



# Consumer Switching

A statement on the GPL NoT+ elements

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Statement

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## Section 1

# Executive summary

- 1.1 In August 2013 we decided that all switches for fixed voice and/or broadband services over the Openreach network would be harmonised to a single Gaining Provider Led (GPL) model using the existing Notification of Transfer (NoT) process ('the August 2013 Document'). Among other things, this will mean the removal of the current Losing Provider Led (LPL) based Migration Authorisation Code (MAC) process for broadband switching. At the same time, we consulted on five enhancements intended to improve the NoT process (a solution we termed 'GPL NoT+').
- 1.2 In this document we set out our decisions in relation to these enhancements and the changes to the General Conditions ('GCs') required to bring harmonisation into effect, having taken into account stakeholder consultation responses and additional new evidence. This document must therefore be read in conjunction with the August 2013 Document.
- 1.3 Ofcom began a review of consumer switching processes in 2010. We decided to prioritise our work on the switches involving fixed voice and broadband services made over the Openreach copper network.
- 1.4 Most switches for fixed voice services currently use a GPL NoT process, under which a consumer wishing to switch provider need only contact the provider to whose service they wish to switch. Broadband switches either use the NoT process, or require the consumer to contact the provider they are leaving in order to obtain a MAC which enables the switch to take place.
- 1.5 In summary, we have decided to implement all five of the enhancements in substantially the same form as we consulted on them, but we have made some amendments following stakeholder comment and we provide further clarification in certain areas. These enhancements should help consumers change landline and broadband providers with greater ease, confidence and convenience. We summarise our decisions, including the changes we have made to our proposals as set out in our August 2013 Document, as follows:

<b>Proposed GPL NoT enhancement set out in the August 2013 Document and the issue it seeks to address</b>	<b>Our conclusion set out in this Statement</b>
<p>The Gaining provider (GP) must obtain and store for 12 months a clear record of consent to switch from the consumer.</p> <p>This aims to reduce the incidence of slamming by enhancing our enforcement capabilities.</p>	<p>No change to the August proposal.</p>
<p>The Losing Provider (LP) must provide better information in the Notification of Transfer letter to the end customer regarding the implications of switching. This</p>	<p>As under the August proposal, except:</p> <ul style="list-style-type: none"> <li>• The requirement to state the time of the migration has</li> </ul>

<p>letter must include:</p> <ul style="list-style-type: none"> <li>• Precise information on any early termination charges payable.</li> <li>• A list of all communications services that will be transferred, all those that will be directly or indirectly affected by the transfer, and all those which the provider reasonably expects to remain unaffected by the transfer.</li> <li>• A statement that the consumer is not required to contact the LP to cancel the contract in order for the service to be switched.</li> </ul> <p>This aims at ensuring that consumers are fully informed about the service and financial implications of their decision to switch.</p>	<p>been removed.</p> <ul style="list-style-type: none"> <li>• The LP is required to list only those communications services <b><u>which it provides</u></b> that will be affected and unaffected by the transfer.</li> </ul> <p>However, we encourage losing providers to list services provided by third parties which may also be affected by the transfer, where these are critical to security or health.</p> <p>Minor amendments were made to the 'GCs' to clarify when the letter must be sent in paper or another durable format, and when it can be sent electronically.</p>
<p>Where a customer is switching to a bundle of fixed voice and broadband services provided by the same provider, the provider must co-ordinate the switches of the two services together in order to ensure minimal loss of service.</p> <p>This aims to ensure that consumers can transfer multiple services without suffering a break in these services.</p>	<p>As under the August proposal, except that we have made minor amendments to the GC to clarify that the requirement applies where:</p> <ul style="list-style-type: none"> <li>• a consumer submits a request to transfer the broadband and fixed voice services together (rather than separately); and</li> <li>• there is functionality available to Communication Providers ('CPs') to enable them to make such a simultaneous transfer.</li> </ul> <p>We have also amended the requirement to the effect that where the GP does not have a direct relationship with Openreach, it shall ensure that an order is placed for the simultaneous transfer, where available, by the relevant intermediary.</p>
<p>Gaining providers should place an order to take over communications services at a new property only once they have an exact match for that address.</p> <p>This aims to mitigate against consumers having their lines switched accidentally during house-moves.</p>	<p>No change to the August proposal.</p>

<p>The LP must notify the end user, where a Working Line Takeover order has been placed.</p> <p>This is for home move situations where a consumer wishes to transfer services to a new home. It aims to ensure that the consumer at the target property is informed about any plans for services to be changed to another provider at that address, and to allow the consumer to tell his or her own provider if the address has been targeted in error.</p>	<p>No change to the August proposal.</p>
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- 1.6 We have also concluded that it is appropriate for the GPL NoT+ requirements to be introduced in two phases:
- A first phase: the implementation of changes to the GPL NoT process. These do not depend on Openreach systems development. This must be completed within nine months of the publication of this Statement.
  - A second phase, (conducted in parallel with the NoT+ implementation), the implementation of a harmonised GPL switching process. We believe it is appropriate to extend the timescale that we proposed for this from 12 months to 18 months. This phase includes discontinuation of the LPL MAC process for broadband switches.

### Next steps

- 1.7 We set out in our August 2013 Document that our decision on GPL NoT+ is the first stage in a two stage process.
- 1.8 This first stage includes implementation of changes required to harmonise to GPL NoT+. In order to achieve this, we will manage a programme of work through an industry working group, chaired by Ofcom and supported by the Office of the Telecommunications Adjudicator (OTA).
- 1.9 We are convening the first industry working group meeting on 22 January 2014, to be chaired by Ofcom and supported by the OTA. This meeting will begin the industry process for implementation of the harmonised switching process. Through this group we will also set out the interim milestones to be met to ensure that CPs are able to complete the necessary development work within the implementation period. Please email [consumer.switching@ofcom.org.uk](mailto:consumer.switching@ofcom.org.uk) by Friday 17 January 2014 to register your interest in attending this meeting.
- 1.10 Our second stage will consider whether there are further changes required in relation to the Openreach network, in particular to address the issue of erroneous transfers. We will also consider whether it would be appropriate to extend the switching processes to include other technologies and networks. We plan to publish details and timelines for carrying out further work in this area in spring 2014.

## Section 2

# Introduction

## Structure of this document

- 2.1 We summarise in this section the steps involved in our review of switching which led us to decide that switches over the Openreach network should be harmonised to the GPL NoT process and to progress with five specific enhancements to that process. We then set out the applicable regulatory framework.
- 2.2 Section 3 recaps, for each of our proposed enhancements, the nature and scale of the problems it is intended to address, a description of the relevant existing requirements for CPs under the GCs, and the reasons we gave for our proposal. We then summarise stakeholder responses to the proposal, and assess these alongside additional new evidence where applicable, before setting out and explaining our final decisions.
- 2.3 Section 4 sets out our assessment and conclusion on timescales for implementing GPL NoT+. Section 5 sets out our next steps.

## Background to our statement and consultation on GPL NoT improvements

- 2.4 Well-functioning communications markets require effective switching processes. The ability to switch Communications Provider allows consumers to exercise choice, purchase the service or combination of services which best meets their needs, and switch away if they are dissatisfied with a provider. Conversely, ineffective processes constrain consumer choice, and hence can be harmful to competition, investment and market entry.
- 2.5 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. This includes the ability to switch quickly, conveniently and without loss of service. It also requires that consumers are aware of the implications of their decision to switch, and are protected from being switched against their will.
- 2.6 As part of the review of switching processes that we began in 2010 we decided to prioritise work on fixed voice and broadband switches taking place over the Openreach copper network. This was because we identified this as the area of greatest potential consumer harm and because it supports the largest number of switches.

## Our decision to harmonise to GPL NoT

- 2.7 In Section 8 of our August 2013 Statement, we set out our decision to harmonise to the GPL NoT system, and to consult on five specific enhancements. Currently, there are a number of different processes for switching voice and broadband services over the Openreach network. These can involve complex technical co-ordination between Gaining Providers ('GPs'), Losing Providers ('LPs') and Openreach. These systems have evolved largely within industry, with some aspects being subject to regulation under Ofcom's General Conditions.

