who are on contracts with more than 2 years left to run after 25 May 2011. We believe that applying the restriction to these existing contracts could have material and undesirable consequences for those consumers and their providers, respectively.
- 7.57 Furthermore, we are now aware of the Government’s approach to transitional arrangements for applying the amended regime in the recent ECWR. The Government has decided to take a consistent approach to these arrangements, so that on the whole the new regime will not apply to specified matters occurring before 26 May 2011. So we think a similar approach should be taken with regard to the application of this restriction (in particular, having regard to the past tense of the word “conclude” as used in Article 30(5)), and it should therefore apply to new contracts only, i.e. contracts concluded after 25 May 2011.
- 7.58 We also referred in our consultation to the proposed restriction as applying to the ‘initial contract’ concluded with consumers. We now think that there is a risk that this

terminology could lead to misapplication of the intended restriction in light of responses received. Article 30(5) prohibits contracts mandating “*an initial commitment period that exceeds 24 months*”.

- 7.59 A stakeholder who submitted a confidential response considered that an ‘initial’ contract only consisted of the very first contract between consumer and CP. This stakeholder held that all further contracts with the same provider were ‘subsequent’ contracts, and that the 24 month limit would only apply to the first contract and not to any subsequent contract.
- 7.60 This confidential response furthermore stated that Ofcom’s proposed decision to apply the 24 month limit to all contracts was inconsistent with Ofcom’s Additional Charges Guidance (‘the Guidance’)⁴⁰. In the Guidance, Ofcom has made a distinction between initial and subsequent contracts, and this stakeholder considered that its understanding of what is a subsequent rather than an initial contract has been informed by the Guidance.
- 7.61 For clarity, we consider that ‘initial’, does not refer only to the first contract struck between a CP and a consumer. Instead, we consider that each and every contract between a CP and a consumer will have an initial commitment period, and this period cannot exceed 24 months. So even second and subsequent contracts that are struck between a CP and consumer will have an initial commitment period which cannot exceed 24 months.
- 7.62 Whatever the position taken in that Guidance, it does not preclude the need to properly implement the Community obligation about initial commitment periods in Article 30(5) of the USD into UK law. In other words, the fact that we used the terms ‘initial’ and ‘subsequent’ in the Guidance in order to explain our approach to the Unfair Terms in Consumer Contracts Regulations 1999 is not necessarily determinative of the approach to be taken to the term ‘initial’ in that Article. In our understanding, the EU legislator has imposed this restriction to ensure that consumers can take full advantage of the competitive environment and facilitate changing providers when it is in consumers’ interests, while allowing for a reasonable minimum contractual period. We do not think that this aim would be achieved if the approach suggested in the confidential response was taken.
- 7.63 We furthermore interpret ‘initial commitment period’ as meaning the period of the contract during which the consumer cannot leave the contract without being liable to pay compensation to the CP. When read together with the reference to the word ‘initial’ in Article 30(5) and the reference to ‘minimum contractual period’ in Article 30(6), we consider that this period begins on the commencement date of the contract as agreed between the CP and consumer and ends on the day that follows 24 months thereafter. After the expiry of that period, the same contract may still be in (continuous) operation but without a requirement for the consumer to compensate the CP in relation to termination.
- 7.64 Additionally, the consumer may be offered a new handset and/or tariff in return for agreeing to a new commitment period, subject to the same 24 month initial commitment rule. Whether the acceptance of a new handset and any associated revisions to terms and conditions constitutes a new contract, and hence is subject to the rule regarding the initial commitment period, will be a question of construction dependent on the factual circumstances. We anticipate this may often be the case, although it may not always be so.

⁴⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/Guidance.pdf> .

- 7.65 Therefore, it could be misleading to speak of ‘initial contracts’ versus (say) new contracts. Whether or not there is between two parties a contract, a renewed contract or another contract may be a question of law, question of fact or both. The answer to that question will depend on the circumstances of each case and is not something we think Article 30(5) is seeking to regulate, for instance by laying down a rule that an existing contract must be cancelled and a new one entered into.
- 7.66 Accordingly, we have reflected these modifications in GC9 as set out in Annex 2. As well as the initial commitment period referred to in GC9.3 and GC9.4, the same reasoning applies to the requirement under GC9.5 to offer contracts with a commitment period not exceeding 12 months.

Early Upgrades

- 7.67 EE sought clarification that the provision’s objective is only to prevent an initial commitment period being greater than 24 months, but not to preclude a contractual relationship being variously amended and extended with the effect that a consumer may, within a continuous contractual relationship, remain with the same provider for more than 24 months.
- 7.68 Furthermore, we note the suggestion from EE that customers should be allowed to agree to a new commitment period (e.g. with a new handset and/or tariff) before their initial contract has reached its term, with the result that they may be in a contract exceeding 24 months with the same provider. We consider that this again reflects uncertainty resulting from the ‘initial contract’ terminology which we used in our consultation, and which we have now addressed by amending the text of GC9 to refer to ‘commitment period’.
- 7.69 If CPs want to offer ‘early upgrades’, they may as part of this agree a new minimum commitment period provided it relates to a new contract. As noted above, the question of whether this constitutes a new contract to which the initial commitment period requirement applies is one of construction based on the factual circumstances. However, we anticipate that such circumstances very often will involve cancellation of an existing contract and entering into a new one.
- 7.70 In any event, it is for CPs to decide how they structure contractual arrangements with customers in relation to upgrades. Given our approach to ‘initial’ above, if there is a new contract caused by the upgrade, we do not consider that EE’s interpretation of the words “*do not mandate an initial commitment period that exceeds 24 months*” in Article 30(5) is correct.

Conclusions on commitment period requirements

- 7.71 We will therefore amend our original proposals as set out in the consultation as follows:
- to clarify that the 24 month maximum commitment period applies only to agreements struck from 26 May 2011; and
 - to refer to the ‘commitment period’ rather than the ‘contract’ due to the confusion that may arise from the latter term.
- 7.72 This will affect GC9.3, 9.4 and 9.5 (the changes are set out in Annex 2).

7.73 In terms of impacts, given that the 12 month or less contract options are already widely available in the market, we do not expect this provision to affect CPs. In terms of the 24 month contract limit, there were only a few CPs who told us they had contracts in excess of this duration. We understand that both these CPs have now stopped offering these products. Given the provision will not apply to those customer contracts they had already signed (before 25 May) it should have limited impacts on these CPs - and it will not affect their existing customers (who currently have contracts with commitment periods in excess of 2 years).

Contract termination conditions and procedures not to act as disincentives for end-users against switching their providers

7.74 This proposal attracted fewer responses but some stakeholders – Sky and EE questioned the need for such a provision and FCS asked for some further clarification about the meaning of “disincentives”.

7.75 SSE and BT both welcomed this provision. FCS has sought further clarification on the meaning of “disincentives”.

7.76 As we explained in the consultation document, disincentives can be both contractual (early termination charges, automatically renewable contracts) or can be industry processes⁴¹.

7.77 EE's views were that other GCs (18 and 22) already cover conditions and procedures which may act as disincentives, and thought that the insertion of this provision would be neither proportionate nor objectively justifiable. Sky had very similar views.

7.78 We have considered this view but disagree that there is no need for a broader provision which may capture conditions and procedures other than those already covered by GCs 18 and 22. Having a broader provision which is able to capture a range of disincentives will in our view allow for better consumer protection.

Conclusions on requirement relating to contract termination

7.79 We have therefore amended GC9 so that it now reflects this high level provision.

7.80 This requirement should only impact any CPs who have contract termination conditions and procedures which are acting as disincentives for switching providers. Otherwise, this new provision is unlikely to have any major impacts.

Summary

7.81 Overall, in light of all the feedback, we have proceeded to implement most of our original proposals to amend several aspects of GC9. However, we have also made changes to some of our initial proposals – noted in paragraphs 7.31 and 7.71 above - on the basis of comments received from stakeholders. These changes are reflected in the full text of GC 9 at Annex 2.

⁴¹ We further note that in order to benefit from competition, consumers must have confidence to be able to exercise choice. This means that consumers should be able to switch between services and providers without undue effort, disruption and anxiety. Therefore, procedures and processes that increase switching costs and create barriers to consumers changing providers are likely to act as disincentives against switching providers.

- 7.82 In Annex 1 of our consultation, we also summarised the expected impacts of these changes. We continue to believe they may result in some benefits to some business customers who can now potentially exit from contracts penalty free after being notified of materially detrimental modifications; some greater transparency for consumers/end-users from the new information requirements and limited benefits on contract durations (given most CPs already adhere to the contract length requirements).
- 7.83 We recognise there will be impacts on some CPs in fulfilling these new provisions – in terms of adding the additional contractual information to new contracts, in providing notifications of contract modifications to other end-users i.e. businesses (and in relation to business end-users who choose to exercise their right to exist from materially detrimentally changed contracts penalty-free). While we recognise these potential costs, we reiterate that these requirements are necessary in order to implement the revised USD.
- 7.84 We also note that several stakeholders argued that we should provide a period of forbearance to comply with some of the new requirements in GC9.
- 7.85 While we recognise that CPs will need to potentially implement a number of changes after 25 May, however it is impossible for us to allow a transitional period without breaching Community law. It is not therefore an option available to us to grant a transitional period for compliance and also end-users will rightly expect that they can take advantage of corresponding rights as of 26 May.

Legal Framework

- 7.86 We consider that our changes meet the criteria set out in section 47(2) of the Act. They are:
- **not unduly discriminatory** as the revised requirements will apply to all CPs to the extent GC9 is relevant to them;
 - **proportionate** as the changes represent the minimum necessary to implement the revision of Articles 20, 30(5) and 30(6) and there is no less intrusive mechanism to achieve the intended purpose; and
 - **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

Section 8

Change to General Condition 15

Special measures for end-users with disabilities

- 8.1 In Section 8 of our consultation, we noted three key changes to the USD that were relevant to measures for end-users with disabilities (and so to GC15). These were:
- Article 26(4) of the USD, which requires Member States to ensure that access to 112 (and in this context the UK national emergency number 999) for disabled people is “*equivalent to that enjoyed by other end-users*” and based on European standards⁴²;
 - Article 23a which requires Member States to empower their national regulatory authorities (which in the UK is Ofcom) to specify, where appropriate, requirements to be met by providers of public electronic communication services to ensure disabled end-users have access to electronic communications services equivalent to those enjoyed by the majority of end-users - and that they benefit from the choice of CPs and electronic communications services available to the majority of end-users⁴³; and
 - Article 27a which requires measures to ensure disabled end-users can access 116 services (that is, harmonised services of social value) “*to the greatest extent possible*”, including whilst travelling in other Member States.
- 8.2 In the rest of this Section, we discuss in turn our approach and proposals with regard to implementing each of these requirements, stakeholders’ responses and our conclusions.

Mandating access to emergency SMS to help ensure equivalent access to 112/999 and that the service is maintained

- 8.3 In our consultation, we set out a key proposal which is to mandate the provision of an emergency SMS service in order to help promote equivalent access for disabled end-users, in line with the requirement under Article 26(4).
- 8.4 Specifically, we proposed to modify GC15 by inserting an additional paragraph imposing a requirement on mobile network operators to provide SMS access to the emergency services as well as voice call access and access via text relay. We also proposed a requirement on providers to publicise the service⁴⁴. As the USD also refers to disabled end-users being able to access emergency services whilst travelling in other Member States and the need for awareness of 112 as the single

⁴² We are not currently aware of any European standards specifically around access to the emergency services by disabled citizens. If in future such standards are developed, we would take appropriate measures to ensure compliance where appropriate to do so.

⁴³ See also recital 12 of the Citizens’ Rights Directive (2009/136/EC) which states that: “Equivalence in disabled end-users’ access to services should be guaranteed to the level available to other end-users. To this end, access should be functionally equivalent, such that disabled end-users benefit from the same usability of services as other end-users, but by different means.”

⁴⁴ Communications providers already have a duty to publicise the other services for disabled people that are mandated in GC15 and we propose to add emergency SMS to this list.

European emergency call number, we proposed to mandate the service on 112 as well as 999.

8.5 We proposed these modifications for a number of reasons:

- **Emergency SMS helps to promote equivalent access to the emergency services for disabled end users.** While we recognise that SMS does not provide disabled end-users with 100% equivalence with voice telephony (due to its lack of immediacy), we stated in our consultation that it offers a significant improvement over other currently available options particularly when away from home (these can be summed up as no access or mobile access using additional hardware and/or software). Emergency SMS gives disabled end-users the ability to contact the emergency services urgently when away from home using mainstream technology and a 24/7 relay service;
- **It guarantees the continued existence of an emergency SMS service across providers and ensures the Framework requirement continues to be met.** At the moment any MNO could switch off access for its customers (including customers of MVNOs using its network) at any time. This would clearly be very undesirable given the significant consumer benefits that the scheme offers. It would also be against the objectives of the revised Directive. Given the importance of emergency SMS to hearing- and speech-impaired users, we want to ensure it remains available so that disabled people can benefit from the choice of communications services available to the majority of end-users; and
- **Mandating the scheme imposes no financial burden over and above what the MNOs have verbally committed to.** An additional financial burden would only be imposed if an MNO intended to withdraw the service. However we illustrated through the specific impact assessment in our consultation that the benefits of greater certainty for disabled end-users outweighed this nominal extra burden.

8.6 In summary, we believed it important to mandate the service to secure and maintain it across all mobile providers in order that disabled end-users can benefit. This is in line with the requirements of the revised USD and carries a minimal regulatory burden.

Most stakeholders generally agreed with our proposal to mandate emergency SMS although some had reservations

8.7 We asked stakeholders if they agreed with our proposals to ensure equivalent access to the emergency services for disabled users and to mandate the provision of emergency SMS.

8.8 Of the 19 respondents who explicitly expressed a view on the proposal to mandate emergency SMS, most (twelve) supported our proposal. These included BT, FCS, Hearing Link, NDCS, Reach 112, RNID, Sense, Sorenson, TAG, TalkTalk, Verizon and one confidential respondent. Several of these respondents, such as Hearing Link, NDCS and Reach112, gave qualified or partial support as they also expressed reservations on our proposal:

“Sense welcomes the decision from Ofcom to mandate the Emergency SMS service. This service has been shown to save lives

and is a good step towards equivalent access to emergency services for people that cannot use a voice phone” - Sense

“NDCS strongly supports any action to ensure equivalent access to emergency SMS for deaf people...By mandating this service, many deaf young people will no longer be able in a position where they will be unable to help themselves or others in an emergency. However, NDCS has a number of reservations and comments about Ofcom’s approach...” - NDCS

- 8.9 Seven stakeholders indicated that they disagreed with our proposal to mandate emergency SMS - the four mobile network operators, the MBG, C&W and PhoneAbility.

Why mandate this service as part of transposition?

