



## Consumer Switching

A consultation on processes for switching fixed voice and broadband providers on the KCOM copper network

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Consultation

Publication date: 29 October 2014

Closing Date for Responses: 10 December 2014

## About this document

It is vital for consumers to be able to exercise their choice and switch providers easily in order to take advantage of competition in the communications sector.

This document sets out our consultation on switching processes used on the KCOM copper network. KCOM provides voice and broadband services in the Kingston upon Hull area, where the Openreach network is not available.

This consultation follows on from our decision in December 2013 to harmonise all switches for fixed voice and/or broadband services over the Openreach network to a single Gaining Provider Led process using the existing Notification of Transfer (NoT) process. At the same time we decided to implement five enhancements to improve the NoT process.

In this document we are consulting on harmonising the two existing KCOM processes to a single process led by the gaining provider. We are also consulting on implementing the same five enhancements to improve the NoT process that have been implemented on the Openreach network.

We are seeking views from Stakeholders on our proposals. The Consultation closes on 10 December 2014.

We will aim to publish a statement in early 2015.

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## Section 1

# Executive Summary

- 1.1 Competitive communication markets are more likely to work well for consumers when it is quick and easy to switch between providers.
- 1.2 In 2013 we decided to harmonise switching processes on the Openreach network to a single process based on the existing Gaining Provider Led Notification of Transfer (GPL NoT) model, with five additional enhancements designed to improve consumer protection.
- 1.3 We are now consulting on similar proposals for switching fixed voice and broadband services delivered over the copper network provided by KCOM<sup>1</sup>. These proposals include harmonising the two processes used for switches made over the KCOM copper network to a single Gaining Provider Led (GPL) process.
- 1.4 KCOM and Openreach's network and services are very similar to one another. As such, we consider it likely that the problems and resulting consumer harm we identified in relation to switching processes on the Openreach network also exist in respect of switching processes on the KCOM network. These likely harms include the drawbacks of the Losing Provider Led Migration Authorisation Code (LPL MAC) process and the existence of multiple processes.
- 1.5 We recognise that given the significantly smaller size of KCOM's network compared with that of Openreach, the scale of any consumer harm in this regard will be lower than was the case with Openreach, as will the scale of the benefits we consider will result from the changes we propose. Notwithstanding this, we consider that there are likely to be advantages to adopting the existing Notice of Transfer (NoT) model of GPL to apply on the KCOM network. We also consider that harmonising to this process is likely to deliver improvements for consumers more quickly, with lower implementation risk and at lower cost, than changing to a different switching process.
- 1.6 For the reasons set out in this document, in particular the similarity between the relevant networks and services, we consider it likely that the problems we associated with the NoT process on the Openreach network - slamming, break in service, erroneous transfers, and lack of clarity over the implications of the switch – are likely to exist on the KCOM network.
- 1.7 We therefore propose to make the same improvements to the NoT process on the KCOM network as those which have already been implemented within the NoT process on the Openreach network. These would require:
  - that a record of customer consent to switch a fixed voice or broadband service be obtained and stored;
  - the provision of better information on the implications of switching;
  - that gaining providers (GPs) order the simultaneous transfer with minimal loss of service, of bundled voice and broadband services;

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<sup>1</sup> KCOM is the designated Universal Service Provider in the Hull area.

- that no Working Line Takeover (WLT) order shall be placed unless an exact address match has been identified; and
  - that a notification shall be sent by the incumbent (losing) Communications Providers (CPs) to its end users advising them of the order under the WLT process - via post or use of e-mail with consumer consent.
- 1.8 In light of the significantly smaller scale of the KCOM network compared with the Openreach network and given KCOM, the operator that would be most affected, has indicated to us that they are open to the changes we are proposing, we have not carried out the same evidence-gathering process as we did when we proposed these changes to switching processes on the Openreach network. We are however inviting stakeholders to provide us with any evidence that they consider we should take into account before deciding whether to proceed with our proposals.
- 1.9 Subject to the outcome of this consultation and our final decisions, we expect the timescales for implementing both the NoT process, and the NoT+<sup>2</sup> enhancements on the KCOM network will take nine months.
- 1.10 Ofcom is seeking views on these proposed changes by 10 December 2014.

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<sup>2</sup> We term this proposed solution 'GPL NoT+' because it builds on the existing GPL NoT process.

## Section 2

# Introduction

- 2.1 In this section, we set out the key aims, objectives and scope of this consultation. We consider the rationale for intervention in the processes for switching fixed voice and broadband providers over the KCOM copper network and we explain the relevant regulatory framework.

## Background

- 2.2 Well-functioning communications markets require effective switching processes. The ability to switch Communications Providers ('CPs') allows consumers to exercise choice, purchase the service or combination of services which best meet their needs, and switch away if they are dissatisfied with a provider. Conversely, ineffective processes constrain consumer choice, and hence can also be harmful to competition, investment and market entry.
- 2.3 Ofcom has a principal duty to further the interests of consumers in relevant markets, where appropriate by promoting competition. The interests of consumers in relation to switching processes mainly concern their experience of switching, including the ability to switch quickly and conveniently and without loss of service, to be made aware of the implication of their decision to switch and to be protected from being switched against their will. In this process we are therefore primarily concerned with issues directly affecting consumers, but we also consider implications for competition.
- 2.4 This consultation concerns the processes used for switching between providers offering voice and broadband services over the KCOM copper network in the Hull area. It follows our decision in August 2013 to harmonise all switches made over the Openreach copper network to the existing Notice of Transfer (NoT) process, which is led by the gaining provider, and our decision in December 2013 to introduce a number of enhancements to this process. We are currently working with industry and the Office of the Telecommunications Adjudicator (OTA) to ensure that these changes are fully implemented by June 2015.
- 2.5 Our work on the switching processes used on the KCOM network forms part of Ofcom's wider programme of switching work, which aims to improve the experience of consumers seeking to change their CP. As set out in our July 2014 Call For Inputs<sup>3</sup>, we are also currently assessing switching processes for voice, broadband and pay TV services (and service bundles) delivered over cable, satellite, Openreach and mobile networks. In addition, we continue to explore options for making incremental improvements to Openreach switching processes, and to address contractual barriers to switching.

## Scope of this consultation

- 2.6 This consultation concerns processes for switching voice and broadband provider over the copper network owned and operated by KCOM in the Hull area.

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<sup>3</sup> Consumer switching: Next steps and call for inputs  
<http://stakeholders.ofcom.org.uk/consultations/consumer-switching-cfi/>

- 2.7 We are not considering switches made between the KCOM copper network and other networks as part of this work. This includes switches made to and from the fibre network which KCOM is currently deploying to premises within its footprint. Penetration of this network is currently limited (KCOM expects to have passed 45,000 premises by March 2015<sup>4</sup> and take-up is currently 27%<sup>5</sup>), and KCOM, through its KC Lightstream brand, is the only retailer. We think it likely in the near term that most switches between KCOM's copper and fibre networks will be made by KC retail customers seeking to upgrade their broadband. In this scenario, KCOM has an incentive to ensure that the transition runs smoothly. While this remains the case, we do not see a reason to explore the case for regulatory intervention. However, we will keep this position under review as fibre take-up in Hull grows.
- 2.8 We are also excluding switches between the KCOM and Openreach copper networks, in locations where overlap exists (such as the East Yorkshire Expansion area). We understand that around [X] premises are served by both networks in this area. We consider that the scale of switching between them is likely to be low and does not currently merit an investigation into the case for a regulatory intervention. We will review this position in the event that there is a material increase in the level of network overlap.
- 2.9 We recognise that an increasing number of KCOM's retail customers take a communications service bundle which includes TV provided through a combination of broadband and digital terrestrial (DTT) transmission, using the YouView platform. Some also take KCOM's mobile telephony service, provided under a mobile virtual network operator (MVNO) arrangement over O2's network. Processes for switching pay TV and mobile services are also not within the scope of this consultation. We will consider them as part of our wider work looking at switching arrangements for other networks and services, as set out in our Call For Inputs published in July this year.<sup>6</sup> Where mobile and pay TV services are taken as part of a bundle with KCOM voice or broadband services, we are only concerned in this consultation with switching processes for the voice and broadband components.