- 2.8 We consulted in February 2012 (the ‘2012 Consultation’) on the problems associated with switching processes on the Openreach copper network, and set out options for reform. We identified eight significant problems that consumers could face, and discussed the extent to which the options would address these. We said that identifying the best way forward would be a matter of judgement, balancing the treatment of different issues and evidence of harm against each other and against the costs for consumers and industry.
- 2.9 In our August 2013 Document we concluded that we should harmonise to a single switching process. That meant considering whether this should be a GPL or an LPL model. In making this decision we assessed the extent to which LPL and GPL systems create higher switching costs and difficulty for consumers, pose a risk to competition and address the other problems that we identified with switching.
- 2.10 Having considered these issues, we concluded that a harmonised GPL system for all switches on the Openreach copper network was a preferable and proportionate solution. We noted that since the existing landscape overwhelmingly used the GPL process, harmonizing to this process would be a smaller and less interventionist step.

### **Consultation on improvements to the GPL NoT process**

- 2.11 We then considered what form of GPL process would be most appropriate. We took into account a lack of industry consensus in the responses to our 2012 Consultation. We believed that consensus would have been needed in order to deliver wholesale changes to the existing system
- 2.12 In section 9 of the August 2013 Document we consulted on the five enhancements proposed to the GPL NoT system and the changes to the GCs required to put them into effect. The enhancements were:
- a mandatory record of customer consent to switch, in order to improve protection against being deliberately switched without consent (‘slammed’), by enhancing Ofcom’s ability to enforce against providers using such practices;
  - provision of better information to the customer on the implications of switching;
  - the mandatory use of systems and processes to minimise loss of service when switching bundles; and
  - mandating two best-practice elements of the Working Line Takeover (‘WLT’) process to mitigate some of the impacts of erroneous transfers. These requirements were for providers to:
    - i) place WLT orders only where they have an exact match for the line; and
    - ii) notify end-users, via notification letter or email, that their line is due to be taken over.

### **Next steps**

- 2.13 Our August 2013 Document explained that our decision to adopt a harmonised GPL process across the Openreach copper network and to proceed in the short term with enhancements to the existing system, ie. by pursuing the GPL NoT+ solution, constituted a first stage in a two-stage process for addressing switching issues.



- 2.14 We explained our intention to continue work in a second stage, in order to address problems that the GPL NoT+ solution might leave unresolved. We set out, for example our intention to consider whether further improvements to the Enhanced GPL NoT option or a move to a hub and database system may be proportionate.
- 2.15 Our immediate priority is the implementation of the GPL NoT+ enhancements. We have set out in section 4 our assessment of implementation and timescales.

## Regulatory and legal framework

- 2.16 In our August 2013 Document, we set out an explanation 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.<sup>1</sup> We have summarised the relevant provisions again below.
- 2.17 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. The Framework was revised in 2009, and was required to be implemented by all Member States, including the UK, by 2011. The UK implemented the revisions through the Electronic Communications and Wireless Telegraphy Regulations,<sup>2</sup> which made changes to the Act.

### Ofcom's general duties

- 2.18 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'.*

- 2.19 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.
- 2.20 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.<sup>3</sup>
- 2.21 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. We consider this includes in the current context:

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<sup>1</sup> See paragraphs 2.32 to 2.52 of the August 2013 Document.

<sup>2</sup> The Electronic Communications and Wireless Telegraphy Regulations 2011, SI 2011/1210, 4 May 2011. Available at: [http://www.legislation.gov.uk/uksi/2011/1210/pdfs/uksi\\_20111210\\_en.pdf](http://www.legislation.gov.uk/uksi/2011/1210/pdfs/uksi_20111210_en.pdf)

<sup>3</sup> Ofcom's Statutory Duties and Regulatory Principles. Available at: <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>.

- 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.
- 2.22 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.
- 2.23 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**

- 2.24 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.

- 2.25 In doing so, Ofcom has to read these requirements in accordance with the requirements of Article 8 of the Framework Directive.<sup>4</sup>
- 2.26 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’)’.<sup>5</sup> Ofcom’s power to set conditions relating to consumer protection is not limited to the measures set out in that directive.

### **Amendment of the General Conditions**

- 2.27 With regard to our powers and duties in relation to the GCs in particular, we explained in the August 2013 Document that section 45 of the Act gives Ofcom the power to set conditions which can only contain provisions authorised or required by one or more of sections 51, 52, 57 and 58. Section 47(2) of the Act governs the circumstances in which Ofcom can set or modify a GC. It states that a condition can be modified only when the modification is:
- i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
  - iii) proportionate to what the condition or modification is intended to achieve;
  - iv) in relation to what it is intended to achieve, transparent.
- 2.28 We explained that under section 51(1)(a) of the Act, Ofcom can set GCs which make such provision as we consider appropriate for the purposes of protecting the interests of end-users of public electronic communications services. This includes, but is not limited to, the power to set conditions for the purposes listed in section 51(2) of the Act. On that basis, we set out how the legal framework applies to switching processes.<sup>6</sup>
- 2.29 In section 9 of the August 2013 Document we consulted on the implementation of the enhancements of GPL NoT+ and the changes to the GC required to put them into effect in a harmonised system. The proposed modifications were notified pursuant to section 48A (3) of the Act.<sup>7</sup> By virtue of section 48A(6) and (7) of the Act, Ofcom may give effect to these proposals, with or without modification, only after having considered every representation made to us within the period specified in the notification, and having regard to every international obligation (if applicable).
- 2.30 Accordingly, having considered every representation made to us in respect of and for the reasons set out in our August 2013 Document and sections 3 to 4 below, we have decided to proceed to modifying GCs 22 and 24. Annex 2 sets out an explanatory overview of the modifications to our proposals in the August 2013

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<sup>4</sup> Directive 2002/20/EC of the European Parliament and of the Council (as amended by Directive 2009/140/EC), 7 March 2002. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0033:0033:EN:PDF>

<sup>5</sup> Directive 2002/20/EC of the European Parliament and of the Council (as amended by Directive 2009/140/EC), paragraph 8 of Annex A.

<sup>6</sup> See paragraphs 2.53 to 2.55 of the August 2013 Document.

<sup>7</sup> See Annex 11 of the August 2013 Document.

Document in order to provide clarity for stakeholders. The notification required under section 48(1) of the Act is set out at Annex 3.

2.31 We now set out our decision in respect of the enhancements.

## Impact Assessment

2.32 Section 7 of the Act requires Ofcom to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. Impact assessments form part of best practice policy-making as they provide a valuable way of assessing different options for regulation and showing why the preferred options was chosen. Ofcom is committed to carrying out and publishing impact assessments in relation to the majority of its policy decisions.<sup>8</sup>

2.33 We set out our impact assessment in the August 2013 Document. In this document we take into account relevant responses and set out our conclusions on the impact of the changes.

## Equality Impact Assessment

2.34 Ofcom is also required to assess the potential impact of all our functions, policies, projects and practices on the equality of individuals to whom those policies will apply. Equality impact assessments ('EIAs') assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.

2.35 We have given careful consideration to whether or not our decision will have a particular impact on race, age, disability, gender, pregnancy and maternity, religion or sex equality. We do not envisage that our decision in this statement will have a detrimental impact on any particular group of people.

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<sup>8</sup> For further information about Ofcom's approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment <http://www.ofcom.org.uk/about/policies-and-guidelines/better-policy-making-ofcoms-approach-to-impact-assessment/>

## Section 3

# Enhancements to the GPL NoT process

## Introduction

- 3.1 In this section we provide our final analysis and conclusions, including amendments to the GCs, on the five enhancements we proposed to the GPL NoT process.
- 3.2 The five improvements are a sub-set of those included in the Enhanced GPL NoT specification detailed in the August 2013 Document and have been taken forward because we believe it is proportionate in the short term to implement them.<sup>9</sup> We decided on which elements we should consult, after considering of the nature of the problem each enhancement is intended to address and the potential for wasted costs should a database solution be adopted in a future stage.<sup>10</sup>
- 3.3 We set out our updated assessment of and decision about each enhancement in the following order:
1. a mandatory record of customer consent to switch a fixed voice and/or broadband service to be obtained and stored;
  2. the provision of better information to the customer on the implications of switching;
  3. the mandatory use of systems and processes to minimise loss of service when switching bundles; and
  4. mandating two best-practice elements of the Working Line Takeover ('WLT') process for home movers to mitigate some of the impacts of erroneous transfers under the WLT process. These requirements were for providers:
    - i) to place WLT orders only where they have an exact match for the line; and
    - ii) to notify end-users, via notification letter or email, that their line is due to be taken over.