- 8.10 The four mobile network operators with spectrum, the MBG and C&W questioned why Ofcom was proposing to mandate a service that had been successful as a voluntary scheme. As stated above, we proposed mandating the scheme to safeguard it for the hearing- and speech-impaired people who rely on it. While the risk of one or more MNOs pulling out of the scheme now or in the future is likely to be small, the consequences if this did happen would be grave for disabled users who are likely to have come to rely on the scheme. Furthermore, we are concerned that relying on a voluntary agreement for emergency SMS does not offer hearing- and speech-impaired people equivalence with people who are readily able to make a voice emergency call through a mandatory service.
- 8.11 Some respondents also suggested that to mandate the scheme might have a detrimental effect on voluntary schemes in the future. We do not consider that this will undermine communications providers’ incentives to establish and take part in voluntary schemes in future. In many situations, providers will still find it beneficial to establish and participate in voluntary or self-regulatory schemes, particularly where the alternative would be comparatively intrusive regulation. However, voluntary measures are not always appropriate, and in this case we feel that there is a risk that voluntary agreements may not be robust enough, given the potential consequences of a breakdown in the scheme.
- 8.12 O2 suggested that if a provider were to withdraw from emergency SMS, subscribers could switch to another provider in order to continue to access the service. We do not believe that subscribers should have to switch providers in order to be able to call for help in an emergency; such a situation would not represent equivalence for disabled end users⁴⁵. O2 also suggested that if Ofcom considered that emergency SMS should be available from all providers, it could mandate the service in the event that an MNO withdrew. However, if this happened, users could be left without access to emergency SMS, albeit temporarily, which would be undesirable.
- 8.13 PhoneAbility argued that mandating emergency SMS was unconnected with equivalence as the Equality Act, which requires suppliers to make ‘reasonable adjustments’ to remove any barriers that could make it difficult or impossible for disabled customers to use their services, would guarantee its continuance. Under the

⁴⁵ This would cause inconvenience for all customers affected, and could result in additional costs for customers on pay monthly contracts who could be subject to early termination charges when switching provider, or those using pre-pay mobile services and who maintain a significant amount of pre-paid credit.

Equality Act, only a court can rule on whether or not a particular measure constitutes a 'reasonable adjustment'. If one or more MNOs were to withdraw from the scheme, an individual disabled person would have to take a case through the county courts, prove that they were disabled and then prove that they had been discriminated against for a reason connected with their disability to obtain redress under the Equality Act. There are no class actions under the Equality Act, so any judgment in favour of a disabled claimant would only relate to the individual claimant. There would also be a cost associated with any legal action.

- 8.14 Reach 112 suggested that Ofcom had applied the proportionality test in terms of numbers of users instead of the value of lives that would potentially be saved. Paragraph 8.16 of our consultation considered the issues of the value of life and also of preventing severe injury in some detail.
- 8.15 TAG suggested that this issue could have been considered as part of the fuller review of GC15 which will take place in the summer. However, we saw no reason to delay a decision on emergency SMS further.
- 8.16 Hearing Link said that while they welcomed emergency SMS, mandating it might harm the voluntary scheme, although they did not say why they thought this might be the case. They also suggested that the voluntary scheme should be allowed to carry on for longer before regulation was introduced. However, the trial ran for 19 months, which we believe has been sufficient to establish its value.

Enhanced relay services and equivalence

- 8.17 A number of organisations welcomed or cautiously welcomed the mandating of emergency SMS but called for more progress on enhanced relay services such as IP relay, captioned telephony and video relay (particularly Sorenson, which is a provider of video relay services in the United States). Relay services are the subject of a separate review by Ofcom, and a consultation document will be published later in the year.
- 8.18 The issue of IP access to relay services will be addressed in detail in this separate review. However, emergency SMS is robust in areas where coverage is marginal and where IP connections might well not be successful. (Coverage can be marginal in remote areas where signal strength is low, but also in areas of congestion where, because of voice call prioritisation, it is difficult to get an IP data connection.) In these situations, SMS is a good option as it only needs a usable signal for a very brief period.
- 8.19 We would also reiterate that mandating emergency SMS is not a replacement for any future measures to secure equivalence for disabled end-users but a potential complement to any additional measures that may be introduced following our forthcoming consultation on relay services.
- 8.20 The National Deaf Children's Society ('NDCS') said that Ofcom's statement that many of the measures already mandated in GC15 currently promote equivalence for disabled consumers potentially prejudices the relay services review. In making that statement we sought to indicate the measures that were currently in place for the purposes of delivering equivalence for end-users. We did not seek to determine whether or not those provisions continued to provide equivalence for disabled end-users and this will be the subject of the forthcoming consultation.

- 8.21 Some organisations pointed out that emergency SMS is not 100% equivalent with making a voice call, with Reach 112⁴⁶ asserting that there was a danger in mandating emergency SMS when a better alternative (i.e. Total Conversation using IP) was available. As we said in the consultation document, although emergency SMS is not 100% equivalent with making a voice 999 call, we believe it offers a far higher degree of equivalence than use of the existing 999 service for most hearing- and speech-impaired people. It also works well in areas where coverage is marginal and where IP connections might well not be successful.
- 8.22 Reach 112 also said that equivalence is either 100% or not, and that it is not possible to have degrees of equivalence. Experience in other parts of the communications sector demonstrates that this is not the case - for example, audio description gives access to television programmes for visually impaired people, but can never give a completely equivalent experience with being able to see what is happening on-screen. Nevertheless, audio description is valued by visually impaired people and required by legislation and regulation.
- 8.23 Reach 112 suggested that deaf and speech-impaired people are advised to use other methods of contact rather than emergency SMS until confirmation is received that the call is being dealt with. In fact, users are only advised to use other methods of contact if no reply is received after two minutes. Evidence from the trial is that replies are received more quickly than this, with the median time until the first reply is received being 87 seconds.
- 8.24 Reach 112 argued that users will not see emergency SMS as default, as it is possible for deaf people to make a voice call to 999. (Deaf people who use this route are advised by BT to make as much noise as possible or tap on the handset to attract attention). However, this only works from landline phones, where it is normally possible to trace an address. Emergency SMS can be used when away from home, and also enables replies to be received by the caller. Replies can reassure callers that help is on the way, and can also include valuable information such as advice about how to care for someone who is ill or injured in advance of an ambulance arriving. Reach 112 also said that emergency SMS does not give reassurance to deaf people. However, evidence from the trial does not support this.

Technical issues

- 8.25 VON, which is a coalition of VoIP providers, said that mandating emergency SMS must be looked at in the context of technical feasibility and reliability. We believe that the trial has demonstrated the service to be technically feasible and the back-up equipment that is now in place will ensure that the scheme is resilient.
- 8.26 TalkTalk said that mobile operators with spectrum need to make the service available to MVNOs. As far as we are aware, all MNOs currently make this available to MVNOs using their spectrum. MVNOs will be caught by the new obligation on emergency SMS, and mandating the service will mean that MVNOs will have to add this to the list of other contractual agreements they make with their host MNO.
- 8.27 Three suggested that some MVNOs do not use their host networks' message centres, but send SMS independently. These MVNOs will need to make their own arrangements to support emergency SMS. However, no MVNO responded to the consultation to suggest that this would be a problem.

⁴⁶ Reach 112 is a pilot of Total Conversation (sign language, lipreading, text and voice) access to the emergency services for a limited number of people in the Bristol area

- 8.28 Three also asked for a more detailed breakdown of the capital costs shown in the Summary of Costs table in our consultation. The figure of £80,000 represents the investment cost of installing a back-up system to ensure resilience of the service and is needed regardless of whether the permanent scheme is implemented on a voluntary or a mandatory basis. This cost was the outcome of a competitive tender held by BT and Ofcom does not have a further breakdown.
- 8.29 NDCS questioned why the handling of emergency SMS was being given to BT. Ofcom is not proposing any obligation on BT to provide this service. Instead, there will be an obligation on mobile providers to give access to the emergency services via SMS. It will be up to the mobile service providers to determine how to meet this obligation, for example whether to self-supply call handling facilities or subcontract to BT or some other third party.

112 and 999

- 8.30 EE suggested that mandating on 112 as well as 999 may not be proportionate given that emergency SMS is a UK-only service. Vodafone said that mandating emergency SMS on 112 as well as 999 will not deliver any significant benefit.
- 8.31 At present awareness of 112 in the UK is not especially high and emergency SMS is a UK-only service. However, the Directive gives Member States a very clear obligation to use and promote 112 as well as 999 and we are required to reflect the requirements of the Directive that is being transposed.

Publicity

- 8.32 TAG and Hearing Link said that publicity was important, particularly for people visiting the UK from overseas. We are imposing on MNOs an additional duty to publicise the service to their customers. Publicity for people coming from overseas is outside Ofcom's remit but we can draw the attention of relevant disability organisations in Europe to the scheme.

Restricting access to disabled end-users

- 8.33 The MBG, BT and EE argued that emergency SMS should be restricted to hearing- and speech-impaired people. Although the service is marketed as being designed for hearing- and speech-impaired people, the registration process does not currently ask if the user is disabled.
- 8.34 In the light of responses received, we will reword the amended GC to clarify that communications providers are obliged to offer access to emergency SMS to hearing- and speech-impaired people, in line with the purpose of the Directive. However, we consider it important that barriers to registration remain low, and would not consider users being asked to submit proof of disability to be consistent with this, because it may place a significant additional burden on disabled end-users. While we accept that registration is necessary for the success of the scheme, it is desirable for the registration process to be kept as simple as possible given the value of the service and the need to ensure equivalence of access⁴⁷.
- 8.35 Although the obligation does not extend beyond provision to hearing- or speech-impaired users, we would not wish to encourage MNOs explicitly to restrict service in

⁴⁷ It is currently possible for users to register in an emergency situation by texting 'register' to 999, and to use the service right away.

this way. There is no evidence that hearing people are using the service to any significant extent, almost certainly because voice calls are quicker than SMS⁴⁸. Mobile voice emergency callers also benefit from 'Limited Service State', meaning that they can make emergency calls when they are out of coverage of their home network, so long as there is coverage by another network. This means that voice emergency calls can often be successful even where other calls cannot be made because of little or no network coverage.

Conclusions

8.36 We are mandating emergency SMS on both 999 and 112, with the GC reflecting the fact that communications providers are only obliged to offer this service to hearing- and speech-impaired people. The wording of the revised GC15 can be found at Annex 2.

Legal Framework - emergency SMS

8.37 We consider that our changes meet the criteria set out in section 47(2) of the Act. They are:

- **not unduly discriminatory** as the revised requirements will apply to all CPs to the extent GC15 is relevant to them;
- **proportionate** as the changes represent the minimum necessary to implement the revision of Article 26(4) USD and there is no less intrusive mechanism to achieve the intended purpose; and
- **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

We are doing further work examining the need for additional special measures to ensure equivalence for disabled end-users

8.38 GC15 currently mandates a range of measures designed to promote access by disabled people to communications services.

8.39 We intend to conduct a full review of the specific requirements currently set out in GC15 in the light of transposition changes as well as recent social and technological trends, shortly. This will consider the case for a general obligation to offer equivalence and choice of services in addition to any specific, discretionary changes to GCs which flow on from the new equivalence requirement and we plan to issue such a consultation document shortly about any such proposed changes. This will be a separate piece of work from our current review of relay services, on which we will also consult this year, and will consider equivalence issues more broadly.

8.40 The ECWR will amend section 51 of the Act to clarify Ofcom's power to impose a GC in relation to equivalence, which powers will be available for us to exercise for the purposes of the above-mentioned review.

⁴⁸ Although there is evidence that some hearing people have registered, the number of emergency SMS calls has remained fairly steady throughout the 19 months of the trial. In addition, evidence from the trial suggests that people making emergency SMS calls regularly mention that they are deaf.

Access to 116 numbers for disabled end-users

- 8.41 116 numbers are an initiative of the European Commission and the Telecoms Framework requires Member States to promote 116 numbers for harmonised services of social value. We noted that the Commission reserved the following harmonised European numbers (the state of play on their allocation in the UK is noted in brackets):
- 116000 for a hotline providing support for parents with missing children (allocated to 'Missing People');
 - 116111 for a child helpline service (NSPCC ChildLine);
 - 116123 for an emotional support helpline service (Samaritans);
 - 116006 for a helpline for victims of crime (to be allocated); and
 - 116117 for a non-emergency medical on-call service (to be allocated).
- 8.42 We recognised the Framework now requires measures to ensure disabled end-users can access 116 services “to the greatest extent possible”, including whilst travelling in other Member States. However, we did not believe it was proportionate to make further changes to GC15 in order to deliver this objective, for example, by mandating CPs to devise a scheme to provide SMS access to 116 numbers⁴⁹.
- 8.43 This was primarily because calls to 116XXX services are less likely to have the same degree of critical urgency as 999/112. We also noted that hearing- and speech-impaired end-users can access these harmonised 116 numbers via the existing text relay service, which we mandate in GC15 for customers of all CPs, and is available 24 hours, seven days a week. It is also possible for disabled people who do not have hearing or speech impairments to use public pay telephones to make voice calls to these numbers. We require at least 70% of BT public call boxes ('PCBs') to be accessible to wheelchair users and at least 70% of all PCBs must incorporate additional receiving amplification.

Stakeholder responses

- 8.44 We asked stakeholders if they agreed 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.
- 8.45 Most respondents who expressed a preference supported our position on this. RNID hoped to see SMS access to 116XXX numbers in future. TAG pointed out that children might prefer SMS access and that a textphone might be in a location where they are at risk. Sense said it was desirable for disabled people to have a choice of ways to contact services using 116XXX numbers. Three suggested that we should encourage communications providers to investigate the cost of SMS routing to 116 numbers. If the costs are reasonable, a voluntary scheme should be encouraged.

⁴⁹ GC 17 already requires CPs to ensure that their customers can call 116 numbers free to caller (and freephone in the case of 116006) in accordance with the National Telephone Numbering Plan. 116 numbers may be either 'freephone' (a charge may be applied provided the caller is advised) or 'free to caller' (the call is always free). The appropriate charging arrangement depends on the characteristics and requirements of the particular 116 service.

8.46 Organisations to which 116XXX numbers are allocated are already able to offer SMS access themselves if they wish, alongside other forms of access⁵⁰. We remain of the view that it would not be proportionate at present to mandate this type of access in light of the different nature of the services provided (which are less likely to have the same degree of critical urgency as emergency services) at present, particularly as there is no existing voluntary scheme to build on. A more detailed review of likely costs and benefits would need to be carried out as a separate exercise to the transposition process. This does not, however, preclude these organisations from offering SMS access themselves should they wish to do so.

Conclusions

8.47 We will not therefore be making any changes to GC15 in relation to access to 116XXX numbers.

⁵⁰ We note that ChildLine, which is provided by the NSPCC, already offers 24/7 access by email and 1-2-1 chat (instant messenger) in addition to telephone access.