## Regulatory Framework

- 2.10 We are proposing to improve consumer switching processes by using our power to amend the General Conditions of Entitlement ('GCs'). We set out below an overview of Ofcom's relevant duties and powers under the Communications Act 2003 ('the Act') and the requirements and procedures to be met before Ofcom can introduce new GCs or modify any existing conditions.

## Legal Framework

- 2.11 Ofcom regulates the communications sector under, and in accordance with, the framework established by the Act and European Community requirements for regulation. This is known as the 'European Framework'. The European Framework and its associated Directives provide a common framework for the regulation of electronic communications networks and services in the EU.

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<sup>4</sup> KCOM Annual Report 2013/14

<http://www.kcomplc.com/docs/news-pdf/annual-reports/annual-report-2013-14.pdf> p13

<sup>5</sup> KCOM Trading Statement end Sept 2014

<http://www.kcomplc.com/media-centre/news-2014/kcom-group-plc-trading-statement/>

<sup>6</sup> Consumer switching: Next steps and call for inputs

<http://stakeholders.ofcom.org.uk/consultations/consumer-switching-cfi/>

## Ofcom's general duties

2.12 Section 3(1) of the Act states that:

'it shall be the principal duty of Ofcom, in carrying out their functions:-

to further the interests of citizens in relation to communication matters; and

to further the interests of consumers in relevant markets, where appropriate by promoting competition'.

2.13 Section 3(2) of the Act states that Ofcom is required, when carrying out its functions, among other things, to secure the availability throughout the UK of a wide range of electronic communications services.

2.14 Section 3(3) of the Act requires Ofcom, when performing its duties, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and any other principles appearing to Ofcom to represent best regulatory practice.

2.15 Section 3(4) of the Act states that in performing its duties, Ofcom must also have regard to a number of matters as appears to be relevant in the circumstances, including:

- i) the desirability of promoting competition in relevant markets;
- ii) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- iii) the desirability of encouraging investment and innovation in relevant markets;
- iv) the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;
- v) the needs of persons with disabilities, of the elderly and of those on low incomes;
- vi) the opinions of consumers in relevant markets and of members of the public generally; and
- vii) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsection 3(1) and 3(2) is reasonably practicable.

2.16 In addition, Section 3(5) of the Act requires Ofcom, when performing its duty to further the interests of consumers, to have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

2.17 Consumer is defined in Section 405(5) of the Act and includes people acting in their personal capacity or for the purposes of, or in connection with, a business.

## European Community requirements for regulation

2.18 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements. In summary, these requirements are to:



- i) promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- ii) contribute to the development of the European internal market;
- iii) promote the interests of all persons who are citizens of the European Union;
- iv) not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
- v) encourage the provision of network access and service interoperability for the purpose of securing:
  - efficient and sustainable competition;
  - efficient investment and innovation; and
  - the maximum benefit for customers of CPs.
- vi) encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of CPs.

2.19 In doing so, Ofcom has to read these requirements in accordance with the requirements of Article 8 of the Framework Directive.

2.20 Article 6 of the Authorisation Directive allows Ofcom to set conditions containing 'consumer protection rules specific to the electronic communications sector, including conditions in conformity with Directive 2002/22/EC ('Universal Service Directive')'. Ofcom's power to set conditions relating to consumer protection is not limited to the measures set out in that directive.

### **Powers and duties in relation to GCs**

2.21 Ofcom sets GCs to which all CPs in the category specified in that GC (e.g. providers of publicly available telephone services) must comply. The specific requirements will depend on the nature of the service and the type of customer.

2.22 Section 45 of the Act gives Ofcom the power to set GCs which can only contain provisions authorised or required by one or more of Sections 51, 52, 57, 58 or 64 of the Act. Section 47 governs the circumstances in which Ofcom can set or modify a GC. It states that a condition can be modified where that is:

- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- c) proportionate to what the condition or modification is intended to achieve; and
- d) in relation to what it is intended to achieve, transparent.

2.23 Under Section 51(1)(a) of the Act, Ofcom can set GCs which make such provision as we consider appropriate for the purpose of protecting the interests of end-users of

public electronic communications services. Under Section 51(2) this power includes the power to set conditions for that purpose which:

- i) ensure that conditions and procedures for the termination of a contract do not act as a disincentive to an end-user changing CP;
- ii) relate to the supply, provision or making available of goods, services or facilities in association with the provision of public electronic communications services;
- iii) give effect to Community obligations to provide protection for such end-users in relation to the supply, provision, or making available of those goods, services or facilities;
- iv) require the provision, free of charge, of specified information, or information of a specified kind, to end-users.

2.24 Ofcom's power to set conditions in order to protect end-users is not limited to the list of purposes set out in 51(2).

### **Application of the legal framework to switching processes**

2.25 Ofcom's principal duty, in carrying out our functions, is to further the interests of citizens in communications matters, and consumers in relevant markets, where appropriate by promoting competition.

2.26 In the current context, our primary objective is to further the interests of consumers by protecting their interests as end-users of voice and broadband products delivered over the KCOM copper network. This document is primarily concerned with how Ofcom should seek to protect those interests where a consumer wishes to switch supplier.

2.27 We therefore consider the consumer's experience under current switching processes. We note in particular that under Section 4(5) of the Act Ofcom is under a duty to act in accordance with the Community requirement to promote the interests of citizens by ensuring a high level of protection for consumers in their dealings with suppliers. Pursuant to Sections 51 and 52 of the Act, we may set conditions for the protection of consumers, in particular:

- i) to ensure that the procedures for contract termination do not act as a disincentive against changing service provider,
- ii) to require the provision, free of charge, of specified information, or information of a specified kind, to end-users; and
- iii) to give effect to Community obligations to provide protection for consumers in relation to the supply, provision or making available of public electronic communications services. Such obligations include those contained in Article 30 of the Universal Services Directive (as amended), which require Member States to:
  - a) protect consumers throughout the switching process; and
  - b) ensure that consumers are not switched to another CP against their will.

## Section 3

# Proposal to harmonise to GPL NoT+

## Introduction

- 3.1 In this section we describe the processes that are currently used for switching fixed voice and broadband services on the KCOM network and set out our approach to this consultation. We then detail and assess our proposals to:
- Harmonise to a single switching process
  - Adopt a Gaining Provider Led (GPL) process
  - Adopt proposed enhancements which are part of the NoT+ switching process.

## Background to switching processes on the KCOM network

- 3.2 Changes to wholesale arrangements in 2009 facilitated competition in the provision of fixed voice and broadband services to Hull. KCOM are now required to provide both narrowband and broadband network access to alternative providers. However, unlike BT, they are not obliged to offer Wholesale Line Rental (WLR) and Local Loop Unbundling (LLU).
- 3.3 We understand that [X] CPs, including KCOM's KC retail business, have purchased voice and/or broadband services provided over KCOM's copper network, and now resell them, predominantly to business customers. In total, there have been around [X] switches between these providers.
- 3.4 Two formal switching processes are available to help consumers wishing to move from KC to a reseller, from a reseller to KC, or between resellers. These processes are similar to those used on Openreach infrastructure, although we understand that they have been simplified to reflect the lower scale of switching. There is no automated interface between KCOM and its resellers; all switches are processed by e-mail or call. Some aspects of both processes are governed by the GCs.
- **The Notice of Transfer (NoT) process** is used for switching fixed voice services on the KCOM network.<sup>7</sup> This is a GPL process, where the consumer need only contact their (new) Gaining Provider to switch. The GP then places an order via an email to initiate the transfer process and all provisioning activity is undertaken via KCOM's systems. The consumer receives letters from both providers confirming the planned switch before it happens. This gives them an opportunity to stop the order going ahead in cases where they change their mind, or have no knowledge of (or did not consent to) the attempted switch. We understand that around [X] lines have been switched using this process.