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<sup>9</sup> Paragraphs 7.11 to 7.13 of the August 2013 Document provide a full description of the Enhanced GPL NoT option, while paragraphs 8.81 to 8.103 of the same report detail our assessment of what elements of this option we decided to take forward.

<sup>10</sup> Wasted cost analysis was conducted by CSMG using its existing work on the costs associated with the Enhanced GPL NoT Option. See Annex 10 of the August 2013 Document.

## 1. Require that a record of customer consent to switch a fixed voice and/or broadband service is obtained and stored

### Introduction

- 3.4 In this sub-section we set out our assessment of our proposal to require that CPs obtain and store a record of customer consent to switch a fixed voice and/or broadband service.
- 3.5 We begin by summarising our findings on the level of slamming and standard of record keeping by CPs. We then recall our assessment of the impact of record keeping on our enforcement activities, including the reasons why we considered a requirement on CPs to record and store a customer's consent to switch a fixed voice or broadband service to be proportionate. We then set out our final decision on the enhancement, taking into consideration stakeholder responses to our proposal, CSMG's response to stakeholder comments on their estimated costs,<sup>11</sup> and new evidence on the level and nature of slamming complaints our consumer contact centre (CCT) receives.
- 3.6 In summary, we have decided to require CPs to record a customer's consent to switch a fixed voice and/or broadband service and retain this record for 12 months.

### Summary of our August 2013 consultation

#### *Extent of the problem*

- 3.7 In our August 2013 Document (paragraphs 5.30 to 5.45) we presented new evidence which suggests that slamming occurs less frequently than we previously believed. As a result, the costs to consumers and industry of slamming are lower than we originally thought – we estimated these at £2.1- £2.6m.
- 3.8 Slamming remains a cause of significant harm for those consumers affected and it is important that we can enforce against it effectively. We noted that the majority of slamming complaints are now against smaller CPs, or against a long tail of CPs who each generate only a few slamming complaints a month. We explained that the current framework for enforcement is not well suited to addressing instances of slamming by this group of CPs.
- 3.9 We detailed evidence from a study by Mott McDonald (paragraphs 5.47 to 5.53) which showed that there was poor and variable record keeping by CPs in relation to mis-selling and slamming complaints, with variation by the size of CP and across different categories of complaints. We noted that our ability to investigate allegations of slamming can be hampered where the provider's sales records are poor.
- 3.10 We concluded that a new requirement on CPs to obtain and store good records of consent to switch would enhance our enforcement activities. In particular, it would enable us to target the smaller CPs and the 'long tail' of CPs effectively and thereby secure further reductions in slamming.

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<sup>11</sup> CSMG Switching Models: Comments on Stakeholder Responses, 17 December 2013  
<http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/statement/annex4.pdf>

*Current requirement*

- 3.11 The current requirement for record keeping (GC 24.11) requires each CP to create and keep records regarding the sale of its fixed-line telecommunications service, for a period of not less than six months. Under this obligation CPs are required to 'use reasonable endeavours' to create and keep these records and are not specifically required to maintain a direct record of the consumer's consent to switch.
- 3.12 GC 24.11 specifies that the sales record must include the date and approximate time of the contact with the customer, the means through which the contract was entered into and the place where the contract was entered into (where relevant). It must also identify the sales person(s) involved to assist in dealing with any complaint or query. Ofcom provides guidelines intended to help CPs comply with GC 24.<sup>12</sup>

*August 2013 proposal*

- 3.13 In light of the Mott McDonald evidence on poor record keeping and slamming we proposed a new requirement on CPs to obtain and store a clear 'record of consent' from consumers to switch their fixed and/or broadband services.
- 3.14 We made suggestions as to what we believed might constitute a record of customer consent to switch:
- call recordings for all successful telesales of the customers' consent to the transfer. This could either be recorded, as an individual element of the telesales process, or the consumer could be put through to a separate person who would record the consent;
  - a written record signed by the customer for all successful retail/shop and doorstep sales; or
  - for online sales, screen shots of order systems or account interactions relating to the sale in question.
- 3.15 We said that the record would need to contain the following information in order to ensure that the consent is clearly recorded:
- a direct record of consent, as provided by the customer;
  - an explanation from the CP that it is 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

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<sup>12</sup> GC 24 paragraphs A6.29. Available at: <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/narrowband/statement.pdf>

- where appropriate, the consumer/calling line identification (CLI) of the target line.
- 3.16 A record of consent would be required for each contract entered into by a GP with an end user for the provision of broadband and/or voice services. Each record would be retrievable on an individual basis.
- 3.17 The record would be retained for a 12-month period even if the transfer was subsequently cancelled or terminated by the customer.
- 3.18 We explained that this new requirement is intended to deter, and enhance our ability to investigate slamming. However, we recognised that the potential remains for consumers to be misled during the initial sales calls remains. Therefore, in order to continue to enforce against mis-selling more generally, we will retain the requirement (currently GC 24.11) on CPs to use reasonable endeavours to create and keep all records regarding the sale of its communications service.

#### *Costs of the new requirement*

- 3.19 CSMG estimated the costs of implementing our proposed record of consent mechanism at £9.2m discounted over a ten-year period (equivalent to an annualised cost of £1.1m per year), based on storage for 12 months. As this requirement is a feature common to all the GPL options considered there would be no wasted costs incurred by industry in the event of later transition to Enhanced GPL NoT or a database model such as GPL TxC.<sup>13</sup>

#### *Impact of the new requirement*

- 3.20 We acknowledged that costs will be incurred by providers of all sizes under the new obligation. However, the greatest impact is likely to be felt by the smaller providers, who typically do not currently have the functionality to record, retain and retrieve the records.

#### *Proportionality of the new requirement*

- 3.21 We noted in the August 2013 Document (paragraphs 9.34 to 9.40) a number of benefits that would be delivered by a new requirement to record a consumer's consent to switch will deliver. These included that the requirement would:
- in itself act as a deterrent against slamming as sales agents would be aware that a clear record of consent was being recorded for each sale.
  - enhance our enforcement capability by improving the ease with which we could identify cases that were the result of slams or other causes. This would ensure that we are able to target our resources at incidences of non-compliance and enable prompt enforcement against CPs.
  - 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.

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<sup>13</sup> The Enhanced GPL NoT process is set out in paragraphs 7.11 and 7.12 of the August 2013 Document. The GPL TxC model includes a database which stores information for each customer. Further details of this model are set out in Paragraphs 7.14 to 7.16 of the August 2013 Document.



- reduce our reliance on evidence that currently requires significant resources to collect when investigating complaints. This would release resources that we could use to investigate other slamming complaints.
  - enable us more effectively to establish the full extent of non-compliance by comparing transfer requests from Openreach with CPs records of consent, rather than basing our investigation only on complaints that we receive.
- 3.22 Based on analysis of our previous investigations into slamming 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.
- 3.23 We considered that these benefits would result in a material decrease in the extent of slamming and that the qualitative and quantitative benefits of this enhancement would be proportionate when weighed against the costs. We considered that the changes proposed to the GCs meet the test at Section 47(2) of the Act in being proportionate in addressing the problem of slamming as part of the GPL NoT process.

### **Stakeholder responses**

- 3.24 Fifteen respondents commented on our proposed requirement for a record of consent. Eleven stakeholders (BT, Communications Consumer Panel (CCP), Federation of Communications Services (FCS), [X], The Information Commissioner's Office (ICO), KCOM, SSE, Talk Talk Group (TalkTalk), UK Competitive Telecommunication Association (UKCTA), Universal Utilities and Zen Internet) were broadly supportive of our proposal although some challenged the exact details of the requirement. A further four stakeholders (Entanet, Everything Everywhere (EE), Telefonica, Virgin Media) disagreed with the necessity and cost of the requirement.
- 3.25 We summarise the views raised as follows:

#### *Effectiveness of the requirement*

- 3.26 BT agreed with our assessment that the requirement would act as a deterrent against slamming while FCS stated that the benefits to reputation, especially among smaller providers, warranted the cost.
- 3.27 Entanet said that we had not explained how the requirement would reduce slamming. Virgin Media stated that it believed the requirement was disproportionate given the downwards revision to our estimate of the number of households that are affected by slams.
- 3.28 EE challenged the 'robustness' of the enhancement as it would not verify the identity of the customer. Similarly, BT noted that the requirement would not address orders placed online (via BT.com) where the person who placed the order is not authorised to do so by the account holder. Telefonica questioned why the existing GC on records requirement was not sufficient to demonstrate consent.