Section 9

Changes to General Condition 17

Allocation, Adoption and Use of Telephone Numbers

9.1 In Section 9 of our consultation, we noted that some changes were made to the Directives – in particular the AuD - relating to the allocation and use of telephone numbers. We discussed these changes in relation to our proposed amendments to GC17 as this condition sets out general requirements relating to the allocation, adoption and use of telephone numbers.

9.2 In our consultation, we noted the two key changes to the AuD:

- Article 5(2) of the AuD requires that “When granting rights of use [of telephone numbers], Member States shall specify whether those rights can be transferred by the holder of the rights, and **under which conditions**”. We noted that the latter text in bold was new as the previous Article only referred specifically to transferring rights of use “at the initiative of the right holder”; and
- Article 5(2) of the AuD requires that “Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned **in view of the objective pursued taking due account of the need to allow for an appropriate period for investment amortisation**”. We noted that the words highlighted in bold were additional to the previous Article text.

9.3 In the rest of this Section, we discuss our proposed implementation of these requirements in turn, stakeholder reactions to our proposals and then our conclusions on modifying GC17.

The conditions under which the transfer of rights of use for telephone numbers may occur

9.4 We noted in the consultation that as part of our duty in administering numbers, we allocate numbers to CPs⁵¹ (which gives the allocatee ‘rights of use’ of the numbers). CPs may then use the numbers to provide services to their customers - or they may ‘sub-allocate’ the numbers to other CPs, service providers or resellers (the sub-allocatee).

9.5 While it is current practice for the transfer of rights of use of allocated UK telephone numbers to take place through sub-allocation and end-user use, neither this situation nor the conditions under which transfer may occur are currently set out in GC17.

9.6 Therefore we proposed modifications to GC17 to state explicitly that the transfer of rights of use of telephone numbers is permitted and also to set out the generic conditions under which transfer of rights of use of telephone numbers may occur as follows:

- the telephone numbers have been:

⁵¹ In GC17 and for the purposes of this section, a CP means a person who provides an Electronic Communications Network or an Electronic Communications Service.

- allocated to the CP transferring the rights of use; or
- the CP has been authorised (either directly or indirectly) to adopt those telephone numbers by the person allocated those telephone numbers;
- the telephone numbers are used in accordance with the National Telephone Numbering Plan(“NTNP”); and
- the telephone numbers are adopted or otherwise used effectively and efficiently.

Granting rights of use of telephone numbers for a limited period

9.7 We noted in the consultation that current working practice is that rights of use of telephone numbers are generally granted for an indefinite period but may, on occasion and on a case-by-case basis, be granted for a limited period. However, this situation and details of appropriate duration are not currently set out explicitly in GC17.

9.8 We proposed that, in general, we will grant rights of use of numbers for an indefinite period (subject to sections 61 and 62 of the Act) but that we would modify GC17 to give us the flexibility to grant rights of use for a limited period, on a case-by-case basis ,in appropriate circumstances and in line with the criteria in Article 5(2) of the AuD, i.e. that the duration is appropriate for the service concerned in view of the objective pursued and taking due account of the need to allow for an appropriate period for investment amortisation. Our proposed modification also set out that we may withdraw the numbers from the CP once that period of time has ended.

Stakeholder responses

9.9 We asked stakeholders if they agreed with the abovementioned proposals on conditions for transferring the rights of use of telephone numbers and also for granting rights of use for a limited period of time.

9.10 Seventeen stakeholders responded to our proposals to modify GC17. These were BT, C&W, Colt, EE, FCS, ITSPA, O2, PhoneAbility, Sky, Skype, TalkTalk, Three, Verizon, Vodafone, VON, UKCTA and one confidential respondent. All these respondents either agreed with, or did not raise any objections to, the proposals in relation to modifying GC17.

9.11 Four respondents stated that they considered that the proposals reflected the current situation and had no material effect on working practices⁵² and Three agreed that the proposals reflected the requirements of the revised Directive. Sky supported the proposals as they had the potential to improve the process and transparency of number management and could be beneficial in addressing geographic number scarcity concerns. Skype welcomed the proposals as being conducive to promoting both competition and efficiency in the use of number blocks. However, while Colt agreed with the proposals, they considered that some CPs may need to make changes to numbering allocation systems which could incur costs and time.

9.12 We welcome stakeholders' support for the proposals in relation to transfer of rights of use and granting of rights of use for a limited period. We agree that the modifications should improve the process and transparency of number management and help promote effective and efficient use of telephone numbers. We note that only Colt

⁵² These respondents were C&W, EE, UKCTA and Verizon.

commented on the potential need for CPs to make changes to number allocation systems incurring cost and time as a consequence of the proposals. We maintain our view that the proposed modifications reflect current working practice and therefore we foresee only minor, if any, impact on CPs' number allocation systems.

Transfer of rights of use of telephone numbers

- 9.13 Skype, while supporting the proposals and welcoming the possibility for full and partial block transfers to occur, commented that they were uncertain that sub-allocation of numbers represented a transfer of a right of use of numbers as envisaged by the amended AuD.
- 9.14 In the consultation, we considered that a transfer of rights of use of telephone numbers currently took place through sub-allocation and end-user use⁵³ – in other words, the multi-tiered system that is used to distribute authority to use numbers from the CP allocated the number block to the ultimate end-user. We consider it logical to interpret AuD Article 5(2) as relating to sub-allocation of numbers by the holder of the rights, as well as assignment of numbers to end-users.
- 9.15 BT commented that a transfer of rights of use of a number would also amount to a transfer of responsibilities of use. They considered that if a sub-allocatee misused numbers, the misuse would be the sole responsibility of the sub-allocatee and not the range holder. BT also noted that sub-allocation would make it harder for us to administer the numbering scheme as the direct link with the range holder would be lost.
- 9.16 We agree that a 'right of use' carries with it a 'responsibility of use'. These responsibilities are set out in GC17 and, where applicable, the NTNP. However, securing adherence to these responsibilities remains a requirement associated with the CP allocated the numbers. This position is supported by GC17.8, which states that "*the Communications Provider shall take all reasonably practicable steps to secure that its Customers, in using Telephone Numbers, comply with the provisions of this Condition, where applicable, and the provisions of the National Telephone Numbering Plan*".
- 9.17 Rights and obligations associated with number use are enforced by Ofcom on the CP allocated the numbers. As BT points out, our relationship is with that CP and not parties subsequently granted rights of use.
- 9.18 VON agreed with our proposal to formalise sub-allocation and the conditions under which it should occur. They noted, however, that sub-allocation was not necessarily a solution for more efficient number use as it places the sub-allocatee in a position of dependence on the CP that has control over the network and the numbers. As a consequence, they asked us to consider including protection mechanisms to safeguard smaller CPs from the possible abusive practices of larger CPs when we set sub-allocation conditions.
- 9.19 We agree that sub-allocation can have a number of drawbacks for the sub-allocatee in terms of control of the numbers. However, we do not consider that the proposed modifications to GC17 to reflect amendments to the AuD is the appropriate consultation in which to consider issues on the extent of transferred rights of use and how those rights might be protected. This is an issue that we are looking at in relation

⁵³ See paragraph 9.5 of our consultation.

to encouraging efficient use of geographic numbers⁵⁴ and we will consider the points raised by VON as part of that consultation.

Granting of rights of use of telephone numbers for a limited period

- 9.20 A confidential respondent commented that they would not wish to see time limited allocations as the norm or used, for example, as a means of addressing number scarcity. BT noted that a proliferation of short duration allocations would affect all CPs who would have to make routing adjustments to build the numbers onto networks and then remove them from routing tables.
- 9.21 As stated in our consultation⁵⁵, it is current working practice that rights of use of telephone numbers are generally granted for an indefinite period but may, on occasion and on a case-by-case basis, be granted for a limited period. Our proposals were designed to set out this situation and the details of appropriate duration should a time limited allocation be made. We recognise that time limited allocations have a number of impacts, not only on the CP allocated the numbers but also on service providers and other CPs. To be clear, we are not proposing to increase the incidence of time limited allocations, which are made very infrequently.
- 9.22 EE and UKCTA commented that withdrawal of numbers at the end of a set period should not be made without consideration of the CP's representations for an extension of the time period or a request to change to an indefinite allocation.
- 9.23 We confirm that, towards the end of a time limited allocation period, it would be general practice for Ofcom's Numbering Team to contact the CP allocated the numbers and provide an opportunity for the CP to make representations to extend the allocation period or request the allocation for an indefinite period. We would consider any representations and make a decision based on what we consider to be the best use of the telephone numbers concerned.
- 9.24 BT commented that we need to consider porting rights and their implications when allocating numbers for a limited time period as customers need not necessarily retain the same service once they have ported their number.
- 9.25 We agree that there are a number of implications relating to time limited allocations, including end users' porting rights. We consider it the responsibility of the range holder to take appropriate action to inform relevant parties that an allocation is time limited to reduce potential impact and confusion.

Other issues raised in relation to GC17

- 9.26 A few respondents raised general points on GC17 that did not relate to our specific proposals. FCS encouraged us to use GC17 to audit CPs on use of allocated numbers and seek withdrawal of unused numbers allocated in earlier years. Also on the subject of audit and number withdrawal, TalkTalk and UKCTA mentioned the importance of considering all commercial aspects of withdrawing numbers that may appear dormant but were allocated for a reasonable purpose, such as disaster recovery call centres. UKCTA and ITSPA members called for Ofcom discussion and

⁵⁴ *Geographic telephone numbers: safeguarding the future of geographic numbers*, consultation document published by Ofcom on 25 November 2010:

<http://stakeholders.ofcom.org.uk/consultations/geographic-numbers/>

The consultation closed on 18 February 2011. We plan to publish a statement this summer.

⁵⁵ See paragraph 9.13 of our consultation.

clarification on what was meant by ‘effective and efficient’ use of numbers in GC17.6 in this respect.

- 9.27 Audits are an important part of our management of the UK’s telephone numbers and are necessary to enable us to fulfil our duty to secure that the best use is made of telephone numbers⁵⁶ and to ensure that CPs use numbers “effectively and efficiently”⁵⁷. We take a pragmatic approach to these terms (which existed in the former GC17.6 and are not affected by the current modifications) and would provide CPs with an opportunity to justify utilisation figures.
- 9.28 Skype advocated that we look at a more profound evolution of telephone numbering in the UK, reducing restrictions on rights of use and the way numbers may be used. Although not the subject of these modifications to GC17, the evolution of telephone number use is an ongoing issue for our administration of telephone numbers and Skype’s comments are noted.

Conclusions

- 9.29 Having considered stakeholders’ responses in relation to the proposed modifications to GC17, we have decided to proceed as proposed in our consultation. These changes to GC17 are set out in Annex 2.
- 9.30 We continue to believe that there are unlikely to be costs for CPs as a result of these changes given they reflect current working practices – and that there may be some transparency related benefit in making the position regarding transfer of rights of use of telephone numbers and granting of rights of use for a limited period explicit in the GC.

Legal Framework

- 9.31 We consider that our modifications to GC17 in relation to the transfer and time-limited rights of use of numbers meet the criteria set out in section 47(2) of the Act being:
- **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC17 is relevant to them;
 - **proportionate** as the change is the minimum necessary to implement the revision of Article 5(2) and there is no less intrusive mechanism to achieve the intended purpose; and
 - **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.
- 9.32 We also consider that the modifications fulfil our general duty as to telephone number functions as set out in section 63 of the Act by:
- **securing the best use of appropriate numbers**, by allowing allocated numbers to be transferred and setting the conditions under which transfer may occur, thus facilitating the best use of numbers through their appropriate distribution in accordance with certain conditions for using the numbers

⁵⁶ Section 63(1) of the Act.

⁵⁷ GC 17.6 states that “where Telephone Numbers have been Allocated to the Communications Provider, that provider shall secure that such Telephone Numbers are Adopted or otherwise used effectively and efficiently”.

appropriately. The modification in relation to time limited allocations of numbers will contribute to securing best use by aligning the period of allocation with the service requirement; and

- **ensuring efficiency and innovation**, in that the changes will further the ability for CPs to use numbers efficiently and effectively through the transfer of numbers via sub-allocation to other CPs, service providers and resellers, thus broadening their access to numbers on which to provide services to customers, facilitating higher utilisation of numbers allocated in large blocks by Ofcom and by preventing access to numbers being a barrier to innovation. The changes in relation to time limited allocations of numbers will ensure that numbers are only allocated for a period appropriate to the service with a mechanism for withdrawal once the set period had ended, which ensures efficient use and facilitates the provision of innovative services.

Section 10

Changes to General Condition 18

Facilitating a change of provider (number portability)

- 10.1 GC18 implements the requirements set out in Articles 30 (1) to (4) of the USD regarding the right of subscribers with numbers from the NTNP to retain their telephone numbers when switching between undertakings providing publicly electronic communications services.
- 10.2 The facility that enables consumers to retain their telephone number when switching provider is also known as number portability and GC18 currently requires CPs⁵⁸ to provide number portability 'as soon as is reasonably practicable' as well as setting out rules on porting charges.
- 10.3 The main new obligations contained in Articles 30 (1) to (4) of the USD which Ofcom is required to implement are:
- that ported numbers should be activated within one working day⁵⁹; and
 - that CPs must operate a scheme which compensates subscribers in the event of a delay or fault with porting;
 - In addition, there were some changes relating to changes to definitions and terminology in the Framework, including:
 - no longer limiting the right to number portability to publicly available telecommunications services (also known as publicly available telephone service/PATS) but instead applying it to subscribers with numbers from the National Telephone Numbering Plan; and
 - referring to porting being carried out within 'the shortest possible time'.
- 10.4 In the rest of this Section, we discuss how we proposed to implement these new requirements through modifications to GC18, stakeholder's reactions to our proposals and then we set out our conclusions on modifications to GC18.
- 10.5 As set out in the consultation, we use several terms when describing the parties to the porting process. The Gaining Provider (GP) is the CP who the subscriber wants to port to. The Losing Provider (LP) is the CP from whom the subscriber is porting from⁶⁰. The Range Holder (RH) is typically the CP to whom the telephone number the subscriber wishes to port, has been allocated to by Ofcom.

⁵⁸ In GC18 and for the purposes of this section, a CP means a person who provides an Electronic Communications Network or an Electronic Communications Service.

⁵⁹ In our consultation and statement, we refer to *one working day*. However, in line with our statement on mobile number portability last year - see paragraph 3.36 of Ofcom *Changes to the Mobile Number Porting Process* 8 July 2010

<http://stakeholders.ofcom.org.uk/binaries/consultations/mnp/statement/mnp.pdf> - we reflect this in the text of GC18 as *one business day*.

⁶⁰ We note that GC18 refers to obligations on Recipient and Donor Providers. These terms are ascribed specific meanings in GC18.11.