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<sup>7</sup> On the Openreach network the NoT process is also used for switching broadband services where either the gaining or losing provider uses Metallic Path Facility ('MPF') technology and fixed voice services where both gaining and losing providers use Wholesale Line Rental ('WLR') technology. MPF is the product sold by Openreach to allow providers to gain full control of the local loop connecting to end users to deliver both voice and broadband to end users. WLR is the product offered by Openreach to communications providers to enable them to offer fixed voice services to end users without having to fully manage the line.

- **The Migration Authorisation Code (MAC) process.** This is a Losing Provider Led (LPL) process which applies to DSL broadband switches. A consumer wishing to change provider requests a code (a reference number generated by KCOM systems) from their LP, who carries out checks to confirm that the request has been made by the legitimate account holder. The consumer has an opportunity to discuss the implications of switching with the LP during this time. The consumer must then supply the code to their GP, who places an order via email to initiate the transfer process. We understand that around [3<] switches have been made using the MAC process.
- All voice and broadband switches over the KCOM network can be executed using the NoT and MAC processes respectively. However, the consumer may instead elect to co-ordinate the transfer themselves, without using any formal process. This requires them to contact their LP to terminate their existing contract, and request a new service from the GP. Under this arrangement it is the consumer who manages the stopping and starting of the two services. We describe this as **Cease and Re-provide**.

3.5 In practice, many consumers take both voice and broadband services as part of a bundle from their KCOM network provider. If they wish to switch these services to a new provider, and would like the transfer to be arranged on their behalf, they will need to speak to both the old and the new provider and use two separate processes. The GP will use the NoT process for the voice service, and the LP can issue a MAC for the broadband, which the consumer must then pass on to the new provider. Both providers should be able to offer accurate advice on the correct process to use for each service.<sup>8</sup>

3.6 Our work on the Openreach copper network switches identified a number of problems faced by consumers when transferring services using the two available switching processes (NoT and MAC). As indicated above, since there are strong similarities between these processes and those used on the KCOM network, we think it likely that the problems we found on the Openreach network may also be present on the KCOM network, albeit on a smaller scale. The problems we found in respect of Openreach, having conducted consumer research and invited submissions from stakeholders, are:

- a) Multiple processes - The existence of multiple processes can create confusion and lack of clarity, which can deter some consumers from switching. It can also create added complexity and difficulty for consumers switching bundles, if they have to follow multiple processes simultaneously.
- b) Consumer difficulty and unnecessary switching costs - For some broadband switches, the LPL Migration Authorisation Code ('LPL MAC') process makes the consumer's desired switch subject to the actions of a provider that has little incentive to make the switch happen. This can result in delays, increased costs, and sometimes unwanted pressure on the consumer to reverse their decision.

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<sup>8</sup> On the KCOM network, advising consumers on which switching process to use is relatively straightforward as migration of voice services uses only the NoT process, while broadband migrations use the MAC process. This is in contrast to the Openreach network where CPs can find it difficult to adequately advise the consumer on the correct switching process as it is dependent on the wholesale services used (MPF, SMPF, WLR etc) by the gaining and losing provider.

- c) Lack of awareness of the implications of switching. Consumers often do not receive specific and neutral information from suppliers as to the implications of a switch.
- d) Insufficient customer consent. There are still concerns over consumers being switched against their will despite informal and formal enforcement action having had a positive impact.
- e) Erroneous transfers. Switches where the wrong line is inadvertently switched - often as a result of home moves. We identified a variety of underlying causes.
- f) Loss of service. A significant minority of consumers suffer some loss of service when switching – primarily when switching to or from a bundle of fixed voice and broadband services.
- g) ‘Reactive save’. We also identified risks to competition associated with the fact that a LPL system provides the losing provider with prior contact with every consumer seeking to switch away. This enables losing providers to engage in ‘reactive save’ activity, which may lead to indirect consumer harm as it risks a dampening of the competitive process.

3.7 We have not undertaken new research to establish the nature or extent of these problems specifically on the KCOM network, nor have we commissioned work to estimate the specific costs of our proposed changes. To do so would be likely to duplicate much of the work we have already undertaken on the review of Openreach switching processes and involve considerable expense which in our view would not be a sensible use of resources given the relative scale of the KCOM network compared with the Openreach network and KCOM have indicated to us that they are open to the changes we are proposing. We nevertheless consider it appropriate to consider, as we do in this document, whether there is likely to be a benefit from implementing in relation to KCOM the remedies that we imposed in respect of the Openreach network.

3.8 This is in part because we believe most resellers on the KCOM network will have already implemented our proposed changes in order to fulfil their obligations on the Openreach network. We believe that the costs to extend these changes to cover switching on the KCOM network are therefore likely to be low.

3.9 We would welcome stakeholders’ views on our assessment, including any evidence on the extent of the problems we have identified and the costs associated with our proposed enhancements.

## **Harmonising to a single switching process**

3.10 We think that there is a risk that the existence of two processes on the KCOM network may increase consumer perception that switching is difficult. In our August 2013 consultation on Openreach switching processes, we highlighted evidence to support our concerns (paragraph 4.13)<sup>9</sup> that this may deter some consumers from switching.

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<sup>9</sup> For example our research found around one third (34%) of those who had not switched or had not considered switching provider in the last 12 months, and felt switching providers was too much hassle, raised concerns about knowing which steps they needed to take to switch provider.

- 3.11 The need to navigate two processes simultaneously is also likely to add to the complexity and difficulty associated with changing provider. The continuing trend towards communications service bundling<sup>10</sup> suggests that this concern is likely to get worse in the future. Our previous work on the Openreach copper network found that consumers were likely to find it easier to understand a single process for all voice and broadband switches. We believe that harmonising to a single process would similarly benefit consumers seeking to switch services provided over the KCOM copper network.
- 3.12 Given that the maintenance of separate processes does not in itself generate material benefits for consumers, and in the light of the potential benefits of having a single process for both voice and broadband switches, we think that the processes for switching communications services over the KCOM copper network should be harmonised.

*Q1. Do you agree (i) that the problems we identified as arising in relation to switches on the Openreach network exist, or might be expected to exist in the future, in relation to existing switching processes on the KCOM network, and (ii) that consumers and businesses would benefit from a single process for switching voice and broadband services between providers using KCOM's copper network? If not, please explain why, where possible providing evidence to support your view.*

## Adopting a GPL switching process

- 3.13 We have considered whether any harmonised single switching process on the KCOM copper network should be led by the Gaining or the Losing Provider. Our aim is to find a proportionate solution which can enhance the consumer experience of switching, while continuing to promote competition.
- 3.14 In making this judgment we consider that four key factors weigh in favour of adopting a GPL solution.
- i) We consider that LPL systems generally create higher switching costs and difficulties for consumers. Under LPL, consumers must go through a process with the losing provider which the losing provider has little incentive to support. Harmonising to an LPL system therefore risks worsening the consumer experience of switching. By contrast, our previous research on the Openreach network found that overall GPL processes tend to support a positive consumer experience (see Figure 1 below)<sup>11</sup>, and we are not aware of any reasons why the position should be any different on the KCOM network given its similarities with the Openreach network.
  - ii) We have concerns over the impact which harmonisation to an LPL system could have on competition. Our previous analysis of Openreach switching systems

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Furthermore, 8% of those considering switching broadband as a standalone service or as part of a bundle decided not to switch as they were 'worried about the process'.