- 3.29 The CCP suggested that it might be appropriate for CPs to be required to keep ‘*all records regarding the sale of the communications service*’<sup>14</sup> rather than under the obligation of ‘reasonable endeavours’. We note that this comment refers to GC 22.7 on all records regarding the sale of its services, rather than the proposed record of consent under GC 22.8.

#### *Duration of the retention requirement*

- 3.30 Several stakeholders (BT, EE, UKCTA and Virgin Media) disagreed with the requirement to retain the record for 12 months. UKCTA stated that six months had proved sufficient for Ofcom in the past while EE questioned why it should be different to that required for mobile sales records (GC 23.6). By contrast, Universal Utilities said that records should be held for the duration of the contract, although they acknowledged that most queries are likely to be raised by a customer in the first three months of their contract. They noted that retaining the record for the duration of the contract would be beneficial where there are disputes over early termination charges (ETCs) and in the cases where “an authorised person of the business entered into the agreement without the knowledge of another” and that retaining a permanent record of consent would address this problem.<sup>15</sup>
- 3.31 BT, Entanet and Virgin Media expressed concerns about confusion or inconsistency between GC 22.7 which states that CPs must ‘use reasonable endeavours’ to keep all sales records for at least six months, and the GC 22.8 requirement to keep a record of consent for at least 12 months. Entanet said the same retention period should be mandated for both requirements. Although BT acknowledged Ofcom’s rationale for the cumulative time taken to investigate alleged slamming by a CP it called for Ofcom to focus on allegations within a ‘more limited time period’.<sup>16</sup>
- 3.32 BT highlighted that, in order to comply with both the record retention (GC 22.7) and the record of consent (GC 22.8) requirements, the CP would have to store the whole record for 12 months as it is not possible to split the recording between the general discussion and the record of consent. This would result in additional storage requirements and therefore unnecessary costs. It would also make it likely that data retrieval would be more difficult and potentially less successful.

#### *Format of the consent*

- 3.33 SSE expressed concern that the GC is too prescriptive in terms of the types of consent required and called for greater flexibility in how a CP obtains and stores the record. Several stakeholders (BT, EE, Entanet, FCS, ICO, SSE, TalkTalk, UKCTA, Universal Utilities) called for greater guidance on what would constitute a record of consent, particularly with regards to online sales. TalkTalk questioned how the GC would apply if there were no accusation of mis-selling.

<sup>14</sup> CCP response, page 2, [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Communications\\_Consumer\\_Panel.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Communications_Consumer_Panel.pdf)

<sup>15</sup> Universal Utilities response, page 1, [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Universal\\_Utilities.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Universal_Utilities.pdf)

<sup>16</sup> BT response, paragraph 4.4, <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/BT.pdf>

- 3.34 The ICO pointed to the need when obtaining consent to ensure ‘that it is clear to individuals what they are consenting to, and the individual should be fully aware of what they are consenting to and how their data will be processed.’<sup>17</sup>

*Cost of the requirement*

- 3.35 EE and Virgin Media challenged our assessment of the total cost to industry of the requirement, with both claiming this had been underestimated. Virgin Media cited higher set-up costs [X] for its call recording system and stated that their running costs for this system far exceeded the £0.6m estimated by CSMG over ten years.
- 3.36 Entanet pointed out that the costs ‘*will fall on the conscientious and the smaller provider*’.<sup>18</sup>

**New evidence**

Ofcom Consumer contact team (CCT) data

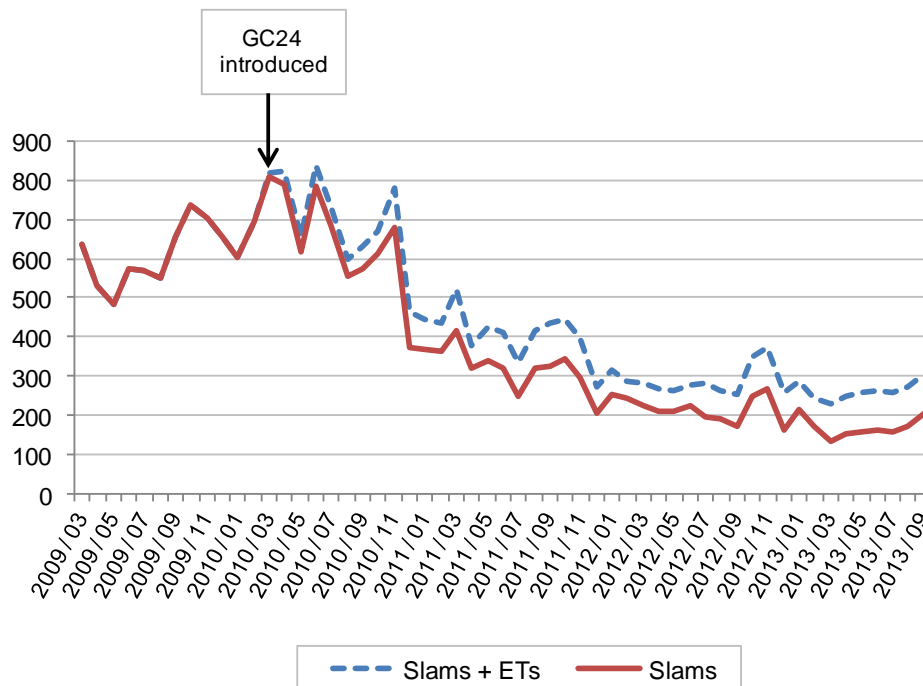
- 3.37 Figure 1 shows updated figures on the slamming complaints we receive, categorised separately and combined with erroneous transfers (ETs). Our data suggest that the number of slamming complaints has fallen over time to around 200 complaints per month. However, at the end of 2012 this downward trend slowed and since then complaints have fluctuated around or just below the 200 mark. These figures suggest that our enforcement activities have had a positive effect in reducing the overall level of slamming but that the current framework for enforcement may not be well suited to further driving down the number of slamming incidences.

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<sup>17</sup> Page 2, <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/ico.pdf>

<sup>18</sup> Page 1, Entanet International response  
[http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Entanet\\_International.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Entanet_International.pdf)

**Figure 1: Slamming complaints as categorised by the CCT – March 2009 to September 2013**



Source: CCT complaints

Includes incidences where the transfer took place as well as attempted switches which were stopped. ETs began to be tracked as a separate complaints category in March 2010

3.38 The majority (53%) of slamming complaints to the CCT in the 12-month period up to the end of September 2013 concerned 'No Contact' slams. This was followed by 'Contact but no contract' (23%), 'Change of mind not actioned' (16%) slams, and incidences where the provider passed itself off as a different provider (8%). These proportions are similar to those detailed in our August 2013 Document.

3.39 Over the same 12-month period, one-third (33%) of slamming complaints were made against larger CPs (down from 39% in the 12 months to the end of March 2013). Three smaller CPs accounted for a further 29% of complaints (24% over the 12 months to the end of March 2013) while the remainder (38%) originated from a long tail of CPs each of which generate only a small number of complaints (37% over the 12 months to the end of March 2013).<sup>19</sup>

## Our assessment

3.40 We have reconsidered our proposals, in light of the responses to the August 2013 Document. Our assessment is as follows:

### Extent of the problem being addressed

3.41 We recognise that slamming creates significant harm for those affected and imposes significant costs on consumers and industry. Based on our own evidence detailed in our August 2013 Document and updated in this Statement, and stakeholder

<sup>19</sup> In the six month period to the end of September 2012 the long tail accounted for 43% of slamming complaints to the CCT.

responses we believe that the incidence of slamming is lower than was the case at the time of the 2012 consultation.