One working day porting for bulk mobile numbers⁶¹

We proposed that one working day porting applies from when a subscriber provides a PAC over the phone

- 10.6 Given we made a decision in relation to the porting of non-bulk mobile numbers last year (which took effect from 11 April 2011)⁶², our proposals only related to the porting of bulk mobile numbers.
- 10.7 In the consultation we set out that in relation to mobile, we consider that the one working day requirement may reasonably be interpreted as meaning that subscribers who have concluded an agreement to port a number with the GP shall be provided (by the GP) with the ability to receive and make calls by means of that number within one working day. Furthermore, under the current donor-led process, we believe it is reasonable to assume the 'one working day' requirement starts when subscribers provide their PAC to the GP, given that the provision of the PAC to the GP is a pre-condition for porting to take place.
- 10.8 Our proposal was that porting should be activated within one working day of a subscriber providing their PAC to the GP. We also noted that, should they wish to, the subscriber could request an alternative port date that is later than the default date⁶³.
- 10.9 We did not consider that it was appropriate to propose that the requirement to provide a PAC immediately over the phone or by SMS within two hours (which is applicable to non-bulk mobile ports) should apply to bulk mobile ports. This was because it is unlikely to be practicable with a large volume of numbers and additional subscriber verification, such as written verification from the business account holder that may be necessary before a PAC is provided.

Stakeholder responses

- 10.10 In terms of bulk mobile porting, 8 stakeholders commented on our proposals – Vodafone, EE, O2, Three, MBG, BT, Consumer Focus and FCS.
- 10.11 While a number of stakeholders requested some clarification or amendment (although many of the suggested amendments were relatively minor), only Vodafone, Consumer Focus and Three raised substantive concerns with our proposals.

Alleged non-compliance with USD and calls to move to a recipient(GP)-led process

- 10.12 Both Three and Consumer Focus argued that the current and proposed MNP process is not compliant with the USD. They argued that the changes do not provide number porting in the shortest possible time nor achieve one working day porting. They both argued that we should introduce a recipient-led MNP process. FCS also considered that MNP would be improved by moving to a recipient-led process.
- 10.13 As we set out in paragraph 10.21 of our consultation, we interpret the USD requirement requiring porting to be carried out "*within the shortest possible time*" to mean the same as the existing GC18 requirement that porting be provided "*as soon*

⁶¹ Mobile bulk ports are distinguished by the mobile industry as ports involving 25 or more mobile phone numbers processed under a single PAC.

⁶² See <http://media.ofcom.org.uk/2011/04/11/one-day-mobile-number-transfers-comes-into-effect/>.

⁶³ We also noted the GP may decline a request to port if they cannot meet the 1 working day timeline.

as is reasonably practicable" - that is to say, that porting be undertaken in as short a time as possible while taking into account the practicalities of porting⁶⁴.

- 10.14 We do not, however, discount the possibility that further improvements may be made to the mobile porting process informed by the outputs of our strategic review of switching processes (Switching Review), which will consider whether mobile number portability should be a recipient-led process as part of the second phase of this project. In considering any future recipient (GP)-led scheme, we may need to consider, amongst other things, what the 'shortest possible time' might mean within the practicalities of any such new mobile scheme.

Consistency of approach with fixed porting

- 10.15 Vodafone argued that Ofcom had not provided a clear explanation why it was taking an inconsistent approach between fixed and mobile bulk porting, which it considered breached our duties to act in a consistent and transparent manner when undertaking our regulatory duties, and that modifications of General Conditions should not unduly discriminate. It argued that the approach to mobile bulk porting should be the same as that proposed for fixed.
- 10.16 We have borne in mind our duty to be, so far as practical, technology neutral and to address the legal tests for modifying GC18 at the end of this section. In the specific case of applying the one day port activation requirements of the Framework we consider the different porting processes for fixed and mobile to be particularly relevant to our consideration of when a subscriber may be said to have concluded an agreement to port and therefore when the one day port activation requirement may be triggered. We also take these different processes into account together with the physical differences in switching in the fixed and mobile environments in our broader consideration of ensuring that UK subscribers can port their numbers with minimum delay and without being hindered.
- 10.17 In the case of mobile, where the subscriber has a validated and authenticated request to port (in the form of the PAC issued by the LP), at the point agreement is reached between the subscriber and GP over the provision of mobile service on their existing number, the porting of the number is ready for activation. The revised USD requires that where subscribers have concluded an agreement to port a number to a new undertaking (the GP), they shall have that number activated within one working day.
- 10.18 This is different in the case of fixed number portability. Under the fixed GP-led porting process, at the point the subscriber makes their request to the GP for fixed service provision on their existing telephone number and agrees a port date, the LP has not validated and authenticated the request to port. A subsequent transaction is carried out between the GP and LP as agreed and documented in the relevant fixed porting process manual to carry out this function. Until this process has been carried out, the number is not ready for activation. This and other issues specific to fixed porting are discussed later in this Section.
- 10.19 We therefore disagree with Vodafone's conclusion that we should align our approach to bulk mobile with our approach to fixed and consider that to do so would be incompatible with the aims of the revised USD to ensure that subscribers can port

⁶⁴ This is consistent with the discretion afforded to competent national authorities under Art 30 (4) of the USD to establish the global process of porting numbers taking into account (amongst other things) technical feasibility and a seamless transfer.

with the minimum delay and without being hindered by legal, technical or practical obstacles⁶⁵.

- 10.20 We consider that, it is more appropriate that our approach to implementing the one day requirement for bulk mobile (the porting of 25 or more mobile numbers) is the same as that for non-bulk mobile (24 or less). We note that this was also the Government's provisional view as set out in paragraph 203 of its own consultation on transposition.

Scope for GPs to refuse ports and investigating compliance

- 10.21 Vodafone argued that we were creating uncertainty by suggesting that subscribers could request alternative port dates or where GPs were unable to satisfy bulk porting requests, they could refuse them, but may be investigated for non-compliance if there was 'undue influence'.
- 10.22 We note Vodafone's comment and take the view that GC18 is clear in its requirements. However, given that GPs (unlike LPs) are not obliged to accept requests to port (since they are not obliged to take on a new subscriber if they choose not to do so) then we consider that our previous concern about 'undue influence' is not relevant.

Customers splitting bulk requests into batches of less than 25 numbers

- 10.23 MBG and O2 asked that we clarify that the requirement for delivering a PAC within two hours by SMS only applies for residential and SME customers, so that non-SME customers cannot circumvent porting rules by breaking requests into batches of less than 25 numbers.
- 10.24 We do not believe that amending the drafting of GC18 is necessary. Mobile LPs are required to comply with GC18.2 which applies to the porting of fewer than 25 mobile numbers. Whether or not this requirement applies to any given circumstance will depend on the specific facts of the case. However, we note that current arrangements provided for under the extant mobile number portability process manual provide for the mobile LP to apply the bulk porting rules when multiple requests are received for the same customer within 2 working days.

PAC provided over the phone

- 10.25 EE noted that at paragraph 10.32 of our consultation we had suggested that bulk ports should occur within one day of a PAC being provided to the GP *over the phone*. EE argued that it was not proportionate to require that PAC requests be accepted over the phone particularly in the business environment.
- 10.26 We agree with EE and consider that it is a matter for GPs to determine the manner in which their subscribers or potential subscribers submit their bulk porting requests.

Mobile short numbers and porting requirements

- 10.27 BT asked if we would confirm whether mobile short numbers are subject to number portability requirements and, if not, what steps we might consider to bring such numbers in scope.

⁶⁵ Recital 47 of the revised USD.

- 10.28 We do not consider that mobile short numbers are subject to the number portability requirements. This is because the right to number portability is limited to subscribers with numbers from the NTNP. Mobile short numbers are not designated under the NTNP and we do not allocate or administer such numbers.
- 10.29 We are not currently considering bringing mobile short numbers within the scope of the NTNP and/or number portability requirements nor do we have any plans to do so. We would welcome dialogue with BT and/or other stakeholders who consider this to be an issue which needs to be addressed.

Responses to call for evidence on the impact of changes to bulk mobile ports

10.30 We asked for evidence on 3 points:

- **Frequency of requests for 1 day bulk mobile ports** – Mobile network operators agreed with Ofcom that requests for 1 day bulk porting are likely to be infrequent. Three said “it is likely to be extremely rare for a customer to request a bulk port within one working day”, Vodafone thought that the current process meets customer needs and that there is no demand for one day porting. A confidential response acknowledged that it expects 1 day bulk port requests to be “*the exception rather than the rule*”.
- **Likelihood requests could be accommodated by GPs** – One confidential response noted that its current practices could not accommodate accelerated requests (although it was reviewing its approach). Vodafone indicated that GPs will want to turn down such requests at least some of the time.
- **Impacts on GPs and LPs from meeting the expected level of requests for one-day bulk porting, including how processes for dealing with bulk ports differ from dealing with single ports.** We received few comments on this point. EE stated there is a need for account verification with bulk ports and Vodafone stated that “similar preparatory steps and agreement are needed between the existing and the mobile communications provider” for bulk mobile ports as for fixed ports. Three stated that as one day porting is complex and therefore the exception, it is likely to be difficult to implement and enforce such a requirement in practice. However, it also highlighted that it does not have a bulk process at all and so considers these obligations are unlikely to affect it).

10.31 In the light of the responses received, we still consider that the impact of the one working day requirement on bulk mobile porting will be minimal.

Conclusions

- 10.32 We consider it appropriate to modify GC18 to require that bulk mobile numbers are activated within one working day of a subscriber providing a PAC. The modification is set out at Annex 2.
- 10.33 We recognise the logistical requirements, such as the distribution of SIM cards and handsets, associated with a large number of ports and note that in some cases bulk port subscribers might not wish immediate account activation and might find it convenient to request that the new account for many devices used by that organisation is activated at a particular day in future.

One working day porting for fixed numbers

We proposed the one working day porting requirement starts when the GP requests activation from the LP

- 10.34 For fixed lines, we noted that in general the porting process is led by the GP who recruits the switching subscriber and contacts the LP to initiate the port process. This process involves verification and authorisation steps (to ensure the subscriber is eligible to port), in some cases of fixed-line switching consumer protection measures (to avoid slamming) and coordinating system changes which sometimes involve a third party RH network. It may also be necessary for the GP to provide a physical line to the subscriber's premises. Finally, either the GP requests port activation from the LP or the LP commences port activation automatically as per the fixed date and time agreed with the GP.
- 10.35 Our interpretation of Article 30 was that once an agreement to port has concluded, the one working day requirement should commence from that point. So given the nature of the fixed porting process, we proposed that this point should start from when the GP requests activation from the LP or the LP commences port activation automatically as per the agreed date and time. This is, necessarily, after consumer protection/verification measures have been completed and after any necessary line provisioning has taken place (which is to avoid an unintentional loss of service for the subscriber). We stated that our proposal was likely to require limited changes to the current fixed porting arrangements.

Stakeholder responses

- 10.36 Thirteen stakeholders commented on our proposals – EE, Colt, Verizon, UKCTA, FCS, ITSPA, C&W, BT, Vonage, VON, Sky, TalkTalk and a confidential respondent.
- 10.37 Most respondents agreed that the one working day requirement should commence after consumer protection and verification measures have taken place.

Calls for a wider review of GC18

- 10.38 While ITSPA agreed in principle with our approach to the implementation of the one working day requirement both they and FCS argued that our proposals did not address the underlying problems with geographic and non-geographic porting.
- 10.39 In setting out its broader concerns with fixed porting, ITSPA highlighted the difficulties in establishing multiple bilateral arrangements with competitors to set up facilities to enable subscribers to port between fixed CPs. The FCS reported similar concerns from its members in its response to our consultation. ITSPA urged us to carry out a thorough review of GC18 to address these concerns and sought our involvement in the development of an industry-led initiative to reform the number portability process.
- 10.40 As set out in the consultation, we are aware of issues in relation to the fixed porting process. The OTA2 is currently working with industry to tackle some of these issues, including arrangements for subsequent porting, order handling arrangements as well as the lack of geographic porting arrangements between providers. This work remains ongoing and we believe it will lead to improvements to the porting process.
- 10.41 We are also considering the possibility to address more fundamentally some of the current deficiencies of the fixed porting process through our current Switching

Review. We will discuss this further in our second consultation document on strategic consumer switching which we will publish later in the year.

Alternative port dates/times

- 10.42 C&W argued that the one working day requirement should not apply where an out-of-hours port is requested, as there is no industry agreed requirement to facilitate out-of-hours requests, and the ability to fulfil such requests relies on engineers working voluntary overtime and so cannot be guaranteed.
- 10.43 We recognise that out-of-hours porting is a facility increasingly valued by business customers to enable the activation of their new fixed line services to be carried out seamlessly and with minimal disruption to their business. We understand that out-of-hours ports are conducted on a best efforts basis by fixed CPs and are subject to the availability of engineers. Where engineering resource is not available for the scheduled time for out-of-hours porting, the subscriber may prefer this to be rescheduled for another date/time outside normal working hours rather than carried out during the working day.
- 10.44 We do not consider that the intention of the revised USD is to deny subscribers the option to request alternative arrangements such as a later port activation date/time or out-of-hours porting.

Multi-line porting

- 10.45 C&W, Verizon and UKCTA raised concerns about the impact these requirements would have in conjunction with any reduced timescales for protection/verification measures resulting from the Switching Review and the OTA2 work, especially with regard to multi-line ports. They requested that we acknowledge the technical difficulties and therefore longer timescales required for such ports, and cautioned against material reductions in the time allowed for such protection/verification measures for business porting requests. C&W was also concerned that we have not recognised the difference in residential and business porting sufficiently.
- 10.46 We acknowledge the concerns raised, however, our consideration of the one working day requirement for fixed porting has already taken into account the complexities of multi-line ports. Our approach is for the one day requirement to be triggered from the confirmed port date, set in accordance with the industry agreed porting process lead times relevant to the order type (whether single, multi-line etc) or from the point that the GP makes a manual request to the LP for activation. This approach should ensure that the implementation of the one working day requirement provides, amongst other things⁶⁶, sufficient time for provisioning activities of different complexities to be carried out to facilitate a seamless transfer. We note that almost all stakeholders agreed with us that this approach is reasonable and proportionate.
- 10.47 That said, we take no view here as to whether the existing fixed process timescales, whether in relation to consumer protection measures, port validation and authentication or provisioning lead times (single or more complex multi-line installations etc), cannot or should not be improved upon. The Switching Review and work of the OTA2 will continue to consider these issues. We nevertheless note the general concern that in relation to business porting processes in particular, changes intended to ensure that porting is carried out within the shortest possible time, must

⁶⁶ Such as cooling-off consumer protection periods and port validation and authorisation processes.

take into account the reasonable measures CPs need to undertake to ensure that the continuity of service demanded by consumers is preserved.