<sup>10</sup> Just over six in ten consumers (63%) bought at least two of their communications services together in a bundle in Q1 2014, a slight increase on the previous year's figure (60%), Communications Market Report 2014,

[http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr14/2014\\_UK\\_CMV.pdf](http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr14/2014_UK_CMV.pdf)

<sup>11</sup> Assessment and conclusions on how LPL and GPL options address the problems identified, Paragraphs 7.30 to 7.133, 8.8 to 8.53, 8.65 to 8.75, Openreach Consumer Switching Consultation August 2013, [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer\\_Switching.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer_Switching.pdf)

found that it was harder for CPs to acquire customers under LPL than GPL because consumers find the LPL process more difficult.<sup>12</sup> We consider that this is particularly important in the context of KCOM's large share of retail voice and broadband customers in the Kingston upon Hull area.

- iii) The large majority of KCOM network switches currently relate to voice services delivered over analogue lines. The General Conditions of Entitlement require that these switches use the GPL system called Notice of Transfer. Harmonising to this GPL model is therefore likely to be less disruptive for consumers, industry and competition, than adopting the LPL MAC process, which is used only for the minority of switches which relate solely to broadband.
- iv) In light of the fact that many CPs will have already adapted their switching processes to work with the GPL process on the Openreach network, we consider that the costs of adopting a harmonised gaining provider led process on the KCOM network are not likely to be high.

**Figure 1: Issues experienced during GPL and LPL switches on Openreach\*\***

| Issue  | GPL (196)  |       |       | LPL excluding mobile (94*) |       |       |
|--|------------|-------|-------|----------------------------|-------|-------|
|  | Main/Major | Minor | Total | Main/Major                 | Minor | Total |
| Being without service during switch            | 9          | 22    | 31    | 19                         | 28    | 47    |
| Arranging services to start/stop at right time | 13         | 22    | 35    | 19                         | 38    | 57    |
| Paying for both services                       | 11         | 20    | 31    | 14                         | 21    | 35    |
| Provider making it difficult to switch         | 6          | 16    | 22    | 18                         | 23    | 41    |
| Provider trying to persuade me to stay         | 9          | 29    | 38    | 20                         | 46    | 66    |
| Clarity of switching process                   | 8          | 26    | 34    | 16                         | 39    | 55    |
| Needing to contact more than one provider      | 5          | 17    | 22    | 15                         | 43    | 57    |

Source: Summarised from Customer Retention and Interoperability Research 2012, QE1/2 Base: All Switchers (past 2 years) \* low base size treat as indicative only. Significance tests have been conducted on 95% confidence interval.

\*\* Initial screening to identify qualifying respondents was conducted among a representative sample of 7,497 residential consumers in the UK, including across Government Office Regions. A small number of KCOM switchers may therefore be included in this sample.

3.15 On the basis that we consider GPL processes are more likely than LPL to reduce switching costs and difficulties for consumers, and to support competition, we think that a GPL system should be preferred.

*Q2. Do you agree with our view that consumers are likely to find switching provider over the KCOM copper network cheaper and easier under a GPL process than under*

<sup>12</sup> There may also be a risk to competition due to the ability of the LP to make a 'save' offer to each and every customer switching under the MAC process. However, we do not have information on how prevalent this activity is on the KCOM copper network and so have not analysed it further.

*an LPL process? If not, please explain why, where possible providing evidence to support your view.*

## Adopting the NoT+ switching process

- 3.16 A GPL process for voice and broadband switches made over the KCOM network could take a number of forms. We consider that there are significant advantages to adopting the existing Notice of Transfer (NoT) model of GPL as this is likely to deliver improvements for consumers more quickly, with lower implementation risk and at lower cost, than changing to a new form of GPL process. We are therefore not consulting on alternative GPL models.
- 3.17 On the Openreach network, the NoT process is associated with four key switching-related problems; slamming, break in service, erroneous transfers, and lack of clarity over the implications of the switch. Given the similarities between the Openreach and the KCOM networks, we consider that some or all of these issues are also likely to exist on the KCOM network, although their impact and scale may well differ given the difference in scale of those networks. On that basis, we believe that these issues can be addressed by requiring providers on the KCOM network to adopt the 'NoT+' consumer protection enhancements that we specified for providers on the Openreach network in our December 2013 statement on switching processes.
- 3.18 The rest of this section considers the likely extent and impact of each of these four switching issues on the KCOM network. We then detail the relevant NoT+ enhancement designed to address the problem, and assess its likely effectiveness. We then comment on the likely cost of implementation and the proportionality of the measure. We complete this section by outlining the expected timescales for implementing GPL NoT+, subject to consultation, and set out an explanation of how the proposed changes translate into modifications of the GCs.

### 1. Obtain and store record of customer consent to switch

#### Introduction

- 3.19 Slamming occurs when a consumer is switched to another provider without their explicit knowledge or consent. This typically results from a lack of upfront checks to ensure that the customer has been correctly identified, together with a failure to secure their authority and agreement to switch.

#### Current GC 22 requirement

- 3.20 GC 22.8 currently places a requirement on CPs on the Openreach copper network to obtain and store a clear 'record of consent' to switch from a consumer. A record of consent is required for each contract entered into by a GP with an end user for the provision of broadband and/or voice services and must be retained for a 12-month period, even when the transfer is subsequently cancelled or terminated by the customer. Each record must be retrievable on an individual basis.
- 3.21 Each of the following could constitute a record of consent:
- for telesales, a call recording of the customers' consent to the transfer. This could either be an individual element of the telesales process (i.e. a verification stage), or achieved by putting the consumer through to a separate person (e.g. internal verifier) who records the consent;



- for retail/shop and doorstep sales, a written record of consent signed by the customer to transfer; or
- for online sales, screen shots of order systems or account interactions relating to the sale in question. For example, by clicking the 'Agree' button at the bottom of a Record of Consent page, the consumer would be giving their consent to switch.<sup>13</sup>

3.22 A key aspect of the requirement is the ability to demonstrate that express consent was given and to make clear which service the customer has consented to. To help achieve this the record needs to contain the following information:

- a direct record of consent provided by the customer;
- an explanation from the CP that they are required to create a record of the customer's consent;
- the name and address of the customer;
- the time, date and means by which the consent was given;
- where appropriate, the place where consent was given and the salesperson(s) involved;
- the address where the target line is situated; and
- where appropriate, the Caller Line Identification ('CLI' or telephone number) of the target line.

### Rationale for GC 22 requirement

3.23 Slamming can cause significant harm for affected consumers. It can lead to distress and may require time and effort to resolve. Consumers who are slammed during a minimum contract period may be asked to pay an early termination charge (ETC). Slamming also creates significant costs for providers, who need to deal with affected consumers and may have to rectify the error. These costs may ultimately be borne by consumers generally in the form of higher prices.

3.24 In our August 2013 document we concluded that the level of slamming on the Openreach network is likely to be low.<sup>14</sup> We noted, for example in paragraph 5.32, that in February 2013 around 1% of UK adults said they had their fixed voice and/or fixed broadband switched without their consent in the previous 12 months. This figure was significantly lower than results from a comparable 2011 survey.<sup>15</sup> Nevertheless, we remained concerned to ensure that slamming did not become a problem in the future.

3.25 We found evidence of poor and variable record keeping by CPs in relation to mis-selling and slamming. We concluded that deficiencies in record keeping could

<sup>13</sup> Additional clarifications arising from an Industry meeting in March 2014 on what could constitute a the record were published here: [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/statement/Additional\\_clarifications.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/statement/Additional_clarifications.pdf)

<sup>14</sup> Paragraph 5.60, [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer\\_Switching.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer_Switching.pdf)

<sup>15</sup> We estimated that the existing costs to slamming to be between £2.1m to £2.6m.

impede our ability to investigate slamming and that the current framework for enforcement is not well suited to addressing slamming by the long tail of CPs.