- 3.42 We also think that the nature of the slamming complaints has changed. The biggest decline in slamming complaints to our CCT is for those made against larger providers.<sup>20</sup> This is consistent with our active engagement with these CPs to ensure compliance. The majority of complaints are now against smaller CPs or against the long tail of CPs (both large, medium and small CPs) which each generate only a few complaints per month.
- 3.43 No stakeholder challenged the finding of the Mott McDonald study,<sup>21</sup> that there are deficiencies in the way in which some CPs keep records of sales and that this makes it difficult to enforce quickly and effectively against slamming.

### Effectiveness of the requirement to reduce slamming

- 3.44 We consider that the requirement to retain a record of consent for each service switched is likely to result in a material decrease in the level of slamming. This will help us target smaller CPs and the long tail of CPs which together account for the majority of slamming complaints. We continue to believe that the requirement will act as a deterrent against slamming, enable CPs to help consumers who have a problem with switching, and help in dispute resolution cases. It will also help Ofcom investigate slamming complaints, and will confirm CP compliance under the existing GC 24.3, rather than basing our assessment on complaints received by the CCT.
- 3.45 The requirement will also help identify when a case is not a slam but should instead be classified as mis-selling, an ET, or consumer error. This will ensure that our resources are better targeted at incidences of non-compliance and enable prompt enforcement against CPs.
- 3.46 We do not believe, as Telefonica suggested, that the current GC on Records of Sales (currently GC 24.11) which specifies that the GP must use 'reasonable endeavours to create and keep all records of the sale of its Fixed-Line Telecommunications Service' is sufficient. The term 'reasonable endeavours' can cause enforcement difficulties in circumstances where a CP states that they are unable to provide records. Furthermore, records of sale may not include direct proof of the consumer's consent to switch these services.
- 3.47 We note that the new requirement is a stand-alone obligation which will be enforced separately from any other provision. We will actively enforce against 'failure to keep a record of consent' under the new requirement where we consider it appropriate to do so. This could occur, for example, where systematically poor records hamper our investigations into slamming allegations.
- 3.48 We disagree with EE's point that if the identity or authority of the consenter is not recorded, the consent mechanism will not be sufficient to prevent abuse. All CPs are already required under current GC 24.6 (GC 24.6 as amended) to take all reasonable steps to ensure that the customer is authorised to request the migration.

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<sup>20</sup> That generate on average more than 10 complaints per month.

<sup>21</sup> Analysis of Fixed-Line Mis-selling complaints, Mott MacDonald, August 2012, <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/fixedline-mis-selling.pdf>

### Duration of the retention requirement

- 3.49 Our requirement to keep records for 12 months is based on analysis of earlier investigations into alleged slamming by CPs. We recognise, as suggested by BT, that the majority of slamming complaints to Ofcom are made shortly after the initial transfer has taken place. However, as we explained in paragraph 9.36 of the August 2013 Document, in some circumstances the consumer may attempt to rectify the apparent slam with the corresponding CP before making a complaint. This may, at the very least, add several weeks between the point when the first slam occurred and the point at which the consumer reports it to us. Where a consumer is subject to repeated transfer requests over a period of months, which are successfully cancelled, they may contact Ofcom several months after the first slam occurred.
- 3.50 Moreover, as detailed in paragraph 9.36 of the August 2013 Document, the nature of the way we conduct investigations into possible non-compliance means it may be necessary to monitor complaints data over a period of several months in order to establish whether there is sufficient evidence to justify opening an investigation. This applies particularly when the number of complaints each month is low but amounts to a significant number over a longer period. It may also be necessary where complaints fluctuate over several months and we require an extended period of time to establish whether there is sufficient evidence to suggest a systematic breach.
- 3.51 We are also concerned that CPs with low but persistent or fluctuating levels of complaints may consider that they will not be challenged or subject to enforcement action covering a longer period, if they are obliged to retain their records of consent for only six months.
- 3.52 We also believe, as we explained in paragraphs 9.36 of the August 2013 Consultation, that a retention period of at least 12 months is necessary because evidence may come to light during a slamming investigation that suggests non-compliance from before the point at which the complaint was made. Under a six-month records retention obligation, if we were to find evidence during the investigation that suggested non-compliance beyond our initial complaints data and over a period longer than six months, we would not be able to request information from a CP to establish the full extent of non-compliance.
- 3.53 We acknowledge BT's point that retaining records for 12 instead of six months may incur additional costs. However, we note CSMG's assessment that the costs for the longer retention period assumes that storage within the larger CPs can be expanded to accommodate this volume of incremental data and that the cost of additional storage required 'can be purchased for a few thousand pounds or less'.<sup>22</sup>
- 3.54 We note that CSMG has assumed that the entire sales call is recorded and stored for 12 months rather than just a separate record of consent, and systems are developed 'to identify and tag records of consent to facilitate retrieval at a later date'.<sup>23</sup> We also note that CSMG is unclear why the volume of records required under a retention obligation of 12 months would cause 'undue pressure' on BT's facilities.<sup>24</sup>

<sup>22</sup> CSMG Switching Models: Comments on Stakeholder Responses, 17 December 2013, paragraphs 2.12 and 2.13.

<sup>23</sup> CSMG Switching Models: Comments on Stakeholder Responses, 17 December 2013, paragraph 2.10

<sup>24</sup> CSMG Switching Models: Comments on Stakeholder Responses, 17 December 2013, paragraph 2.12

- 3.55 Although we note Universal Utilities' point that holding the record of consent for the duration of the contract can assist in questions over ETCs or in the case of business agreements where an authorised person enters into an agreement without the knowledge of another, we consider that these matters fall outside the scope of our analysis.<sup>25</sup>
- 3.56 Similarly, we recognise that there is potential for consumers to be misled during initial sales calls and that the requirement exists (currently GC 24.11) for CPs to use reasonable endeavours to create and keep all sales records applies for six months. We note that this also applies to mobile telephony sales record under GC 23.6. Nevertheless the existing GC (and GC 23.6) is intended to aid enforcement against mis-selling more generally.<sup>26</sup> Consideration of this broader issue falls beyond the scope of this review and proposed improvement, which is intended to address the specific problem of switches that occur without the consumer's consent.

### Format of the consent

- 3.57 We acknowledge that CPs are best placed to identify what types of records would meet our requirement for clear and direct evidence of consent from the consumer to switch and how best to achieve this. This might involve the adaptation of existing systems, or investment in new processes and solutions.<sup>27</sup> The GC sets out the minimum elements that must be included in the record; this also addresses the ICO's comment that when obtaining consent, the CP should make it clear what the individual is consenting to.
- 3.58 We gave examples in our consultation as to what could constitute a record of consent. However, these should not be regarded as an exhaustive list. For example, providers could structure their sales calls in such a way as to comply with the GC; some providers may already do this while others may need to change their call transcript to be compliant with the new requirements. It is up to individual CPs to determine this.
- 3.59 We have assessed the following examples provided by stakeholders as a record of consent via online applications and in principle it appears that these are capable of providing direct evidence of consent:
- Customer pressing the 'I agree' button on the website translates into XML code that is ultimately sent to Openreach (TalkTalk, UKCTA).<sup>28</sup>

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<sup>25</sup> GC9 requires that providers specify minimum requirements within a contract with a consumer or other end-user. This includes under GC9.2 (j) 'the duration of the contract, and the conditions for renewal and termination of services', these include 'any charges due on termination of the contract, including any cost recovery with respect to terminal equipment'.

<sup>26</sup> In addition to slamming, mis-selling includes false/mis-leading information, lack of information, in appropriate sales and mis-leading advertisements.

<sup>27</sup> CSMG – Switching Models: An updated Cost Assessment of Options, Page 35

<http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/annexes/annex10.pdf> CSMG noted that the total costs of this enhancement are driven by the need for smaller CPs (Tier A) to set up call recording solutions and manage these, while larger CPs already have existing call recordings systems in place. Additional cost will also be incurred by larger CPs to configure systems and install necessary hardware for storage.