Impact of the one working day porting requirement on existing SLAs

- 10.48 A confidential respondent noted that current industry processes provide for the activation of ported geographic numbers in much less than 1 working day (e.g. ported numbers will be activated within 15 minutes of a request 15% of the time and within 20 minutes 99% of the time), and highlighted that if CPs were to take advantage of the full 24 hours rather than meeting existing SLAs, this may have serious negative consequences for consumers, for example preventing engineers from carrying out test calls to identify failed ports at the time of installation. They requested that we set out that we do not expect the introduction of the one working day requirement to change these SLAs.
- 10.49 BT also noted these SLAs, and suggested re-introducing a Functional Specification, which could be referred to in GC18.
- 10.50 We note the concern raised and agree that the changes made to implement the revised USD should not impact these SLAs since they are both compatible with the requirement for one-day port activation, and are consistent with the general requirement for porting to be carried out in the shortest possible time. Moreover, we note that the SLAs serve to ensure that service disruption is minimised through coordinated activation and that post activation test calls can be made and failures can be promptly identified and rectified.
- 10.51 That said, we do not consider, that the implementation of the revised USD necessitates a requirement for more detailed regulation of the porting processes by modifying GC18 to require compliance with some form of documented functional specification.

DSL Porting

- 10.52 Vonage raised an issue in relation to porting a DSL number. It highlighted that, when a DSL number is ported to another CP, the line should be re-numbered to prevent the DSL connection being ceased along with the voice service (which leaves the customer with no fixed connectivity at all when porting to a VoIP provider).
- 10.53 We understand that currently the provider of access usually ceases its service if the phone number is ported away from its network. We also understand that OTA2 are pursuing a development in support of industry which will allow numbers to be exported whilst renumbering the underlying access line to avoid its cessation. We cannot pre-judge the outcome of this potential development but would expect any new porting arrangements to be in line with the proposed GC/USC changes.

Conclusions

- 10.54 We have modified GC18 to require that, for fixed porting, numbers and their subsequent activation shall be completed within one working day once all necessary validation processes and line provisioning have been completed.
- 10.55 On the basis of the responses received, we still consider that the impact of the one working day requirement on fixed line porting is likely to be minimal, given that it largely reflects current working practices.

10.56 We acknowledge the concerns raised in relation to the fixed porting process more generally and have noted that tactical improvements to this process are currently being considered by industry in conjunction with the OTA2 and, more broadly, through the Switching Review.

Requirement for CPs to put in place schemes to compensate subscribers for delays or faults with porting

10.57 Finally, we proposed to modify GC18 to require that CPs provide reasonable compensation as soon as is reasonably practicable following the correction of any delay or abuse in the porting process by them or their representatives.

10.58 We considered whether it was appropriate to set out in GC18 further details of the compensation scheme, such as the appropriate levels of compensation. However, consistent with our regulatory principles, we proposed a lighter touch approach whereby CPs will be able to design the detail of the scheme themselves in a way that is more suited to their business and existing administrative processes.

10.59 Nevertheless, we also noted that we would review the compensation schemes that CPs put in place after 12 months and that we may decide to specify the detail of the schemes at a later date should the schemes be inadequate for their purposes.

10.60 In order to assist CPs to put in place their schemes, we proposed some guidance on how these schemes might operate and what 'reasonable compensation' might mean. We set out that schemes could be operated using a CPs standard complaints handling process and that ADR could be used in the event that resolution could not be reached. In relation to the level of compensation, we considered that a porting delay or abuse was analogous to a delay or fault in service provision and that a rate based on the daily cost of service seemed an appropriate level of compensation.

Stakeholder responses

10.61 We asked stakeholders if they agreed with our proposed approach to the porting compensation scheme requirement.

10.62 Nineteen stakeholders commented on our proposals for the compensation scheme – EE, MBG, BT, O2, Vodafone, C&W, TalkTalk, Three, FCS, Colt, ITSPA, Verizon, Vonage, SSE, UKCTA, Sky, Ombudsman Services, PhoneAbility⁶⁷ and one confidential respondent.

10.63 Most respondents did not disagree or did not comment on the proposed modification to GC18 to require CPs to provide reasonable compensation as required under the Framework. Respondents did however raise a range of issues as to how such a scheme would work in practice.

Clarification on what is meant by an 'abuse' of porting

10.64 Eight respondents (EE, TalkTalk, Verizon, Vonage, UKCTA, ITSPA and Sky) requested further guidance on what is meant by an 'abuse' of porting. Three and ITSPA argued that the compensation scheme should apply for the entire porting process from the point of the original request (including the provision of the PAC). ITSPA also argued that the compensation scheme should include initial service establishment.

⁶⁷ PhoneAbility agreed with our proposals without further comment.

- 10.65 Given the responses on this issue, we consider that it would be of benefit to provide further guidance on what an abuse of porting might mean. We consider that an abuse of porting is likely to include circumstances where CPs fail to adhere to the documented industry agreed porting processes insofar as the subscriber does not receive the porting service that they would have received had the process been properly complied with. This would include, amongst others, failures by mobile LPs to issue PACs to subscribers immediately over the phone or by SMS within 2 hours. That is not to say that in every instance where industry processes are not adhered to, and this impacts on the overall porting experience for the consumer, that compensation should be paid, particularly where the delay occurs as a result of the consumer or force majeure. However, we consider that industry processes are a good benchmark from which to consider whether an abuse has occurred.
- 10.66 However, we do not consider that it is reasonable to extend the requirement to provide reasonable compensation to subscribers in circumstances where CPs have not completed the process of service establishment as ITSPA suggest. Service establishment enables numbers to be ported between CPs⁶⁸ on agreed terms prior to providing number portability to subscribers. Each CP is obliged to provide portability to another CP who so requests as provided for under GC18. Failure to comply with this requirement is enforceable under the Act.

Who should pay out the compensation?

- 10.67 Some respondents (such as Three, SSE and Ombudsman Services) welcomed Ofcom's decision to allow CPs to design and implement their own schemes. However, many respondents also requested further guidance on how the scheme should work in practice, to ensure that it was fit for purpose from the start and therefore to avoid having to redesign the scheme or introduce an entirely new one in 12 months time.
- 10.68 One issue raised by many respondents (O2, FCS, Sky, EE, MBG, UKCTA, ITSPA, Vonage, Verizon, TalkTalk, BT, Vodafone, Three and a confidential respondent) was who would be responsible for paying compensation, as the general view was that it would be difficult to determine who was responsible for a delay or abuse of porting (particularly where the process involves more than two CPs or other third parties). A number of responses suggested that it would be the GP who would pay out compensation, as this is the CP with whom the customer has a new contractual relationship. Most felt that everyone, not least consumers, would benefit from further guidance.
- 10.69 A number of stakeholders (such as BT, C&W, Vonage, FCS, a confidential respondent and EE) highlighted that, if it were the case that GPs paid out compensation (and any ADR costs), then industry agreements and existing contracts would need to be modified to allow for this to be recovered from the CP responsible for the delay/abuse (where this was not the GP).
- 10.70 Vodafone suggested that determining who was responsible and pursuing them to reimburse the GP would not be a good use of resources. C&W also suggested that GPs may not find it worthwhile to pursue the CP responsible for a delay or abuse. EE suggested that there was a risk that some CPs would pay for the whole industry by always compensating consumers even where they were not at fault and that this was unsatisfactory.

⁶⁸ In particular, it provides for calls to ported numbers to be onward routed by the RH to the GP in accordance with the technical standards for UK number portability.

10.71 The requirement in GC18 provides that reasonable compensation is payable by the CP responsible for the delay in the porting of a number or where there is an abuse of porting by them or on their behalf. However, a claim against the CP who is legally liable for compensating subscribers under GC18 may not lead to a scheme that is practical to administer or one that leads to good consumer outcomes. Therefore, given that stakeholders have asked for further guidance on the operation of these schemes, we have considered the following scenarios:

Scenario 1 – Compensation settled by the GP who receives the claim and recovers cost from an industry compensation fund

10.72 Under this scenario, the subscriber submits a claim to the GP. The GP reviews the claim and determines whether the subscriber has experienced a delay or abuse in porting and, if so, settles the claim by providing reasonable compensation irrespective of whether the GP was at fault or not. The subscriber can appeal the GP decision through ADR or the courts. The GP is then reimbursed from the industry compensation fund.

10.73 Under this scenario it would be simple and quick for the subscriber to claim compensation. However, it is likely to be complicated for industry to reach multi-lateral agreement on the basis for making contributions and to establish and administer a compensation fund. In addition, depending on how contributions to the fund are determined there is the potential for this scenario to be sub-optimal in incentivising CPs to provide porting without delay.

Scenario 2 - Compensation settled by the GP who receives the claim and recovers costs from the CP at fault

10.74 The subscriber submits a claim to the GP. The GP reviews the claim and determines whether the subscriber has experienced a delay or abuse in porting and, if so, settles the claim by providing reasonable compensation with the subscriber. The subscriber can appeal the GP decision through ADR or the courts. The GP then resolves with other CPs which CP was responsible for the delay or abuse and compensation payments and costs are reimbursed under wholesale arrangements with the CP at fault.

10.75 Under this scenario it would again be simple and quick for the subscriber to claim compensation and it would optimise incentives to provide porting without delay or abuse by requiring the CP at fault to bear the compensation costs. However, it is likely to be difficult and costly for CPs to resolve who was at fault on a case-by-case basis and complicated for CPs to negotiate wholesale arrangements which provide for reimbursement. In addition, the need for bilateral arrangements may prove difficult for smaller CPs.

Scenario 3 – Claim only settled by CP at fault

10.76 Under this scenario, the subscriber could submit a claim to the GP. The GP resolves with other CPs which CP was responsible and the subscriber claim is referred to the CP at fault for the delay or abuse in porting. The CP at fault settles the claim by providing reasonable compensation directly to the subscriber. The subscriber can appeal the CP decision through ADR or the courts.

10.77 This scenario optimises the incentives to provide porting without delay or abuse by requiring the CP at fault to bear the compensation costs. However, it is likely to be difficult and costly for CPs to resolve who was at fault on a case-by-case basis.

10.78 Given that they may fail to come to a decision, the subscriber's claim is likely to be protracted and the subscriber may not receive compensation at all.

An industry-wide scheme

10.79 On balance, we think that a more successful scheme might be one based round scenario 1. While developing an industry-wide compensation scheme will be challenging, in the long run it should result in a more satisfactory outcome for both consumers and CPs. Further, a number of stakeholders in their responses supported a central scheme, such as Vonage, Sky and FCS⁶⁹.

10.80 We remain of the view that a light touch approach in this area is appropriate and that industry is better placed to work through the detail of how such a scheme might operate. The development of a scheme would be best progressed through an industry established group, and we encourage industry to consider how best to take this forward. FCS has recently expressed some concerns about smaller CPs potentially not being allowed to participate fully in industry-wide discussions and decisions. Our expectation is that the group will include all CPs that have an interest in the compensation scheme.

10.81 There are a number of factors which will have to be agreed between participants. For example, BT highlighted that industry discussions are needed to ensure that compensation schemes work efficiently and effectively and cannot be arbitrated. In addition, they thought that it would need to be clear to customers who they can make a claim from, in which specific circumstances and how they go about it. Sky similarly highlighted that processes would need to be agreed to establish with which CP a subscriber should lodge a complaint, how delays are measured and the responsibility on the CP at fault to compensate the CP who paid out to the subscriber.

10.82 FCS also highlighted a number of issues which would need to be taken into account in developing such a scheme, such as apportionment of blame (including what happens where more than one party contributed to a fault), the proof needed to establish who was at fault, how quickly compensation should be paid, and what would happen if payment were not forthcoming. If a central fund is established, there would also need to be clear parameters established around the levels of compensation paid by CPs for different types of porting failure and when compensation should be paid to avoid some CPs paying out more generously and readily than others. We would expect industry discussions to cover such points.

10.83 We will review the scheme after 12 months to assess whether it is delivering the right outcomes for consumers and for CPs.

When compensation should be paid

10.84 Mobile operators (EE, Vodafone, O2 and MBG) generally argued that compensation should only be paid where there is a loss of service as a result of a delay or abuse in porting. Three and Vonage argued that it is incorrect to equate a delay or fault in porting with a delay or fault in service provision, as porting is not necessarily a prerequisite for providing a mobile or VoIP service. MBG also argued that, where there is loss of service, compensation should not be paid for the first two days as prior to that such disruption is more likely to be accidental. In addition, MBG argued that

⁶⁹ FCS, Sky and BT were in favour of industry-agreed guidelines for how schemes would work. Vonage were in favour of a centralised database for porting which, amongst other things, they argued would make it easier to establish responsibility for any delay in porting.

compensation should not be paid where the fault lies with the customer or results from force majeure.

- 10.85 C&W suggested that porting should only be considered to have been delayed where 24 hours have passed since the request and the underlying service is operational, as otherwise the proposals may create the perverse incentive to proceed with a port where the line transfer has failed, causing loss of service.
- 10.86 We disagree that compensation should only be paid where there is a loss of service or even after two days of loss of service. We consider that the compensation requirement in GC18 is clear that CPs must compensate where there is a delay or abuse with porting and this is not linked to loss of service. More generally, this provision is about incentivising CPs to ensure that subscribers can port their numbers without delay and without being hindered such that they can retain their number(s) independently of the undertaking providing the service.
- 10.87 As set out above, there should be some element of CP causality that triggers the requirement to compensate and therefore we agree that compensation should not be paid where the fault lies with the consumer or results from a force majeure.
- 10.88 We do not consider that our proposals may lead to a perverse incentive to proceed with a port where the line transfer has failed leading to loss of service. The onus to ensure that the underlying service is operational rests with the GP and industry's agreed processes state that port activation should not be initiated by the GP until this is proven. Where port activation has been initiated by the GP after proving the underlying service to be operational but the port fails, existing procedures provide for faults to be diagnosed and resolved between the relevant CPs in a timely manner including, where necessary, service restoration or recovery. However, where such porting failures remain unresolved such that the porting of the telephone number exceeds one-working day from the GPs activation request, the subscriber shall be entitled to claim compensation.

Compensation levels

- 10.89 A number of respondents commented on the level of compensation payable in different circumstances. MBG and Vodafone welcomed Ofcom's suggestions on the level of compensation and considered this was reasonable but only where there is a loss of service.
- 10.90 Verizon, a confidential respondent and UKCTA argued that a delayed port should attract less compensation than a failed port, as the consumer harm resulting from a delay is lower. Sky also suggested different levels of compensation may be warranted when the port is delayed and when there is loss of service.
- 10.91 C&W suggested that the level of compensation we had suggested in the consultation would be unlikely to satisfy consumers. Ombudsman Services highlighted that ADR services can require suppliers to make goodwill awards when a consumer has suffered loss, stress or inconvenience as a result of a supplier failing to do something which could reasonably be expected of it.
- 10.92 Vonage queried how compensation would be calculated where a subscriber was moving to a more expensive GP under our proposals. It argued that the level of compensation should be based on the value of the number rather than the service which would run over it.