- 3.26 We therefore set out a new obligation on Openreach providers to improve the record of consent obtained and stored of a customer's consent to switch a fixed voice and/or broadband service. This requirement is separate and distinct from GC 22.7<sup>16</sup> (formally GC 24.11) that covers records regarding the sale of fixed-line telecommunications.
- 3.27 We believe a record of consent delivers the following benefits:
- It will act as a deterrent against slamming because sales agents will be aware that consent is recorded for each sale.
  - It will help in any investigations made by a CP or as part of a dispute resolution process following a complaint from a consumer, to establish whether consent was given for a particular sale.
  - It will enhance our enforcement capabilities by improving the ease with which we can classify cases that are the result of slamming or other causes. This will ensure that we can target our resources at incidences of non-compliance and will enable prompt enforcement against CPs.
  - Where a CP is unable to provide records, we have to identify other forms of evidence to determine whether there is non-compliance, including witness statements, questionnaires, and call notes. It takes significant resource to collect this evidence; freeing this up helps us focus on other complaints.
  - It will enable us to establish the extent of non-compliance more effectively by comparing transfer requests from the network provider with CPs records of consent, rather than basing our investigation only on complaints that we receive.
- 3.28 Based on analysis of our previous investigations into slamming on the Openreach network, we concluded that a 12-month retention period would ensure that consumers have enough time to report the slam to us. It would also enable us to monitor complaints data and fully investigate the extent of any non-compliance by a CP.
- 3.29 The 12-month retention period applies even when the transfer is subsequently cancelled or terminated by the customer. This ensures that we are able to investigate alleged slamming cases where the consumer has transferred back to their original CP or where there is a complaint regarding an attempted slam.
- 3.30 Where a CP is unable to provide a record of consent we will act against 'failure to keep a record of consent' under the new requirement. Where multiple attempts have been made to switch a service on a single line, a clear record of consent for each request to switch made by a CP will be required. This obligation can be enforced irrespective of whether we are able to collect other evidence that the CP has also breached the mis-selling prohibitions.

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<sup>16</sup> This GC sets out the obligation on CPs to 'use reasonable endeavours to create and keep all records regarding the sale of its Fixed-Line Telecommunications Service, for a period of not less than six months'. Under this obligation CPs were only required to use reasonable endeavours to create and keep these records and were not specifically required to maintain a direct record of the consumer's consent to switch.

- 3.31 The recording of consent from a consumer to switch their services is intended to deter, and enhance our ability to investigate, slamming. However, there still remains the potential for consumers to be misled during the initial sales call. In order to help us continue to enforce against mis-selling more generally, we have retained the requirement (now under GC 22.7) for the CP to use reasonable endeavours to create and keep all records regarding the sale of its communications services.

### Slamming and the KCOM network

- 3.32 For the same reasons as applied in relation to Openreach<sup>17</sup>, we believe the incidence of slamming in the Hull area is also likely to be low at this time. Nevertheless, we remain of the view that slamming creates significant harm for those affected and imposes significant costs on consumers and industry. As was the case in relation to Openreach, we are concerned to ensure that slamming does not become a problem in the future. We are therefore proposing to extend the GC requirement on record of consent to KCOM providers.

### Impact of the proposed new requirement

- 3.33 The impact of this proposal is most likely to be felt by smaller providers who use a telesales channel, but do not have call recording systems in place. These providers would be required to adopt the functionality to record, retain and retrieve records.
- 3.34 Some CPs that do have existing call recordings systems would also be likely to incur some additional costs, through the need to configure systems to log and organise call recordings so that they are easily retrievable. In addition, costs may be incurred from the hardware required to store these recordings for the required time period. Most CPs are likely to incur additional costs to record and store a record of consent for face-to-face and web sales.
- 3.35 We have not assessed the likely scale of these costs, although we do not consider it they are likely to be high, given the relatively straightforward nature of the systems that CPs would need to put in place. In addition, we understand that many resellers on the KCOM network also operate on the Openreach network. These resellers will already have systems in place for recording customer consent in order to comply with the identical requirement for Openreach providers under the new GC 22. We consider the incremental costs of deploying these systems for the KCOM network are likely to be low.

### Provisional View

- 3.36 We provisionally consider that given the potentially serious nature of the harm caused to consumers by slamming when it occurs, the consumer benefits of this enhancement if, as we would expect, it successfully helps reduce or eliminate slamming in the future, and the likely low level of costs that would be incurred, it is objectively justified and proportionate to require this enhancement to be implemented on the KCOM network.

*Q3. Do you agree with our assessment and our proposal to amend the GCs to require CPs to record and store customer consent to switch in order to address the*

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<sup>17</sup> See paragraphs 5.56 to 5.62, Consumer Switching Statement [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer\\_Switching.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer_Switching.pdf)

*problem of slamming? If not, please explain why, where possible providing evidence to support your view.*

## 2. Provide better information on the implications of switching

### Introduction

3.37 Consumers may face a number of practical and financial implications when they decide to switch provider. For example, there may be outstanding contractual liabilities with the Losing Provider (e.g. Early Termination Charges). It is important that consumers are properly informed of the financial and service implications of switching providers. We believe that the letter sent to the consumers by the Losing Provider under the NoT switching process is the best way to provide information on the implications of switching.

### Current GC 22 requirements

3.38 GC 22.11 and GC 22.12 currently require Losing Providers on the Openreach copper network to provide a range of information on the implications of switching by setting out the following information:

- the date of the letter;
- that the End-User is transferring their Communications Service;
- details of all Communications Services that will be transferred;
- where relevant, the Calling Line Identification of all Communications Services that will be transferred;
- details of all Communications Services or other types of services that the Losing Provider reasonably expects to be directly or indirectly affected by the transfer;
- details of all Communications Services that the Losing Provider reasonably expects to remain unaffected by the transfer;
- a reasonable estimate of the Migration Date (including date and time of the day);
- an explanation that the transfer will automatically take effect on the Migration Date and that no contact is required with the Losing Provider to cancel their existing service;
- an explanation that after the transfer, the Customer will receive a final bill including any Early Termination Charge that is due;
- an explanation of the applicable Early Termination Charge as set out in the contract;
- the means by which the Early Termination Charge must be paid;
- the amount of the Early Termination Charge due at the expected Migration Date;
- where applicable, the impact of the transfer on the prices of all continuing Communications Services; and

- relevant contact details.
- 3.39 This information should be set out in clear, intelligible and neutral terms and must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically (excluding SMS).
- 3.40 The letter should be specific to each consumer in order to provide them with the most accurate information before deciding to switch, and to remove the need to contact the LP for clarification.
- 3.41 Ofcom also encourages CPs to list, in clear, intelligible and neutral terms, services not provided by them but which they reasonably expect to be affected by the transfer. This applies in particular where these are of a critical nature in respect of security or health. We did not make changes to the General Conditions in order to make this a binding requirement. However, we will monitor CP practice in this area and may explore how any issues arising might be addressed, for example by changes to the OTA's Best Practice Guide. We may also consider the need for introducing new requirements in this respect, if CPs fail to protect consumers.
- 3.42 Ofcom's Guidance on Unfair Terms in Contracts sets out our view on what we consider Best Practice<sup>18</sup>. An industry template for the LP notification is due to be published by the OTA shortly.<sup>19</sup>
- 3.43 We did not change the provisions of the existing GCs which deal with losing provider contact with customers.
- GC 1.2 states that where a CP acquires information from another CP in connection with arrangements relating to network access, it should use this information for the purpose for which it was supplied and shall respect its confidentiality at all times. Such information shall not be passed on to any other party for whom it could provide a competitive advantage.
  - GC 22.14 requires that where an LP communicates with a customer in order to comply with this General Condition, the LP must not make any marketing representations likely to encourage a customer to terminate their contract with the GP and/or stay in a contract with the LP.