<sup>28</sup> TalkTalk response, page 3, [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/TalkTalk\\_Group.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/TalkTalk_Group.pdf), UKCTA response, page 2 <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/UKCTA.pdf>



- Time-stamped database record that can be shown in a database<sup>29</sup> (UKCTA) or report (FCS).<sup>30</sup>
- New 'Record of Consent' page, with a button for customers to click to say they 'Agree'. A screen shot is retained as the record. (BT)<sup>31</sup>
- Order confirmation screen which captures ordering person's contact details and sends out email confirmation. In these cases, the screen shot would not be retained as the record but the fact that the order proceeds would in itself be proof that the customer had agreed to the switch (BT)<sup>32</sup>. In this instance we would require that the consumer was not able to complete the order without first having given their explicit consent. We would also require CPs to be able to provide evidence that this was the case through a process audit.

### Cost of the requirement

- 3.60 We disagree with Virgin Media's assessment that the cost of the requirement equates to £109 per customer slammed and that this is therefore excessive given that slamming only affects a very small proportion of switches. It appears that this figure is based on the £9.2 million cost of the element over a ten-year period divided by the number of consumers we estimated had been slammed over a 12-month period (84,300)<sup>33</sup>.
- 3.61 As noted in our 'Supporting Calculations' in Annex 6 of the August 2013 consultation, we estimate consumer costs of slamming at £2.3m per annum. Over a ten-year period, this amounts to potential benefits of £18.7m (based on present value) to the consumer if the problem is eliminated. We compared this to the net present cost of implementation over a ten-year period of £8.9m. We have concluded that the quantifiable benefits are in excess of the costs of implementation.<sup>34</sup>
- 3.62 Furthermore, we have attempted to quantify the cost to consumers only in terms of time, leaving aside other costs such as the significant distress caused by slamming.<sup>35</sup> We therefore believe that our estimates understate the potential benefits of the record of consent requirement.
- 3.63 We note that CSMG's costs are based on the assumption that larger CPs already have call recording systems in place, and therefore that the costs '*represent the incremental investment required to adapt the existing systems for the new [call recording] requirements for record of consent*'.<sup>36</sup>

<sup>29</sup> UKCTA response, page 2, Entanet response, page 1,

[http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Entanet\\_International.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Entanet_International.pdf)

<sup>30</sup> FCS response, page 3, <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/FCS.pdf>

<sup>31</sup> BT response, paragraph 4.5

<sup>32</sup> BT response, paragraph 4.5

<sup>33</sup> Paragraph 5.60 in the August 2013 Statement

<sup>34</sup> Paragraphs A6.47 to A6.52 [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>35</sup> We did not quantify the harm to competition (and ultimately consumers) if slammed consumers are not restored to their original number.

<sup>36</sup> CSMG Switching Models: Comments on Stakeholder Responses, 17 December 2013, paragraph 2.9.



- 3.64 We recognise, as suggested by Entanet, that the cost of implementation of this requirement is primarily driven by the smaller CPs, which are less likely to have existing call recordings systems in place. However, we note that CSMG took this into account in their costing estimates.<sup>37</sup> We agree with FCS's point that although small providers will incur significant costs, there is a potentially significant benefit to the reputation of these providers in having more robust consent-recording mechanisms.

### **Our conclusion**

- 3.65 In light of our discussion above we have decided to require CPs to obtain a direct record of consent to be retained for 12 months.
- 3.66 We maintain our view, as set out in our August 2013 Document, that the benefits of this enhancement would result in a material decrease in the extent of slamming, and that its qualitative and quantitative benefits would be proportionate when weighed against its costs. We consider that the changes to the GCs meet the test at Section 47(2) of the Act, particularly taking into account the estimated costs of implementation and the fact that this measure is part of a wider solution to the problems associated with switching processes.

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<sup>37</sup> CSMG Switching Models: An updated Cost Assessment of Options, p. 35, paragraph 6.7

## 2. Require provision of better information on the implications of switching

### Introduction

- 3.67 It is important that consumers are properly informed of the financial and service implications of switching providers.
- 3.68 Although the letter sent by LPs under the current NoT process has been effective in providing consumers with information on the implications of switching, it does not always provide them with information specifically relevant to their circumstances. 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.
- 3.69 In light of this, in our August 2013 Document we proposed additional requirements intended to improve the effectiveness of the existing LP letter, and to provide better information to consumers on the implications of switching.
- 3.70 In this sub-section we explain the extent of the problem in more detail. We outline the current requirements as set out in the relevant GCs and Best Practice Guidance from Ofcom and the OTA. We then recall the proposals we made in our August 2013 Document to improve these letters, along with the costs of implementing them, the impact they would have, and explain why they are proportionate. We then summarise and assess stakeholder views before setting out our final conclusions in the light of these.<sup>38</sup>
- 3.71 In summary, we have decided that the enhancements we proposed requiring provision of better information about the implications of switching are proportionate. However, in light of stakeholder comments we have made some revisions to our proposals to amend GC 22.10, GC 22.11 and GC 22.12. The amendments are:
- we have removed the requirement to state the time of day for the migration;
  - the LP is required to list only those communications services which it provides and which it reasonably expects will be affected and unaffected by the transfer. However, we encourage losing providers to list services provided by third parties that are critical either to security or health, which may be affected by the transfer; and
  - we have made minor amendments to the GCs to clarify that the letter must be sent in paper or another 'Durable Medium'.

### Summary of the August 2013 Consultation

#### *Effectiveness and weaknesses of the NoT letter*

- 3.72 In our August consultation, paragraphs 9.47 to 9.51, we highlighted evidence which suggests that the GPL NoT system is relatively effective in ensuring that consumers

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<sup>38</sup> Our assessment includes CSMG's response to stakeholder comments found here: CSMG Switching Models: Comments on Stakeholder Responses, 17 December 2013 <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/statement/annex4.pdf>

are prompted to find out about ETCs before they commit to switch. We also identified the following weaknesses in the NoT letter which could be overcome or mitigated:

- 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;
- consumer research suggests that many consumers are not made aware during the process that their services will be cancelled automatically and as a result some customers contact their LP unnecessarily to cancel their service.

#### *Current requirement*

- 3.73 Under our existing requirement (GC 24.7), the GP and LP send a letter, in accordance with the industry-agreed process, to the customer stating that the customer is transferring their service. This must be sent after the order has been created, before the switchover.
- 3.74 The information that must be set out in the NoT letter is stated in the existing GC, with details of what is considered best practice provided in the Ofcom Guidance on Unfair Terms in Contracts. An industry template for the LP notification is included in the OTA Best Practice Guide on Migrations and Home Moves.<sup>39</sup>

#### *August 2013 Proposal*

- 3.75 In order to improve the effectiveness of the NoT letter, we proposed in our August consultation to require the LP to provide better information on the implications of switching by setting out the following information:
- precise information on any applicable ETCs, including the means by which the ETC must be paid. The ETC must be specific and calculated according to the planned switchover date;
  - information about the impact of the transfer on the prices of all continuing services;
  - it should be made clear that the customer is not required to contact the LP and that their contract will be automatically cancelled and a final bill sent out when the transfer is complete.
- 3.76 We stated that this information should be set out in clear, intelligible and neutral terms and that the consumer should be given the options of receiving the information in a durable medium (excluding SMS).

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<sup>39</sup>Ofcom Guidance

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

OTA Best Practice Guide <http://www.offta.org.uk/IndustryBPG-MigrationsHomemoves-v4.7.2.pdf>

- 3.77 These new obligations are in addition to the information currently required under the existing GC 24.7, including the proposed switchover date, a list of all communications services that will be transferred, all communications services that will be directly or indirectly affected by the transfer and all communications services that the CP reasonably expects to remain unaffected by the transfer.
- 3.78 We explained that, in order to ensure that consumers are fully informed about the impact of their decision to switch, the NoT letter should clearly identify the direct and indirect services that will be directly or indirectly affected.
- Direct impacts include any services that are to be switched, the date and time of disconnection and, if applicable, the specific ETC for which the customer is liable, based on the planned migration date. We stated that the use of estimates or ranges would not be appropriate as these may overstate the level of costs for which a consumer would be liable, thereby discouraging them from switching.
  - Indirect impacts refer to the ancillary services which are tied to the service that is being transferred. These would include changes to the price of related products if the consumer cancels a bundled service or the loss of services such as email accounts, pay TV, household alarms and medical alert systems. We recognised that this information would be limited to services and products the LP could be reasonably be aware of.