- 10.93 The requirement in GC18 is clear that compensation must be reasonable. We believe that all the points raised are important to the consideration of what reasonable compensation might be and they should be considered in detail by industry when establishing the any scheme's parameters. However, given that stakeholders have requested guidance on this, we agree that it would seem appropriate for compensation levels to distinguish between a delay in porting causing service restriction and a failure in porting resulting in loss of service. Provided the level of compensation is reasonable, there may be different levels of compensation reflecting the degree of service disruption and inconvenience arising from the delay or abuse of porting.
- 10.94 Further, it is not clear to us that a level of compensation based on the cost of the number⁷⁰ provides a basis for reasonable compensation, as this amount is very small. The purpose of the compensation requirement is to incentivise CPs to ensure that subscribers can port their numbers without abuse or delay and it is unclear that compensation based on these very small amounts would be sufficient to do this.
- 10.95 As set out in our consultation, we consider that where a delay or abuse of porting arises, the harm or inconvenience generally experienced by the subscriber of not being contactable on their number over their new fixed or mobile service, while not the same, is analogous to loss of service. Therefore, reasonable compensation could be where this service disruption or inconvenience is based, at a minimum, on a rate per day based on rental or contract charges (or similar) which can be adjusted to the duration of the delay or abuse. If industry considers that these amounts are insufficient then they may wish to consider higher compensation levels.

Request to exclude business ports from compensation schemes

- 10.96 Five stakeholders (Colt, EE, Verizon, UKCTA and C&W) argued that it was unnecessary for the compensation scheme to apply to business customers. Many business contracts already include provisions for compensation, and so this would cause unnecessary duplication and confusion. C&W also argued that, as porting is only a small part of the service offered to B2B customers, it is unlikely such customers would ever use the scheme.
- 10.97 The revised USD requirements and the modifications to GC18 to implement those requirements set out the obligations on CPs to compensate *subscribers* in case of delay or abuse in porting by them or on their behalf. This requirement therefore obliges CPs to compensate all types of customers including businesses.
- 10.98 In our view it is a matter for CPs to decide whether any arrangements provided for under business contracts and associated SLAs are sufficient to satisfy these requirements. We would agree that where reasonable compensation is already provided for in business contracts, there is no need for compensation schemes to include such business subscribers.

⁷⁰ Ofcom published a consultation entitled *Geographic Telephone Numbers* in November 2010 at <http://stakeholders.ofcom.org.uk/binaries/consultations/geographic-numbers/summary/geographic.pdf> setting out proposals to manage and maintain the supply of geographic phone numbers. One proposal concerned charging for numbers to promote efficient use and to pilot a scheme in limited areas applying an annual charge of 10p per number per year to all allocated numbers.

Interaction with ADR processes

- 10.99 Stakeholders generally agreed that the scheme should be administered through existing complaints and ADR processes (for example, Vodafone, O2, BT and C&W agreed with this). UKCTA and EE highlighted problems with the ADR process and third party CPs either not being a party to the ADR process or belonging to a different ADR scheme altogether. BT noted that a mechanism was needed to allow for the recovery of costs and compensation from the CP responsible if this is not the party against whom the customer under the process has taken the dispute. Vonage and EE noted that CPs could incur costs through ADR when they are not at fault.
- 10.100 We accept that there are potential difficulties with the use of ADR schemes in relation to porting compensation. On the basis that industry are able to implement a central scheme with a single fund with clear parameters about when compensation should be paid, there should be less need to rely on ADR. A central fund should also alleviate difficulties with recovering costs from the CP responsible.

Implementing schemes on 26 May

- 10.101 The majority of stakeholders (including EE, MBG, BT, C&W, Sky, TalkTalk and FCS) argued that it is impractical to implement a compensation scheme by 25 May. A number (Colt, Verizon, UKCTA, ITSPA, SSE) suggested we should allow an implementation period of say, 3 months.
- 10.102 We consider that each CP should be able to comply with the requirement to provide compensation for delays or abuse of porting through its standard complaint handling channels on a case by case basis in the first instance. A potential industry-wide scheme could then be established beyond this date i.e. it does not need to be in place at 26 May. We also note that some CPs already make goodwill payments to their subscribers in response to porting delays/faults.
- 10.103 We would also reiterate, as we noted earlier, that we cannot allow a transitional period without breaching Community law. It is not therefore an option available to us to grant a transitional period for compliance and moreover, end-users will rightly expect that they can take advantage of corresponding rights as of 26 May.

Conclusions

- 10.104 We have modified GC18 to require CPs to provide reasonable compensation where there is a delay or abuse of porting.
- 10.105 For the avoidance of doubt, although the modifications to GC18.9 require CPs to pay compensation to subscribers where there is a delay or abuse in porting, we may consider taking enforcement action against CPs in circumstances where there are systematic breaches of GC18.3 or any other provisions of GC18.
- 10.106 Although the detailed operation of compensation schemes is a matter for CPs to consider, we have provided some guidance on the key areas requested by stakeholders. This is set out further below.
- 10.107 As a result of these proposals, subscribers will be eligible to receive a payment for any delay in the porting process. This will provide subscribers with compensation that they might not otherwise receive, which we consider to be of benefit to users. The proposals will result in a set of one-off costs for operators to implement the compensation scheme. There will also be costs to administer the scheme and make

payments to subscribers in relation to delayed porting; how these costs are distributed between different CPs, and so the impact on individual CPs, will depend upon how the scheme is designed (e.g. the basis for contributions to a potential central fund).

Guidance on the compensation scheme

Scheme parameters

- 10.108 When a subscriber experiences a delay or abuse with a port, a subscriber must be able to claim compensation.
- 10.109 An abuse of porting is likely to include circumstances where CPs fail to adhere to the documented industry agreed porting processes, insofar as the subscriber does not receive the porting service that they would have received had the process been properly complied with. This would include failures by mobile LPs to issue PACs to subscribers immediately over the phone or by SMS within 2 hours. That is not to say that in every instance where industry processes are not adhered to, and this impacts on the overall porting experience for the subscriber, that compensation should be paid, particularly where the delay occurs as a result of the subscriber or force majeure. However, industry processes are a good benchmark from which to consider whether an abuse has occurred.
- 10.110 While there are a number of ways for these schemes to operate, Ofcom's preferred approach would be an industry-wide scheme under which the GP would pay compensation irrespective of whether they are at fault or not, while recovering the cost from an industry compensation fund.
- 10.111 Where reasonable compensation is already provided for in business contracts it is unlikely that compensation schemes need to include such subscribers.

Reasonable compensation

- 10.112 In determining reasonable compensation, we consider that a delay or fault in porting is analogous to a delay or fault in service provision. Therefore, reasonable compensation could be where this service disruption or inconvenience is based, at a minimum, on a rate per day based on rental or contract charges (or similar) which can be adjusted to the duration of the delay or abuse. For Pay As You Go (PAYG) mobile subscribers, a proxy could be to calculate the daily amount of an individual CPs Average Revenue Per User (ARPU) for PAYG subscribers.
- 10.113 If CPs consider that these amounts are insufficient then they may wish to consider higher compensation levels.
- 10.114 Provided the level of compensation is reasonable CPs may wish to operate different levels of compensation reflecting the degree of service disruption and inconvenience.

Information requirements

- 10.115 In the consultation, we also proposed two requirements concerning the provision of information to Subscribers:
- to advise Subscribers of when their number will be ported; and

- to set out in a clear, comprehensive and easily accessible form how their compensation scheme will operate.

10.116 UKCTA and Verizon queried what would be an acceptable form in which to communicate this information to consumers, and specifically whether e-mail would be acceptable. Further, Sky and a confidential respondent argued that it should be sufficient to provide information about the compensation scheme on the CP's website, alongside details of other compensation provisions. O2 also questioned which part of Article 20 requires transparency of the porting compensation scheme in T&Cs and on CPs' websites. MBG and O2 both suggested we should allow a reasonable implementation period for the transparency aspects, given the costs in making changes to T&Cs, and that the Directive does not require the transparency and implementation aspects to be in place by the implementation date.

10.117 In response to O2's point, we believe this requirement is covered by Article 20(f) which requires providers to set out information on "*any compensation and the refund arrangements which apply to if contract service quality levels are not met*". Communication of this information from 26 May is vital as otherwise subscribers will be unaware of their right to both claim compensation and also the process for making such a claim. Similarly, subscribers should be clearly advised of the relevant port date so that they can establish whether a porting delay has occurred. We therefore do not consider it appropriate to allow 3 months for these requirements to be implemented.

10.118 It is a matter for CPs to decide the method of communicating the scheme to their subscribers in compliance with these information requirements. We consider that both these requirements can in many cases be satisfied by CPs informing the subscriber of both when their number will be ported and details of the compensation scheme at the time the subscriber requests number portability.

Conclusions

10.119 We have modified GC18 to require that Subscribers are advised of when their number will be ported and porting compensation schemes.

Other proposed modifications to GC18

10.120 We also proposed the following changes to GC18:

- i) changing the reference from 'publicly available telephone service' to 'subscribers with numbers from the National Telephone Numbering Plan'. We noted that this would mean that there are additional subscribers who will be able to port their numbers, such as those provided with an incoming service only and paging portability. However, we did not consider that the inclusion of these subscribers would materially affect the existing provision of number portability;
- ii) requiring that porting charges "do not act as a disincentive to subscribers against switching". This was proposed to explicitly reflect the actual text of Article 30; and
- iii) requiring porting to be carried out 'within the shortest possible time' – to replace the existing phrase that porting should take place "as soon as is reasonably practicable". Given we interpret these terms to mean the same, we did not consider this change would impact current porting practices.

10.121 We did not receive responses to (i) and (ii) and we discussed our response to the few respondents who discussed (iii) in paragraphs 10.12-10.14 above.

10.122 FCS commented that GC18 unhelpfully retains the term 'Subscriber' rather than 'Customer' in line with other GCs. Article 30 of the revised USD refers specifically to 'Subscribers' which is ascribed a specific meaning in the FD. We therefore use the term 'Subscriber' in GC18 noting that 'Customer' has a specific and different meaning to 'Subscriber' in other GCs, for example, GC14.

10.123 EE pointed out a typographical error in our proposed draft condition of GC18.4. Our text stated that the requirement was subject to paragraph 18.2 but should have referred to 18.3. We have amended GC18.4 correcting this error to refer to 18.3(a) as the provision concerns Mobile Number Portability.

10.124 Three argued that either the term 'business day' or 'working day' should be used throughout GC18, rather than switching between the two. We have now used 'business day' consistently throughout the text of GC18.

Conclusions

10.125 We have modified GC18 to incorporate the changes as proposed in the consultation and as set out above. In addition, we have used 'business day' consistently throughout GC18.

Legal Framework

10.126 We have carefully considered our duties under s4 of the Act, in particular, s4(6) in relation to the requirement to take into account, so far as practical, that our decisions in this matter do not favour one form of technology over another. In relation to the application of the one day port activation requirements, we consider that the current practical differences between porting numbers between fixed networks and mobile networks are such that our adoption of different approaches to port activation is reasonable and justified.

10.127 We consider that our amendments meet the criteria set out in section 47(2) of the Act. They are:

- **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC18 is relevant to them;
- **proportionate** as the change is the minimum necessary to implement the revision of Articles 30(1) to (4) and there is no less intrusive mechanism to achieve the intended purpose; and
- **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

Section 11

Changes to General Condition 20

Access to numbers and services (the GC formerly known as ‘Non-geographic numbers’)

- 11.1 In Section 11 of the consultation, we set out proposed changes in order to implement relevant requirements in Articles 27 and 28 of the USD via GC20. The proposals related to access to telephone numbers and the services provided on those numbers across the European Community, and covered all numbers from national telephone numbering plans as well as pan-European numbering ranges.
- 11.2 At present, GC20 imposes obligations on CPs⁷¹ in relation to access to non-geographic numbers and transposes the requirements in the former USD Article 28. The revised Article 28 was re-titled ‘Access to numbers and services’ and so we proposed to re-title our own GC20 as ‘Access to numbers and services’.
- 11.3 We noted the following changes to Articles 27 and 28:
- Article 28(1)(a) now states that Member States shall ensure that, where technically and economically feasible, and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, national regulatory authorities (i.e. in the UK, Ofcom) take all necessary steps to ensure that end-users are able to “**access and use services using non-geographic numbers within the Community**”. The text in bold is a new requirement and it is highlighted to clarify that the obligation now also covers the ability of end-users to use services provided on non-geographic numbers;
 - Article 28(1)(b) states that all necessary steps must be taken to ensure that end-users are able to “*access all numbers provided in the Community, regardless of the technology and devices used by the operator, including those in the national numbering plans of Member States, those from the European Telephony Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN)*”. Previously, Member States only had to ensure that end-users from other Member States could access non-geographic numbers within their territory – so the new requirement extends the scope beyond end users in other Member States and covers all numbers in national telephone numbering plans (i.e. includes geographic numbers) and international numbering ranges such as shared country codes;
 - A new Article 28(2) was introduced which requires Member States to ensure that “*the relevant authorities are able to require undertakings providing public communications networks and/or publicly available electronic communications services to block, on a case-by-case basis, access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other service revenues*”;

⁷¹ In GC20 and for the purposes of this Section, a CP means a person who provides an Electronic Communications Network or an Electronic Communications Service.

- The applicability and scope of the former Article 27(2) (now Article 27(3)) on the potential ETNS was widened. It now requires Member States to ensure that “*all undertakings that provide publicly available telephone services allowing international calls, handle all calls to and from the ETNS at rates similar to those applied for calls to and from other Member States*”. Previously, the Directive’s requirement to handle calls to ETNS fell on those undertakings that operate public telephone networks and did not specify applicable tariffs; and
- A new Article 27a(4) was introduced relating to access to the 116000 number - the ‘Hotline for missing children’ service - which requires Member States to “*make every effort to ensure that citizens have access to a service operating a hotline to report cases of missing children.... available on the number ‘116000’*”.

11.4 In the rest of this Section, we discuss in turn our approach and proposals with regard to implementing each of these requirements, stakeholders’ responses and our conclusions.

CPs provide access to services using non-geographic numbers within the Community and to all numbers provided in the Community, where technically and economically feasible

- 11.5 We proposed revised text for GC20.1 (set out fully in paragraph 11.13 of our consultation) and also GC20.2⁷² (replacing the word ‘non-geographic’ with ‘telephone’). These proposed changes effectively mirrored the requirements of Articles 28(1)(a) and (b).
- 11.6 We noted that, in practice, we did not envisage this proposal placing extensive additional requirements on CPs given that, for example, (i) access to geographic numbers across the European Community is generally provided and because (ii) access to numbers from international numbering plans, if not already provided, would be subject to technical and economic feasibility.
- 11.7 In terms of the new Article 27(2), we proposed a new clause in GC20.3, that the CP shall “*where requested in writing by or on behalf of Ofcom on the basis of fraud or misuse, block access to Telephone Numbers and/or Public Electronic Communication Services and in such cases withhold revenue associated with such Telephone Numbers and/or Public Electronic Communication Services*”.
- 11.8 We also indicated that we would develop a set of guidelines on the criteria for determining fraud and misuse in relation to numbers and services and on how we would issue written requests to block access, withhold revenue and how we expect CPs to respond to these requests.