### Rationale for GC 22 requirements

- 3.44 We previously found in our 2012 Consultation that the letter sent by LPs on the Openreach network under the current NoT process is effective in providing consumers with information on the implications of switching. However, it does not always provide them with information specifically relevant to their circumstances in a neutral manner. This can cause confusion, and is likely to result in some consumers not being adequately informed, or feeling the need to go through the additional inconvenience of contacting the LP to find out more.
- 3.45 We consider that consumers can suffer harm if they find out about the implications of switching later on in the switching process and incur costs (time and hassle) if they decide to cancel the order as a result of the information. Unwinding orders also imposes costs on providers which may ultimately be borne by consumers.

<sup>18</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/Guidance.pdf>

<sup>19</sup> To be published on the OTA website: <http://www.offta.org.uk/best.htm>

- 3.46 In our August 2013 Openreach consultation, paragraphs 9.47 to 9.51, we highlighted evidence which suggests that the GPL NoT system is relatively effective in ensuring that the vast majority of switchers either do not pay an ETC or are prompted to find out whether they are liable for an ETC before they commit to switch.
- 3.47 We also identified the following weaknesses in the NoT letter which we considered could be overcome or mitigated by amending the GCs:
- it is used as a general prompt about the possibility of an ETC as opposed to providing specific information;
  - the LP may provide vague and confusing information in the letter;
  - the consumer may instead try to find out the information by, for example, contacting the LP or checking their terms and conditions. This could mean that they are not fully informed about the implications of their switch or that they face the additional inconvenience of contacting the LP or locating terms and conditions; and
  - consumer research suggests that many consumers are not made aware during the process that their services will be cancelled automatically. As a result, some customers contact their LP unnecessarily to cancel their service.
- 3.48 In light of this, we set out additional requirements intended to improve the effectiveness of the existing LP letter on the Openreach network, and to provide better information to consumers on the implications of switching.

### Information on the implications of switching and the KCOM network

- 3.49 In common with the position we found in relation to consumers on the Openreach network<sup>20</sup>, we consider that consumers on the KCOM network are similarly likely to be best served if the letter they receive from the LP provides good quality financial and service information about the implications of switching which are specifically relevant to their circumstances. We are not aware of any reasons why consumers on the KCOM network should be in any different position to those on the Openreach network. We are therefore proposing to extend the GC 22 requirements on implications of switching to KCOM providers.

### Impact of the new requirement

- 3.50 All CPs on the KCOM network are likely to need to update their systems and processes to implement our proposed new requirement, as the provision of specific information on service implications is an enhancement to the existing LP letter, as required under the previous General Condition (GC 24.7).
- 3.51 Although we have not estimated the likely scale of the costs to CPs on KCOM's copper network of providing specific information on the service implications of switching, including ETCs, within the NoT letter, for the reasons given below, we do not consider they are likely to be high.
- 3.52 Most CPs using the KCOM network are likely already to have developed systems for providing relevant information and sending letters in order to meet the identical

<sup>20</sup> See paragraphs 4.139 to 4.162: <http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/summary/condoc.pdf>

requirement for Openreach providers under the new GC 22. For these providers, we think that additional costs of meeting this requirement for the KCOM network are likely to be low.

- 3.53 Some system changes will be required by CPs that do not operate on the Openreach network to ensure consumer specific information is detailed in the LP notification letter. However, given LPs currently issue letters with generic information as part of the GPL NoT process, this does not constitute a significant change to the existing process and therefore we do not consider the costs are likely to be high.

### Provisional View

- 3.54 Our provisional view is that our proposed new requirement will ensure that consumers on the KCOM network are better informed about the implications of their decision to switch before committing themselves. In particular, we believe they are likely to benefit from precise information on applicable ETCs and the impact of the switch on other services which the LP reasonably expects to be directly or indirectly affected. They would also know that their contract for fixed voice and/or broadband will be automatically cancelled when the service is transferred. These improvements are also likely to reduce the consumer cost of finding out the full implications of their decision to switch as they will not need to contact their LP or spend time reviewing their terms and conditions.
- 3.55 In light of the increasing complexity of communication service purchase decisions, we provisionally consider that a written record of the LP's statement on the implications of switching will help consumers understand the trade-offs between different offerings. This is likely to be particularly useful where many variables must be taken into account which may not be easily understood via a telephone call. Where the implications are more readily understood, a written record would provide an audit trail confirming any advice offered during a telephone call.
- 3.56 For the same reasons as applied in Openreach,<sup>21</sup> we also think our proposal is likely to result in a decrease in unwillingly paid ETCs. Combined with the qualitative benefits detailed, and the likely low level of cost of implementation, we believe that the proposed new requirement is proportionate.

*Q4. Do you agree with our assessment of the requirement for better information on the implications of switching? If not, please explain why, where possible providing evidence to support your view.*

## **3. Reducing erroneous transfers under the Working Line Takeover process**

### Introduction

- 3.57 Switching processes should ensure as far as possible that the correct customer has the correct service switched, i.e. that 'Erroneous Transfers' (ETs) are avoided.

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<sup>21</sup> See paragraphs A6.71 to A6.74, Consumer Switching Statement [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer\\_Switching.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/summary/Consumer_Switching.pdf)

### Current GC 22 requirements

- 3.58 GC 22.22 and Annex 2 to GC 22 set out requirements for CPs where a consumer moves home and seeks a 'Working Line Takeover' (WLT) on the Openreach network.
- 3.59 A consumer may request a WLT where they are moving home and wish to transfer or establish a fixed line or broadband service at the new address where the 'target line' is situated. To help avoid the wrong line being taken over in these circumstance (i.e. an ET occurring), GC 22 subjects CPs to two key requirements:
- GPs may place a WLT order only where there is an exact match for line identification. Where the target line cannot be identified the CP is not permitted to submit the WLT order. CPs are required to take all reasonable steps to identify an exact match for the target line, in accordance with industry best practice.
  - The losing (incumbent) CP must notify the end-user, when a WLT order has been placed. The notification should be a letter, in paper or another durable medium.
- 3.60 These requirements mandate two elements of an otherwise voluntary Best Practice Guide for industry. The Guide is published and maintained by the OTA.<sup>22</sup>
- 3.61 The Guide sets out recommended processes for CPs to follow in effecting transfer of services for customers. It aims among other things to minimise the occurrence of ETs, including through a WLT process. GC 22 requirements mandate two elements from the OTA's otherwise voluntary Industry Best Practice Guide: Migrations and Home Moves for Fixed Voice and Broadband Services.

### Rationale for GC 22 requirements

- 3.62 Our work on the Openreach switching consultation showed that under the existing GPL NoT process, erroneous transfers (ETs) can occur where a CP inadvertently switches the wrong line. This can happen if the provider is unable to reliably identify the correct address and associated assets to take over and provide services to. We found that this can happen during a switch at a single address, but is most frequent as part of the WLT process used in home move scenarios.
- 3.63 Where an ET occurs, it causes harm to the third party consumer whose line is incorrectly identified and taken over. Harm is also suffered by the consumer who requests the change. In addition, CPs incur costs through dealing with both the consumer who is subject to the incorrect line transfer and resolving the transfer for the original consumer they were trying to switch.
- 3.64 We estimated in our August 2013 document (see for example paragraph 5.166) that around 118 700 households were affected by an ET in 2012/23, broadly equivalent to around 5% of fixed line switches. We estimated that the associated costs to consumers were between £0.5 million and £1 million per annum.
- 3.65 We considered that GC 22 requirements relating to how WLT orders were placed and managed on the Openreach system, mandating those in the OTA Best Practice Guide, would be a proportionate response to the risks of ETs occurring as a result of such orders.