*Cost of the new requirement*

- 3.79 Over a ten-year period, the costs of providing specific information on the service implications of switching, including ETCs, within the NoT letter, was estimated by CSMG to be £1.8m.
- 3.80 There would be no wasted costs to industry should there be a subsequent transition to another GPL process (such as Enhanced GPL NoT or GPL (TxC)) as this improvement would be common across the GPL options.

*Impact of the new requirement*

- 3.81 All CPs will need to update their systems and processes to implement this requirement as the provision of specific information on service implications is an enhancement to the existing LP letter, as required under the existing GC 24.7.

*Proportionality of the new requirement*

- 3.82 We explained in paragraphs 9.60 to 9.72 in our August 2013 Consultation, that we believed our new requirement would ensure that consumers were better informed about the implications of switching before making the decision to commit to their switch. In particular, they are likely to benefit from precise information on applicable ETCs and other direct and indirect implications.
- 3.83 As highlighted by various stakeholders and through our own research, the decision to switch providers has become more complex for consumers. They have to consider an increasing number of factors, including price discounts, associated services such

as email, and non-financial benefits ranging from free minutes to Wi-Fi access.<sup>40</sup> In addition, more products are being offered as bundles, rather than individual services.

- 3.84 Given the range of considerations involved, we concluded that it was reasonable to require LPs to inform the consumer of the services that the LP would reasonably expect to be directly and/or indirectly affected by their switch.
- 3.85 We explained that the provision of clear and precise information about the level of any applicable ETCs and services that will be affected, as well as explaining that the contract for their fixed voice and/or broadband service would be automatically cancelled when the service(s) are transferred is likely to reduce the consumer cost of finding out the full implications - the consumer will not need to contact their LP or spend time reviewing their terms and conditions.
- 3.86 In light of the increasing complexity of communication service purchase decisions, we stated that we believed a written record of the LP's statement on the implications of switching would help consumers understand the trade-offs between different offerings, particularly where there are many variables to take into consideration which may not be easily understood via a telephone call. Alternatively, where the implications are easily understood, which may be the case when a single standalone service is purchased, a written record would confirm any advice provided in a telephone call. Furthermore it would ensure an audit trail is available for all interested parties and mitigate against any improper or unclear information provided in the call.
- 3.87 We explained that we did not believe the provision of this information by means of an SMS would be appropriate for all types of consumers.<sup>41</sup>
- 3.88 We considered that our requirement is likely to result in a material decrease in unwillingly paid ETCs and combined with the qualitative benefits detailed, we believed the requirement was proportionate. Given the estimated costs of implementation and that this proposal is one of a number of enhancements intended to improve the switching experience for consumers, we considered the proposed improvements to the GCs meet the test at Section 47(2) of the Act.<sup>42</sup>

## Stakeholder responses

### *Effectiveness of the overall requirement*

- 3.89 Most stakeholders agreed with our assessment of the requirement for better information on the implications of switching (BT, EE, [X], KCOM, Universal Utilities, Zen Internet, TalkTalk, CCP, FCS, Which?, ICO, Melinek, UKCTA). For example, SSE said that a letter would ensure that consumers have a record of the implications of switching to hand, rather than relying on their memory of a phone call.

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<sup>40</sup> 2012 CRI research. For example changing email address and losing bundle discounts was identified as a main or major issue in the decision to switch by 42% and 33% of dual play considerers respectively.

<sup>41</sup> In Annex 7 of the August 2013 Document we highlighted how a SMS has a technical limitation of only being able to contain a maximum of 160 characters. Given that a message to a consumer advising of the implications of switching is likely to exceed this limit, an SMS notification would likely to require multiple messages to be sent. It therefore likely that some consumers, particularly the vulnerable, would find SMS-based notifications confusing and unhelpful.

<sup>42</sup> For further information on the estimated costs of implementation, please see Annex 10 of the August Document.

- 3.90 SSE and Which? expressed support that the letter should inform the consumer that no contact with the LP was necessary and that the existing contract would cease automatically. BT said it understood why Ofcom proposed this requirement and emphasised the need for clarity in the letter about which services would cease automatically and which would continue unless the customer contacted the LP.
- 3.91 Some stakeholders, including Telefonica and Virgin Media, disagreed with the proposal that an NoT letter is the best way to provide information on the implications of switching.
- 3.92 A small number of stakeholders advocated a telephone call as an alternative to a letter. Telefonica argued that this would provide a safety net for the full range of consumer types, while BT felt that a call provided customers with better assistance in making complex choices, rather than a “default” letter.
- 3.93 Universal Utilities suggested that consumers’ lack of understanding of the implications of a switch could be attributed to their having failed to read or having disregarded their LP letters.
- 3.94 Entanet stated their concern that our proposals did not appear to account for the current market in which multiple services are run by different providers on a single line. They expressed concern that a GPL process is reliant upon contact with and an accurate response from LPs.

#### *Format of the notification*

- 3.95 UKCTA argued there was a lack of clarity between GC 22.10, GC 20.11 and GC 22.12 over the use of the term ‘Durable Medium’ and electronic communications that have been explicitly consented to. They suggested removing GC 22.12 and offered alternative drafting for the start of GC 22.10 and GC 22.11.<sup>43</sup>

*‘The [Losing/Gaining] Provider must, in accordance with the industry agreed process send the End-User a letter on a Durable Medium by normal post or e-mail/fax if the End User has previously explicitly consented to receiving electronic communications.’<sup>44</sup>*

#### *ETC requirement*

- 3.96 The proposal that the NoT letter must include the precise amount on any applicable ETC due at the estimated switching date was supported by SSE as well as the CCP, who urged for a move away from generic language in letters such as ‘you may incur an ETC’.<sup>45</sup>
- 3.97 Other stakeholders, including EE, TalkTalk, UKCTA and Virgin Media, disagreed with the requirement for a precise amount. UKCTA and TalkTalk said that they were ‘not convinced’ that this was needed, although neither CP offered details or reasoning.

<sup>43</sup> GC22.10 and GC22.11 states the GP must send the Customer or End-User the letter “in paper or another Durable Medium” while GC22.12 requires that the notification “by normal post, unless the Customer has explicitly agreed to receive correspondence electronically”.

<sup>44</sup> UKCTA response, page 4, <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/UKCTA.pdf>

<sup>45</sup> CCP response, page 3, [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Communications\\_Consumer\\_Panel.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Communications_Consumer_Panel.pdf)

- 3.98 EE recommended the use of a £10 band to allow for any delays to the planned migration date, while UKCTA argued that if the ETC were £54, '*it should be sufficient for the letter to explain that the ETC would be no more than £60 or £70*'.<sup>46</sup> TalkTalk made a similar proposal to UKCTA.
- 3.99 Virgin Media argued that it would be impractical to provide precise information on an ETC based on a moveable termination date, while TalkTalk believed that an incorrect figure would result in customer complaints. BT highlighted that it would be necessary for wholesalers and retailers to undergo systems development in order to co-ordinate accurate information into a single letter.
- 3.100 Universal Utilities noted that, in addition to the NoT letter, it automatically issues another letter about a week before the date of the switch to advise customers of a 'provisional' termination fee figure should any be payable. They considered that this provides accurate and easily digestible information to customers, and did not agree that an alternative procedure would be more effective.

#### *Time of day of the migration*

- 3.101 TalkTalk, UKCTA, BT and Virgin Media noted that Openreach does not commit to, or communicate, the estimated time of day of a switch to a CP. It is therefore not possible to implement our requirement to include this in a NoT letter.

#### *Services affected/unaffected*

- 3.102 Some stakeholders, including Which?, CCP, EE and Telefonica supported our proposal to list all communication services directly and indirectly impacted by a customer's decision to switch. Telefonica recommended that Ofcom consult its consumer information remedies research to test whether the proposed enhancement would be useful to customers. BT suggested that the number of 'value-added services' and complex indirect impacts arising from product deals and ancillary products are perhaps best dealt with in a discussion between the customer and agent, but emphasised the need for clarity in any correspondence.
- 3.103 Stakeholders were concerned that the proposal to provide details of each related communication service that could be indirectly impacted by switching could be open to abuse by LPs. The FCS emphasised the importance of personalising the list of impacted services in each customer letter. SSE suggested that the GC wording be tightened in order to require the LP to refer only to services and products that it provided in both the service and price impacts sections of the letter.
- 3.104 Virgin Media argued that our analysis was flawed as the other implications of switching such as losing a bundled discount or email address can be equally or more significant for a consumer than an ETC. Zen Internet argued that the services listed should be expanded to cover all bundled services, including mobile phone and TV. Zen Internet argued that if a customer switches from a triple-play service (fixed voice, broadband, pay TV) to a dual-play service (fixed voice, broadband), the implications of not having a TV bundled in the package needs to be communicated by the GP and LP.