Stakeholder responses

- 11.9 We asked stakeholders a broad question on whether they agreed 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.

⁷² GC20.2 requires CPs to limit access for calling end-users located in specific geographical areas to telephone numbers assigned to a subscriber, where that subscriber has chosen for commercial reasons to limit such access.

- 11.10 Sixteen stakeholders responded specifically to our proposals on access to numbers within the Community. Those stakeholders were BT, C&W, Consumer Focus⁷³, EE, FCS, ITSPA, O2, PhoneAbility, Sky, TalkTalk, Three, UKCTA⁷⁴, Verizon, Vodafone and two confidential respondents.
- 11.11 Ten respondents explicitly agreed with the proposals⁷⁵. C&W and UKCTA agreed with our initial conclusion that the proposals should not present any significant changes to current practices. Three and ITSPA accepted the reasoning behind the proposals, while O2 was uncertain of the difference that the amendment would make in practice. Consumer Focus welcomed the proposed new provisions to strengthen end users' access rights to non-geographic numbers and saw them working in conjunction with our ongoing strategic work on simplifying and improving consumer confidence in non-geographic numbers⁷⁶.

Providing access to all numbers within the Community – GC20.1 and GC20.2

- 11.12 BT commented that access to numbers from outside the country of allocation should only occur where numbers are part of the internationally recognised numbering scheme conforming to ITU-T Recommendation E.164⁷⁷ (that is, not numbers intended for national use only). C&W commented that access could only be enabled on a country-by-country basis in accordance with the number holder's wishes. Therefore, if the number holder had chosen to restrict access from end users in the UK, then CPs operating in the UK could not be expected to provide access.
- 11.13 We confirm that the requirement on CPs to provide access does not extend to cross-border access to numbers that are (i) designated for national use only; or (ii) where the number user has chosen for commercial reasons to restrict access from end users in certain countries. This is in line with Recital 46 to the CRD which states that *“cross-border access to numbering resources and associated services should not be prevented, except in objectively justified cases, for example...when the number is defined as having a national scope only (e.g. a national short code) or where it is technically or economically unfeasible”*.
- 11.14 Sky considered that the proposed GC20.1 represented a considerable extension to the scope of the current obligations by covering all numbers and all end users (rather than confining the access requirement to non-geographic numbers and to end users located outside the UK). They also requested clarification of our interpretation of the term “where technically and economically feasible” in GC20.1. Both Sky and a confidential respondent urged us to adopt a proportionate and pragmatic approach to this requirement. BT also questioned the nature of a technical feasibility requirement.
- 11.15 We recognise that the proposed GC20.1 extends the scope of the requirement to all numbers and end users in the Community, however we proposed this change to reflect the requirements in the USD. We do not consider the broader scope to have a significant impact on CPs, as the extension is unlikely to represent a major change in CPs' current approach to providing access to numbers and services and is subject to technical and economic feasibility. We agree that a number of considerations,

⁷³ The Consumer Focus submission relates to non-geographic numbers only.

⁷⁴ The UKCTA submission on proposals relating to GC20 does not reflect the views of EE.

⁷⁵ Those respondents were C&W, Consumer Focus, FCS, ITSPA, PhoneAbility, TalkTalk, Three, UKCTA, Verizon and Vodafone.

⁷⁶ See *Simplifying Non-geographic Numbers: improving consumer confidence in 03, 08, 09, 118 and other non-geographic numbers* consultation document published by Ofcom on 16 December 2010

<http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/>

⁷⁷ ITU-T Recommendation E.164 <http://www.itu.int/itu-t/recommendations/index.aspx?ser=E>

including proportionality and pragmatism, should form part of our interpretation of what is “technically and economically feasible”, and the nature of which would be considered on a case-by-case basis.

- 11.16 Two respondents raised more fundamental concerns with the proposals in relation to access to numbers and services within the Community, arguing that they did not properly reflect the intentions of the revised USD. EE argued that Recital 46 to the CRD confirmed that the access requirement remained about cross-border access to Community numbers and they therefore disagreed with the proposed deletion of reference to end users in any part of the European Community “outside of the United Kingdom” from the current GC20.1. In addition, they maintained that other textual changes were needed to ensure the obligation’s cross-border application.
- 11.17 A confidential respondent considered that the proposed drafting of GC20.1 did not strictly conform to the requirements of Article 28 as it did not cover obligations on originating CPs to ensure (rather than permit) access to all numbers and services adopted by CPs in any part of the Community. Such a requirement was necessary to fulfil the ‘any to any’ principle inherent in the article’s obligations.
- 11.18 These two responses raise a fundamental *question* as to whether USD Article 28.1 (and thereby GC20.1) is intended to relate to access to numbers by end users in the Community *outside of the UK* (that is, purely a cross-border provision) or whether end users in the UK are included in the obligation. Although Recital 46 to the CRD focuses on the single market and cross-border access, we consider that the wording of Article 28 does not restrict the obligations specifically to end users in Member States outside of the UK. Rather, this provision refers more broadly to access within “the Community” and therefore includes the UK as a member state. However, the proposed obligations in GC20.1 are not intended to affect the current policy on providing ‘end to end’ connectivity⁷⁸ in the UK (which is achieved through an access-related condition on BT) or relate to ‘any to any’ principles without further analysis.
- 11.19 EE suggested two revisions to the proposed drafting of GC20. They suggested combining GC20.1 and GC20.2, given that GC20.2 was a limiting qualification in relation to commercial feasibility of cross-border access required by GC20.1. They also argued that the phrase “regardless of technological devices used by the operator” proposed in GC20.1(b) was unnecessary and was unclear as to which ‘operator’ was being referred to and should therefore be deleted.
- 11.20 We have considered the suggested drafting revisions to GC20. Combining GC20.1 and GC20.2, while linking the relevant obligations, would make GC20.1 difficult to navigate through the addition of the lengthy clause currently provided in GC20.2. We have decided to retain the division. Reference to ‘technological devices’ stems from Article 28 and we will retain it in GC20 for the avoidance of doubt.

Blocking access to numbers on a case-by-case basis – GC20.3

- 11.21 Three and ITSPA commented that when read together, the obligations in GC20.1 to provide access to all numbers in the Community and those in GC20.3 relating to requests to block access by or on behalf of Ofcom, appeared to suggest that only Ofcom (or a party on behalf of Ofcom) could request that CPs block access to numbers and/or services and withhold associated revenue. Three, ITSPA and UKCTA added that CPs must be able to use their own monitoring system for blocking

⁷⁸ *End-to-end connectivity* statement published by Ofcom on 13 September 2006
http://stakeholders.ofcom.org.uk/binaries/consultations/end_to_end/statement/statement.pdf.

in the event of fraud or misuse and Three questioned whether this would be covered under the right for CPs to withhold access where not “technically and economically feasible”. ITSPA argued for more opportunity to act on fraudulent operations and suggested that members of ITSPA’s Security Committee could assist Ofcom in this respect.

- 11.22 The obligations proposed in GC20.1 and GC20.3 do not restrict CPs’ ability to block access to numbers on a case-by-case basis where justified by reasons of fraud or misuse. They do not affect current or future practices to protect consumers and providers from fraud or misuse of numbers (for example, requirements in relation to blocking and retaining relevant revenue under the PhonepayPlus Code of Practice⁷⁹) and we encourage CPs to undertake and act on their own monitoring processes. The ability for CPs to block access to numbers on such a basis is provided for in GC20.1 as being a potential situation where access would not be “economically feasible”. We thank ITSPA for its offer to assist us in combating fraud and misuse of numbers.
- 11.23 A number of respondents requested clarification on how the request from Ofcom to block access would work and considered that further discussion and potentially further consultation was required⁸⁰. A confidential respondent argued that proportionality needed to be applied to the requirements to block access to numbers and/or services. CPs may only be able to block access where technically and economically feasible to do so (for instance, it may not be possible to block access when roaming). These respondents looked towards our proposed guidelines for more clarity.
- 11.24 As mentioned in the consultation⁸¹, we plan to develop a set of guidelines on the criteria for determining fraud and misuse in relation to numbers and services, how we would issue written requests to block access and withhold revenue and how we would expect CPs to respond to such requests. We plan to take this work forward later this year.
- 11.25 EE argued that in their view, Ofcom was not empowered to act as a ‘relevant authority’ under USD Article 28(2). Even if we were already empowered, or were given the additional powers, we should take time to consider how best to implement the requirement taking into account the issues raised in the related Body of European Regulators for Electronic Communications (‘BEREC’) report⁸² before amending GC20 as Member States were not obliged to exercise these particular powers by 25 May 2011. They also questioned whether the requirement for CPs to implement blocking requests needed to be written into a GC, as CPs already co-operate with such requests and undertake monitoring. Given the above considerations, EE recommended that the proposed GC20.3 be deleted.
- 11.26 We discussed our position to act as a ‘relevant authority’ under USD Article 28 with the UK Government ahead of drafting the proposal. It was concluded that the power for Ofcom to compel undertakings to block access to numbers where there is evidence of fraud or misuse was already provided by section 58(1)(d) of the Act,

⁷⁹ See sections 2.3.3 and 2.5.2 of the PhonepayPlus Code of Practice 11th edition (effective until 31 August 2011 – the 12th edition comes into force on 1 September 2011):

http://www.phonepayplus.org.uk/For-Business/Code-and-Help/~media/Files/PhonepayPlus/Consumer/PhonepayPlus_Code_of_Practice.pdf

⁸⁰ Those respondents were BT, O2, Sky and a confidential respondent.

⁸¹ See paragraph 11.17, 3rd bullet point of our consultation document.

⁸² *The BEREC report of the public consultation on the BEREC report on cross-border issues under Article 28(2) of the USD*, February 2011 http://erg.eu.int/doc/berec/bor_10_62rev1b.pdf.

which provides for Ofcom to set GCs which impose requirements on a CP in connection with its adoption of numbers.

- 11.27 We consider that the provisions of Article 28(2) are important consumer protection measures, and while we welcome CPs voluntarily and proactively blocking access to numbers in the event of fraud or misuse, we maintain that blocking access in response to an Ofcom communication should be a requirement on CPs in the form of a GC. As mentioned above, we plan to develop a set of guidelines on the requirement to block access to numbers.

Our conclusions on access to services using non-geographic numbers, as well as to all numbers, within the Community

- 11.28 Having considered stakeholders' responses in relation to proposed modifications to GC20 regarding access, we have decided to proceed as proposed in the consultation and make the changes to GC20 noted at paragraphs 11.5 and 11.7 above.
- 11.29 The full text of the revised GC20.1, GC20.2 and GC20.3 are set out in Annex 2.
- 11.30 As set out in Annex 1 of our consultation, we expect limited impacts from these changes given that these requirements are already largely practised in the UK.

Requirement to handle calls for the *potential* European Telephony Numbering Space (ETNS) at rates similar to those for calls to and from Member States

- 11.31 In our consultation, we discussed our proposed implementation of Article 27(3) which covers access to (and tariff principles for) the ETNS. In doing so, we acknowledged that the ETNS is not currently in use, being a concept introduced in 2000 for a European telephony numbering space for pan-European numbering using the shared country code +3883 (since reclaimed by the ITU) with a European, as opposed to national or global, identity.
- 11.32 While the original ETNS has not been developed to date, we noted that the European Commission had recently consulted on options for pan-European harmonisation of numbers for the provision of business services⁸³ - and that one option considered was to re-establish the ETNS under the enhanced provisions of the amended USD. In view of this possible use of the ETNS, we proposed to set out a new requirement on CPs in GC20.4 to handle calls to and from the potential ETNS and to apply call rates that are similar to those for calls to and from other Member States in order to comply with USD Article 27(3).

Stakeholder responses

- 11.33 Eleven stakeholders responded specifically to our proposals in relation to the ETNS. These stakeholders were BT, C&W, EE, FCS, PhoneAbility, Skype, TalkTalk, UKCTA⁸⁴, Verizon, Vodafone and VON.

⁸³ European Commission *Consultation on the future harmonisation of numbering resources for the provision of business services*. The consultation closed on 28 February 2011. http://ec.europa.eu/information_society/policy/ecomms/doc/library/public_consult/numb_harm/questionnaire.pdf.

⁸⁴ The UKCTA submission on proposals relating to GC20 does not reflect the views of EE.

- 11.34 Six respondents explicitly agreed with the proposals⁸⁵. Three and Skype accepted that the proposals were required by the European framework. However, EE questioned the justification and legitimacy of an obligation relating to a number range that did not exist.
- 11.35 In response to EE's comment, it is our duty to transpose the relevant requirements of the revised framework, including those relating to the ETNS despite the service not currently being defined by the European Commission. We therefore proposed the minimum amendment necessary to implement the requirements in relation to the ETNS in the revised USD.
- 11.36 VON was supportive of the ETNS concept and considered that the proposed obligations regarding access and tariffs would help address some of the issues that resulted in the lack of take-up previously. VON encouraged Ofcom to discuss the ETNS with other national regulatory authorities and BEREC to ensure a coherent approach across Member States. Skype also referred to the issues that were detrimental to the ETNS flourishing previously and encouraged us to be wary of CPs implementing requirements in a way that would ensure competition from the ETNS failed, particularly if access was subject to interpretation of economic and technical feasibility. VON and Skype both considered that call tariffs were vital to the success of the ETNS. VON argued that it would be detrimental if calls to the ETNS cost the same as other international calls, while Skype considered there was strong evidence that the tariff should be linked to that of domestic geographic numbers.
- 11.37 C&W reserved their position on ETNS until the Commission had adequately defined the service. They considered that we should revisit the ETNS principles once the purpose and nature of the service were known. UKCTA also considered that the charging principles may need to be revisited if a re-launched ETNS differed from expectations. Vodafone urged us to monitor ETNS developments to ensure consumers and CPs were protected from any potential misuse.
- 11.38 BT expressed concern over the implementation of the ETNS proposals, emphasising that the ETNS should be based on commercial arrangements, market demand and technical capability, and that further discussion and potentially consultation was required. Also, given that the ITU had reclaimed the +3883 code formerly associated with the service and the recent Commission consultation had referred to different options, the relevant numbers for the ETNS were unclear.
- 11.39 We appreciate that the European Commission has a duty to consider the opportunities that could be delivered by harmonising numbering resource across the Community and sees this as one of the key issues for reinforcing the single market for telecommunications services. We also recognise that this is an issue of interest for some of our stakeholders and note the comments received on creating a regulatory environment for the ETNS to thrive should it be re-launched.
- 11.40 The Commission's aforementioned consultation on future harmonisation of numbering resources has closed and, having considered stakeholders' responses⁸⁶, the Commission has concluded that it is not currently appropriate to proceed with proposals to harmonise numbers for the provision of business services and does not

⁸⁵ These respondents were FCS, PhoneAbility, TalkTalk, Three, Verizon and VON.