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<sup>22</sup> Best Practice Guide: Working Line Takeovers, Migrations & ELT avoidance, available at: <http://www.offta.org.uk/BPG-WLTs-Mgtns%20%20ELT%20Avoidance-v2.5.pdf>



## Erroneous Transfers and the KCOM network

- 3.66 We recognise that the risk of erroneous transfers occurring on the KCOM network (including any relating to WLT orders) is likely to be considerably less than on the Openreach network. The existence of only one database of lines and addresses, operated by KCOM, removes the scope for mis-matches which can arise where two or more databases are used and unlike Openreach switches, we understand that CLIs are available under all switching scenarios, meaning that the GP does not need to rely on address data alone.
- 3.67 Nevertheless, we consider there is scope for erroneous transfers to occur on the KCOM network where several services are provided over a shared line or where the customer does not know the correct CLI for the address e.g. in a home move context, and GPs find it difficult to identify the correct asset to switch. We are therefore proposing to extend the GC 22 requirements on WLTs to KCOM providers. We provisionally consider that given the potentially serious nature of the harm caused to consumers by such transfers when they occur, the consumer benefits of this enhancement if, as we would expect, it successfully helps reduce or eliminate erroneous transfers in the future, and the likely low level of costs that would be incurred, it is objectively justified and proportionate to require this enhancement to be implemented on the KCOM network.

## Impact of the proposed new requirement

- 3.68 We have not assessed the likely scale of the costs of our proposal on providers on the KCOM network, although for the reasons given below, our provisional view is that they are likely to be low. We understand that where a transfer on the KCOM network involves an active reseller line, it broadly follows the OTA's Best Practice Guide for WLT. Furthermore, we understand that many resellers on the KCOM network also operate on the Openreach network and therefore are likely to have already developed processes which require the mandated elements of the Best Practice Guide to be applied. For these providers the additional costs of mandating these elements of the Guidance are likely to be low.

## Provisional View

- 3.69 Our provisional view is that in light of the consumer harm that can be caused by ETs and the costs that are incurred by Providers in dealing with them it is important to implement measures that mitigate the risk of the occurrence of ETs on KCOM's copper network. We consider that the benefits of the proposed requirements for exact match and notification, when weighed against their likely costs, are proportionate.

*Q5. Do you agree with our assessment of the requirements for exact line match and for end-user notification, in order to address the issue of ETs under the WLT process? If not, please explain why, where possible providing evidence to support your view.*

## 4. Minimising loss of service

### Introduction

- 3.70 An efficient switching process should minimise the risk of the consumer experiencing a break in service for a significant period of time, including where multiple services are switched.
- 3.71 The current switching processes work reasonably well at ensuring continuity of service where consumers seek to switch a single service (fixed voice or broadband). However, the rise in take-up of bundled products means consumers are increasingly seeking to switch fixed voice and broadband services together.

### Current GC 22 requirements

- 3.72 GC 22.14 mandates that where a consumer requests a transfer of broadband and fixed voice services over the same line, the GP shall ensure that an order is submitted, where available, for the simultaneous transfer with minimal loss of service of both communications services. Specifically, it requires that voice and broadband services are switched together. The GC applies only where such functionality is available to the GP.
- 3.73 This requirement applies to any type of migration to and from services that are offered over the Openreach copper network. Furthermore it only applies where a consumer submits a single request to transfer broadband and fixed voice services, rather than multiple and non-simultaneous requests.

### Rationale for GC 22 requirements

- 3.74 Loss of service is a significant issue because many consumers are increasingly reliant on communications services such as broadband for a range of important functions.
- 3.75 In our August 2013 Openreach consultation we highlighted loss of service, particularly in respect of bundled services, as a significant consumer issue (Paragraphs 5.193 to 5.197).<sup>23</sup> We found that the detriment suffered by those who experience loss of service can be significant.
- 3.76 We noted that commercial incentives appeared insufficient to deliver switching processes that address consumer concerns about loss of service. This was evidenced by the fact that only some CPs had made use of industry developments intended to address this issue.
- 3.77 Consequently we decided to introduce a requirement that would ensure the seamless transfer of bundled services and minimise the risk of loss of service.

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<sup>23</sup> We noted for example that our consumer research found that a significant proportion (one fifth) of consumers experience a loss of service when switching services on the Openreach network. See slide 221 [http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/broadband\\_slidepack.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/broadband_slidepack.pdf) Eligible respondents for this survey were identified from an online panel of members from across the UK. A small number of KCOM switchers may therefore have been included in this sample.

## Loss of service and the KCOM network

- 3.78 We have not examined in detail the likely scale of the problem of loss of service currently experienced by consumers on the KCOM network or the adoption by CPs to address the issue. We believe that the incidence of loss of service is likely to be low on the KCOM network, given that the number of switches is small, and given that we understand switches are managed through a manual process.
- 3.79 However, in the August 2013 Openreach consultation (Sections 5.178) we detailed the tactical fixes and enhancements to the switching processes available to CPs on the Openreach network which aim to facilitate seamless switching of bundles. We understand that the simultaneous transfer of bundled communications is available as a manual process on the KCOM network where the CP simultaneously submits the fixed voice and broadband components of an order. However, for the reasons set out below, we consider that consumers are likely to be best served by formalising this requirement. We are therefore proposing to extend the GC 22 requirements on simultaneous transfer with minimal loss of service to KCOM providers.

## Impact of the new proposed requirement

- 3.80 We do not believe that CPs on the KCOM network will incur any cost as a result of this requirement in the short term. This is because the only functionality currently available on the KCOM network for migrating bundled fixed voice and broadband services is the existing manual process. Using this process does not require any systems development.
- 3.81 However, there is scope for this functionality to be developed for the KCOM network and made available to resellers for example, if there was a major rise in switching volumes, which rendered manual processes inefficient. Over the Openreach network for example we would expect simultaneous transfer functionality to be offered for transfer scenarios with any significant volumes. This should help to minimise the potentially serious harm that loss of service can cause consumers. As most KCOM resellers also operate on Openreach, we therefore think it likely that most will already have developed systems to enable them to use this functionality in order to comply with their Openreach obligations. In this event, at least some element of the systems development requirements will be duplicated in the event that functionality is developed on KCOM. This should minimise the cost for CPs of complying with the new requirement.
- 3.82 For all these reasons, we provisionally consider that it is prudent to have the requirement in place in relation to the KCOM network. We believe that consumers benefit from being sure that they will not lose a service when switching voice and broadband together.

## Provisional View

- 3.83 Any loss of service resulting from switching can result in significant harm to consumers, with broadband in particular seen as essential or relied upon by many consumers, including small businesses. The increasing take-up of bundled services and the difficulty of co-ordinating a migration of two services at the same time, presents an increased risk of consumer harm.
- 3.84 In light of the potential consumer benefits of mandating the use of functionality, where available, to ensure the seamless migration of bundled services, our provisional view is that for the reasons given above this requirement is proportionate

given the expected costs in addressing the potential for loss of service within the GPL NoT process.

*Q6. Do you agree with our assessment of the requirement to minimise loss of service through the use of simultaneous transfer functionality where available? If not, please explain why, where possible providing evidence to support your view.*

## Section 4

# Implementation

- 4.1 In this section we consider the appropriate implementation timescales for the GPL NoT+ requirements we are consulting on. As these requirements are incremental to the existing GPL NoT process we expect they can be implemented relatively quickly.
- 4.2 We allowed 18 months for the implementation of the GPL NoT switching process and the decommissioning of the MAC process on the Openreach network. We allowed nine months for the implementation of the NoT+ enhancements, which ran in parallel with NoT implementation.
- 4.3 We think that NoT implementation should take less time on the KCOM network than on Openreach. This is partly because there is only one wholesale network and [X] CPs involved (rather than several wholesalers and several thousand CPs, as is the case on Openreach). This should make change significantly easier to co-ordinate. Furthermore, the manual nature of the current switching processes should reduce the need for complex systems development to meet the new requirements. In addition, our provisional view is that many CPs will already have benefited from the experience of the Openreach NoT and NoT+ implementation programme, which is likely to make the transition on KCOM easier.
- 4.4 On the basis of these factors, we are therefore proposing a period of nine months in which to implement both the NoT process, and the NoT+ enhancements.