⁸⁶ Non-confidential responses to the European Commission's consultation on the future harmonisation of numbering resources for the provision of business services (including the joint response submitted by Ofcom and DCMS) are available at: http://ec.europa.eu/information_society/policy/ecomm/library/public_consult/numbering_harmonisation/contributions/index_en.htm.

intend to take any action at this time. Nevertheless, we also note the Commission will continue to monitor demand for the harmonisation of numbers for business use and whether the appropriate market and technological conditions for harmonisation exist.

- 11.41 We have contributed actively to European discussions on the administration and future of the ETNS. We submitted a joint UK response with DCMS to the Commission's consultation and contributed to a response on behalf of the CEPT/ECC Working Group on Numbering and Networks⁸⁷. As stated above, the Commission does not have any immediate plans to re-launch the ETNS. However, should this position alter in the future, we intend to contribute as appropriate to its development and would consider the appropriateness of engaging further with stakeholders on the ETNS principles.

Conclusions on ETNS

- 11.42 Having considered stakeholders' responses in relation to proposed modifications to GC20 regarding the ETNS, we have decided to proceed with the minimal amendment necessary to implement the requirements in relation to the potential ETNS in the revised USD as proposed in the consultation. The revised GC20.4 is set out in Annex 2.
- 11.43 We expect that the changes will have no impact on CPs currently as the ETNS is not in operation and there are no imminent plans for its re-launch.

The hotline for missing children on 116000

- 11.44 Article 27a introduces new requirements relating to 'Harmonised numbers for harmonised services of social value'. We have discussed these six-digit numbers which use the prefix '116' in paragraph 8.41 of this statement. In our consultation, we focused on the 116000 'missing children hotline number', as Article 27(a)(4) requires that we make every effort to ensure it is accessible to all citizens.
- 11.45 We therefore proposed to introduce an obligation in GC20.5 on all CPs that provide public electronic communications networks and/or publicly available electronic communications services to ensure that any end-user can access a 'Hotline for missing children service' by using the number 116000.

Stakeholder responses

- 11.46 Nine stakeholders responded specifically to our proposed access obligation for 116000. These stakeholders were BT, C&W, EE, FCS, PhoneAbility, TalkTalk, UKCTA⁸⁸, Verizon and Vodafone.
- 11.47 Five respondents explicitly agreed with the proposals⁸⁹. Vodafone made no objection although questioned the value of short harmonised European numbers, raising concerns over lack of consumer recognition and recall.

⁸⁷ The European Conference of Postal and Telecommunications Administrations (CEPT)/Electronic Communications Committee (ECC) Working Group on Numbering and Networks, which represents relevant national authorities in the 48 European CEPT countries.

⁸⁸ The UKCTA submission on proposals relating to GC20 does not reflect the views of EE.

⁸⁹ Those respondents were FCS, PhoneAbility, TalkTalk, UKCTA and Verizon.

- 11.48 C&W considered it would be more efficient to mandate access to all '116' numbers rather than focus exclusively on 116000. BT also considered that other '116' numbers may need regulator support to ensure access.
- 11.49 We welcome stakeholders' responses to our proposal to ensure that end user access to 116000 is provided by all CPs. In the consultation, our considerations on access to '116' numbers were limited to the requirements in the revised USD and thus we reflected the singular treatment given to 116000 in Article 27a(4) with respect to providing extra safeguards to ensure that access is provided.
- 11.50 EE were concerned that Ofcom had not made sufficient effort to ensure the costs of CPs providing access were covered by the obligation given that concern over commercial arrangements had previously resulted in the same access issues in the UK that the proposals aimed to fix. EE argued that any access obligation should be subject to economic and technical feasibility and these considerations should be written into GC20.5.
- 11.51 In terms of the interconnection arrangements between CPs required to achieve access to 116000 (which is designated as a 'free to caller'⁹⁰ number in the UK), we consider this a commercial matter. We encourage originating CPs and the service provider's chosen CP⁹¹ to work together to agree acceptable terms, and if this is not achievable, to refer the matter to Ofcom. We consider that the ultimate resolution of commercial (and any technical) issues should be the aim of CPs and therefore we have not made the requirement to provide access to 116000 subject to technical and economic feasibility.

Our conclusions on the access obligation for 116000

- 11.52 Having considered stakeholders' responses in relation to proposed modifications to GC20 regarding the missing children hotline on 116000, we have decided to proceed as proposed in the consultation. The revised GC20.5 is set out in Annex 2.
- 11.53 We believe there will be benefits from this change as it will provide certainty of access to the hotline for missing children, which we consider to be a service of significant social value. Our understanding is that CPs already provide access to this number and therefore we anticipate minimal impact as a result of this requirement.

Legal Framework

- 11.54 We consider that our modifications to GC20 in relation to access to numbers and services meet the criteria set out in section 47(2) of the Act being:
- **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC20 is relevant to them;
 - **proportionate** as the change is the minimum necessary to implement the revision of Articles 27, 27a and 28 and there is no less intrusive mechanism to achieve what is intended; and

⁹⁰ A 'free to caller' number means that a consumer will not be charged for the call regardless of whether they are calling from a fixed line, mobile or public payphone.

⁹¹ The 116000 number was allocated to Missing People and its chosen communications provider BT on 17 May 2010 and the number is operational.

- **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

11.55 We also consider that the modifications fulfil our general duty as to telephone number functions as set out in section 63 of the Act by:

- **securing the best use of appropriate numbers**, in that the modifications in relation to access to numbers and services will further service provision on numbers in the European Community and will secure access from all CPs to a hotline for missing children on 116000. The modifications will also provide for fraud and misuse of numbers to result in the blocking of access to numbers and services and the withholding of relevant revenue; and
- **ensuring efficiency and innovation**, in that the changes will encourage the use of numbers and the provision of innovative services for end-user access across the European Community, with the additional consumer protection safeguard relating to fraud or misuse of numbers.

Section 12

Changes to Universal Service Conditions

Introduction

- 12.1 The USCs are conditions imposed on the USPs (Kingston Communications in the Hull area and BT elsewhere in the UK) under section 45(4) of the Act.
- 12.2 The USCs are affected by changes to the definitions of certain terms. These are discussed in Section 3 of this document.
- 12.3 We noted in our consultation that there was a minor amendment required to Condition 1 for both Kingston Communications and BT to reflect a change in the wording of Article 4(2) of the USD which refers to connections being capable of supporting “voice” communications. We believed this would not change the scope of the existing USC which already cover ‘calls’ and should therefore have no impact on BT and Kingston.
- 12.4 The rest of this section sets out our proposals to implement a new requirement, stakeholder responses and our conclusions.

A new requirement for USPs to notify us when disposing of their local access network assets

- 12.5 In our consultation, we focused on the new Article 8(3) of the USD. This provision requires that, where a universal service provider intends to dispose of a substantial part or all of its local access network assets (that is the assets involved in the physical connection between the consumer’s premises and the local telephone exchange) to a separate legal entity under different ownership, it must inform in advance the national regulatory authority (i.e. Ofcom) in a timely manner, in order to allow assessment of the effect of the intended transaction on the provision of access at a fixed location and of telephone services pursuant to Article 4.
- 12.6 We therefore proposed to implement the changes by introducing a new Condition⁹² for both BT and Kingston - which requires them to notify us no less than one month in advance of any such disposal.

Stakeholder responses

- 12.7 We asked stakeholders for their views on this new condition relating to the disposal of USPs local access network assets.
- 12.8 Seven stakeholders responded to our proposal – BT, C&W, FCS, PhoneAbility, TalkTalk, UKCTA and Verizon. All agreed with our proposed requirement.
- 12.9 While Verizon noted that our proposal was necessary, it also queried whether the one month notice period was sufficient to allow us to carry out an impact assessment of any disposal. In response, we would note that the one month notice period is the very minimum period that is proposed as a requirement – and that in practice we expect that we would be made aware of any such plans far in advance.

⁹² New condition 7 for Kingston and condition 9 for BT.

- 12.10 BT, while agreeing with our proposal, asked for clearer wording in the new condition. They stated that the intention of this new condition was that it would apply in those cases where legal ownership of the working assets is transferred to another legal entity but would not apply in those cases where they dispose of or decommission parts of their asset base.
- 12.11 In creating these new USCs, we have noted the powers in sections 67(1A) and 67(1B), which we anticipate will be inserted into the Act by the ECWR. Section 67(1A) provides that we may set USCs which apply to a designated universal service provider who proposes to “make a disposal” to another person of a substantial part or all of the designated universal service provider’s local access network assets. We consider that this would cover a sale to another party or another action of disposing something to another party.
- 12.12 However, section 67 (1)(B) clarifies that it does not, however, apply “where the disposal is made by a company to a connected company (within the meaning given by section 1122(2) of the Corporation Tax Act 2010)”. We have therefore now added this clarity to these new conditions, as set out in Annex 4.

Conclusions

- 12.13 Given the support for our proposal, we have established a new USC for BT and also for Kingston which requires them to notify us at least one month in advance of any disposal of a substantial part of or all of their local access network assets to another legal entity under different ownership. This should result in minimal impacts on these USPs as such notifications are unlikely to be a regular occurrence or to involve any significant administrative costs for BT and Kingston.
- 12.14 In addition, we have amended Condition 1 for both Kingston Communications and BT to reflect the change in the wording of Article 4(2) of the USD which refers to connections being capable of supporting “voice” communications.

Legal Framework

- 12.15 We consider that these new obligations on BT and Kingston meet the criteria set out in section 47(2) of the Act. It is:
- **not unduly discriminatory** because the obligations will apply equally to both Kingston and BT as the designated universal service providers in the UK (albeit that the definitional changes feed through in a slightly different way for each given pre-existing differences in the obligations on each);
 - **proportionate** as the disposal notification requirement is the minimum necessary to implement the Community obligation in Article 8(3) of the USD; and
 - **transparent** as the purpose of the change is clear and what Kingston and BT need to do in order to comply with the amended USC is also clear.

Section 13

Other issues raised by respondents

13.1 Some stakeholders raised general points which did not relate to our specific proposals to modify particular GCs. We discuss these below.

Directory Enquiries and Operator Assistance – GC8

- 13.2 A confidential respondent argued that GC9 needs to be further amended so as to take account of the position set out by the EU Framework on the provision of information in Directory Enquiry Facilities. In their response, they then further argued that new sub-conditions should be inserted into GC8 to reflect elements of Recital 38 of Directive 2009/136/EC, which would enable us to require the possibility of providing a centralised mechanism providing comprehensive aggregated information and also the cost-orientated supply of data to directory enquiry service providers.
- 13.3 The same respondent raised a separate point regarding Directory Enquiry services (DQ services) and GC8. They felt that by taking a combination of Article 25(3) and Article 28 of the USDC, the rights of end-users should be to access any and all directory enquiry services and that this meant General Condition 8.1 should be amended to read: “...at least one *Directory Enquiry Facility*...” instead of “...a *Directory Enquiry Facility*...”. In their view, this would ensure that nobody could argue that GC8 cut across provisions that implemented amended General Condition 20 (see Section 11 of this statement) by suggesting in the case of DQ that access to only one provider met all relevant legal requirements.
- 13.4 We note the respondent’s concerns but consider that that it is appropriate in this statement to limit our changes to those ensuring that the GC’s meet the minimum Community obligations under the USD, as the consideration of mechanism for the establishment of a centralised directory information and the supply of such information are the subject of a separate review⁹³. However, we will be restarting our review of telephone directory information obligations and regulations⁹⁴ and invite the respondent to resubmit their proposal at that time to be considered as part of that review.
- 13.5 On a related point, BT argued in its response that we are required to remove the obligation to provide *operator assistance* from GC8. However, while the framework requirement to ensure an operator assistance service is no longer extant this does not require us to remove the obligation though clearly we should consider the appropriateness of its retention. We consider that it would not be appropriate to remove this obligation without broader consultation on the impact on consumers. We intend to include this issue in the review of wholesale DQ services mentioned above and also invite BT to submit their proposal at that time.

⁹³ We note that the consideration of mechanism for the establishment of a centralised directory information and the supply of such information are the subject of a separate review.

⁹⁴ The consultation on the review of telephone directory information obligations and regulations (<http://stakeholders.ofcom.org.uk/consultations/dirinfo/>) was published in 2008. The review was suspended later that year pending the resolution of appeals of our decision on disputes raised by the Number and Conduit with respect to BT’s supply of directly information. The final resolution of these appeals, which were ultimately referred to the European Court of Justice, is expected this year.

Information about Customer Service

- 13.6 Consumer Focus raised a separate point about new Article 22 of the USD stating that 'National regulatory authorities may specify, among other things, the quality of service (QoS) parameters to be measured and the content, form and manner of the information to be published'. They believed "*that QoS can be defined by Ofcom under this provision, and can refer not only to network performance, speed and reliability, but also quality of customer service*" and that we should work with consumer organisations in setting minimum quality of service indicators.
- 13.7 We believe this Article is 'permissive' in the sense that we may consider specifying such details on Quality of Service. We also note Consumer Focus' interest is in the availability of information on providers' customer service to enable consumers to compare performance and make informed choices. In July 2010 we published market research on consumers' views of their communications providers' customer service⁹⁵, which included information by provider. We have recently carried out a second wave of this research and expect to publish it over the summer, with a view to informing consumers' choice of provider.

⁹⁵ <http://stakeholders.ofcom.org.uk/consultations/topcomm/qos-report/> .

Annex 1

List of consultation respondents

A1.1 We received 33 responses to our consultation.

A1.2 The 30 stakeholders who submitted non-confidential responses are listed below⁹⁶. In addition, we received confidential responses from 3 communications and service providers.

- **Antelope Consulting**
- **BT**
- **C&W (Cable & Wireless Worldwide)**
- **Colt**
- **Connexon**
- **Consumer Focus**
- **EE (Everything Everywhere)**
- **FCS (Federation of Communications Services)**
- **Hearing Link**
- **ITSPA**
- **MBG (the Mobile Broadband Group)**
- **NDCS (National Deaf Children's Society)**
- **O2**
- **Ombudsman Services**
- **PhoneAbility**
- **REACH112**
- **RNID (The Royal National Institute for Deaf People)**
- **Sense**
- **Sky**
- **Skype**

⁹⁶ Their responses are published on our website at <http://stakeholders.ofcom.org.uk/consultations/gc-usc/?showResponses=true&pageNum=1#responses> .

- **Sorenson**
- **SSE (Scottish and Southern Energy)**
- **TAG**
- **TalkTalk**
- **Three**
- **UKCTA**
- **Verizon Business**
- **Vodafone**
- **VON (Voice on the Net Coalition Europe)**
- **Vonage**