*Q7: Do you agree with the estimated implementation timescales of GPL NoT+ we have outlined? If not, please explain why, where possible providing evidence to support your view.*

## Section 5

# Provisional Conclusion

- 5.1 Removing the current requirement to operate the MAC switching process is a deregulatory proposal which creates consistency for KCOM, its wholesale customers, and consumers in the Hull area. Adding the NoT+ enhancements gives additional consumer protection. Our provisional view is that this can be delivered at relatively little incremental cost given that most providers are likely to have made the necessary changes in order to comply with Openreach obligations.

*Q8: Are there any other issues that need to be taken into consideration? If so, please explain what these are, providing evidence in support where possible.*

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 10 December 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/gpl-harmonisation/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [liz.hall@ofcom.org.uk](mailto:liz.hall@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Liz Hall  
2<sup>nd</sup> Floor  
Consumer Affairs  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Liz Hall on 020 7981 3149.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in early 2015.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)



## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

|                      |                          |   |                          |
|----------------------|--------------------------|---|--------------------------|
| Nothing              | <input type="checkbox"/> | Name/contact details/job title              | <input type="checkbox"/> |
| Whole response       | <input type="checkbox"/> | Organisation                                | <input type="checkbox"/> |
| Part of the response | <input type="checkbox"/> | If there is no separate annex, which parts? |                          |

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

**Annex 4**

## Consultation questions

*Q1. Do you agree (i) that the problems we identified as arising in relation to switches on the Openreach network exist, or might be expected to exist in the future, in relation to existing switching processes on the KCOM network, and (ii) that consumers and businesses would benefit from a single process for switching voice and broadband services between providers using KCOM's copper network? If not, please explain why, where possible providing evidence to support your view.*

*Q2. Do you agree with our view that consumers are likely to find switching provider over the KCOM copper network cheaper and easier under a GPL process than under an LPL process? If not, please explain why, where possible providing evidence to support your view.*

*Q3. Do you agree with our assessment and our proposal to amend the GCs to require CPs to record and store customer consent to switch in order to address the problem of slamming? If not, please explain why, where possible providing evidence to support your view.*

*Q4. Do you agree with our assessment of the requirement for better information on the implications of switching? If not, please explain why, where possible providing evidence to support your view.*

*Q5. Do you agree with our assessment of the requirements for exact line match and for end-user notification, in order to address the issue of ETs under the WLT process? If not, please explain why, where possible providing evidence to support your view.*

*Q6. Do you agree with our assessment of the requirement to minimise loss of service through the use of simultaneous transfer functionality where available? If not, please explain why, where possible providing evidence to support your view.*

*Q7: Do you agree with the estimated implementation timescales of GPL NoT+ we have outlined? If not, please explain why, where possible providing evidence to support your view.*

*Q8: Are there any other issues that need to be taken into consideration? If so, please explain what these are, providing evidence in support where possible.*

## Annex 5

# Glossary

**Act** - The Communications Act 2003.

**Broadband** – Service or connection that is capable of supporting ‘always on’ services that provide the end user with high data transfer speeds.

**Bundle** – Where a consumer purchases two or more services from the same Provider on a single bill and considers this to be a package of services. The consumer may or may not receive a discount for purchasing the services together.

**CLI** – Consumer/ calling line identification (telephone number).

**Consumer** – Any person who uses or requests a publicly available Electronic Communications Service for purposes which are outside his or her trade, business or profession.

**CP** – Communications provider.<sup>24</sup> A person who provides an Electronic Communications Network or provides an Electronic Communications Service, as defined in the Communications Act 2003.

**DSL** - Digital subscriber line. A family of technologies generally referred to as DSL, xDSL, capable of transforming ordinary phone lines (also known as ‘twister copper pairs’) into high speed lines.

**ET** - Erroneous transfers.

**ETC** – Early termination charge. Charge for consumers who terminate their contract before the end of any Minimum Contract Period (or Subsequent Minimum Contract Period).

**Fixed-line** – Narrowband call and/or line rental services provided to consumers and small business consumers.

**GP** - Gaining provider. Provider to whom the customer is transferring.

**GPL NoT** - Gaining provider led Notification of Transfer process. A GPL process where the consumer only needs to contact their (new) Gaining Provider to switch. The Gaining Provider informs the (current) Losing Provider on behalf of the consumer in order to organise the transfer. The consumer receives letters from both Providers confirming the planned switch before it happens. This provides an opportunity for the consumer to stop the order going ahead where they change their mind or in cases where they have no knowledge or have not given their consent to the attempted switch.

**GCs** – General Conditions of Entitlement.

**GPL process** – Gaining provider led process. Switching process where the consumer only needs to contact the Provider they are transferring to in order to switch.

**LP** - Losing provider. Provider from whom the customer is transferring.

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<sup>24</sup> Terms ‘communications provider’ and ‘provider’ are used interchangeably throughout this document.

**LPL MAC** - Losing provider led migration authorisation code process. A LPL process which applies to broadband only. It means that if a consumer wishes to change their provider, they need to obtain a code from the Losing Provider and give it to the Gaining Provider. On receiving a request for the code, the Losing Provider carries out checks to confirm that the consumer making the request is the legitimate account holder and has an opportunity to discuss the implications of switching with the consumer. The consumer must supply the code to their Gaining Provider to allow the switch to go ahead.

**LPL process** – Losing provider led process. Switching process where the consumer needs to contact the Provider they are transferring away from as well as the Provider they are transferring to in order to switch.

**MAC** – Migration authorisation code. Unique code that a customer obtains from the losing broadband service Provider and gives to the gaining provider, that allows the service to be transferred from an existing service Provider seamlessly and with little or no disruption of service.

**Mis-selling** – Irresponsible sales and marketing activities, such as the provision of false or misleading information, applying unacceptable pressure to change Providers and where customers are switched without their express consent.

**NoT** – Notification of Transfer

**Ofcom** - Office of Communications. The regulator for the communications industries, created by the Office of Communications Act 2002.

**Openreach** – BT's access services division.

**OTA** – Office of the Telecommunications Adjudicator. Acts independently from industry and the regulator. Seeks to facilitate the implementation of process improvements, particularly where multi-lateral engagement is necessary.

**Reactive save** – Also known as 'targeted save activity'. Where the LP is able to accurately identify, as a result of information the LP receives as part of the formal switching process, customers intending to switch and to make them a counteroffer not to switch. The LP is informed of the imminent switching either by the consumer via the code request under a LPL process or by the GP placing the order to transfer the service under a GPL process. The term does not refer to counteroffers requested by a consumer who explicitly contacts the LP with the purpose of obtaining a better offer.

**Slamming** – Where a CP has requested to take-over a fixed voice service without the customer's express knowledge and/or consent; that is in the following circumstances:

- i) Where the customer has never been contacted by the Gaining Communications Provider;
- ii) Where the customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;
- iii) Where the customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the customer has not agreed to purchase; or

- iv) Where the customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider.

**Switching costs** – Costs incurred by changing supplier that are not incurred by remaining with the current provider. There are several types of switching costs, including transaction costs, compatibility costs, learning costs, contractual costs, equipment costs, uncertainty costs, psychological costs, shopping costs and search costs.

**WLT** – Working line takeover. A request to reuse a working telephone line for a new end user at an existing end user's address.