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<sup>46</sup> UKCTA response, page 3, <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/UKCTA.pdf>

- 3.105 BT thought that customers might find a letter with more comprehensive information confusing, and could potentially misinterpret it as a final bill. Similarly, Universal Utilities felt that providing further detail in a letter could detract from the key issues.
- 3.106 SSE suggested that industry guidance should be created on how to describe the impact of switching on alarm systems.

#### *Losing provider contact with consumer*

- 3.107 Virgin Media argued that Ofcom should 'permit active contact between the LP and consumer (as part of a discussion over whether the consumer should switch) as these types of discussion are informative and welcomed by consumers'.<sup>47</sup>
- 3.108 KCOM argued that a GPL process is not the most efficient switching procedure as it implicitly expects customers to make a reasoned final decision after having begun a contract with the GP. KCOM stated its belief that under the proposed changes, if a consumer received an NoT letter and contacted their LP to discuss unexpected ETCs, the LP '*may be too limited in discussion of a customer's legitimate options to avoid the fees, due to the ban on representations that could induce a customer to continue their existing contract*'.<sup>48</sup>

#### *Costs of the enhancements*

- 3.109 TalkTalk believed that the requirement to provide precise information on any applicable ETCs would increase implementation costs.
- 3.110 Virgin Media disagreed with our costing of the proposed enhancement. It felt that £1.8m was an underestimate, taking into account the system upgrades, training and enhancements required to ensure that each letter was tailored to individual customers. Virgin Media argued that to provide precise information, both on ETCs and on the impact of the transfer on the prices of all continuing services, would require analysis of the contract and its length as well as the cost and benefits associated with the contract. It argued that the costs of IT enhancements to amend processes and create automated processes, as well as staff training, would be likely to exceed [£].

### **Our assessment**

- 3.111 We have considered the responses and relevant evidence we have received on our proposal from stakeholders. We set out further guidance and any amendments to our proposed GCs below.

#### Effectiveness of the NoT letter

- 3.112 We believe that the NoT letter is the best way to provide information on the implications of switching. The evidence we presented in the August 2013 Document shows that the letter is relatively effective at 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. Furthermore, we stand by our reasons detailed in the August 2013 Document (paragraphs 9.67 and 9.68) as to why it is essential that consumers are provided with better information on the implications

<sup>47</sup> Virgin Media response, page 9, [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Virgin\\_Media.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Virgin_Media.pdf)

<sup>48</sup> KCOM response, page 3 <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/KCOM.pdf>



of switching in a durable medium. We have not been presented with any evidence from stakeholders to suggest that any other medium would be better than the durable medium required.

### Format of the notification

3.113 We have removed from GC 22.10 and GC 22.11 the wording on the medium of the letter and revised GC 22.12 (now in paragraph 22.13 of the revised GC) in light of stakeholder comments, to make it clearer that the notification letter must be sent in paper or in another 'Durable Medium'<sup>49</sup>. The letter must be sent by normal post, unless the end-user has explicitly consented to receive correspondence electronically. The revisions to these three GCs can be found at paragraph 3.131.

### Information contained within the notification

#### *Inclusion of ETC information*

3.114 We continue to believe that ETC information should be included in the NoT letter. This provision was supported by the stakeholders who commented on this specific requirement. We expect that where no ETC is due this is stated in the letter. This will ensure that the letter is not used as a general prompt about the possibility of an ETC which could create confusion for those customers outside their minimum contract period (MCP) and induce them to call their CP unnecessarily to get clear information. It will also reduce the number of instances where the consumer finds out they are liable for an ETC only after they have been switched.

#### *Precise information on any applicable ETC*

3.115 The provision of precise information on any ETC will ensure that the consumer is better informed before making the decision to commit to switch. It will also ensure that the letter does not provide vague or confusing information on the ETC and result in an unnecessary call to the customer's CP. It is also likely to reduce the number of customers who are made aware of their ETC only after they have paid it. We are here concerned only with the inclusion of precise information on the ETC and accept that usage based charges will appear in the final bill.

3.116 We consider that no case has been made as to why our requirement should be considered 'impractical'. We note that CPs already have in place systems to calculate a final ETC 'in the existing rating and billing architecture'<sup>50</sup> and some CPs already explain to customers on their websites how to calculate ETCs and can provide this information by phone if the consumer initiates contact.<sup>51</sup> We have seen

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<sup>49</sup> "Durable Medium" is defined in GC22 as "any instrument which enables the Customer or End-User to store information addressed personally to him in a way accessible for future reference, for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored, excluding SMS".

<sup>50</sup> CSMG note that CPs already have this ability and have based their costing of this requirement on this assumption, page 8, paragraph 3.12 (i). Furthermore, it was assumed that CPs have the ability to determine the implication of switching a single service on other services and that CPs have existing automated systems to generate LP letters to a customer that support both static text and dynamic elements. For details see CSMG Switching Models: Comments on Stakeholder Responses, 17 December 2013, paragraphs 3.9 to 3.19.

<sup>51</sup> BT

[http://www.productsandservices.bt.com/consumerProducts/dynamicmodules/pagecontentfooter/pageContentFooterPopup.jsp?pagecontentfooter\\_popupid=26746&s\\_cid=con\\_FURL\\_termcharges](http://www.productsandservices.bt.com/consumerProducts/dynamicmodules/pagecontentfooter/pageContentFooterPopup.jsp?pagecontentfooter_popupid=26746&s_cid=con_FURL_termcharges)  
TalkTalk - <http://help2.talktalk.co.uk/your-order/there-charge-terminating-my-contract-early>

no clear evidence to suggest that CPs would face significant practical difficulties in providing this information in the NoT letter.

- 3.117 We recognise that the requirement to provide a precise ETC will necessitate implementation costs. However, this was accounted for in CSMG's costing assessment, which we used to inform our overall assessment of whether this requirement is proportionate. We note that although Virgin Media felt the costs for the enhancements to the NoT letter were underestimated, no stakeholder sought to challenge the CSMG estimate directly.
- 3.118 We do not agree with the TalkTalk and UKCTA proposals that a 'reasonably precise estimate should be sufficient'<sup>52</sup> in which a 'no more than' figure is provided. The example given by UKCTA shows the level to which a 'reasonably precise' estimate could be stretched (to £70 when the customer is actually required to pay £54). We do not believe this would be as effective as an exact amount in addressing the problems that we have identified because it is likely to suggest a materially higher cost and does not provide the precise information that consumers may need when making their final decision to switch. It may also prompt the consumer to go to the trouble of calling their CP to clarify the precise figure. The same analysis applies to the suggestion that a range or band could be used.
- 3.119 We have seen no clear evidence to suggest that providing a range for the ETC would be significantly less costly than providing an exact ETC. We note CSMG's assessment that in principle the development effort required to establish an accurate range or 'a no more than' figure would be broadly similar to the development effort needed to establish the ETC at an expected migration date.<sup>53</sup>
- 3.120 The GC requires that the CP provide a precise figure calculated on the basis of a reasonable estimate of the expected migration date. We expect the CP to provide an explanation that the ETC is calculated on the basis of the expected migration date, and that this may change if the migration date changes. This should reduce the risk of consumer complaints where, despite meeting this obligation, a CP has provided a figure which does not correspond to the actual ETC due (because the migration date has moved).
- 3.121 Taking account of our proposal and stakeholder's suggestions, we have concluded that, as we proposed in the August 2013 Document, the NoT letter should provide the ETC based on the expected migration date and that this should be precise, rather than a band, or 'no more than' figure.

#### *Migration date and time*

- 3.122 In light of stakeholders' submissions (TalkTalk, UKCTA, BT and Virgin Media) we recognise that the requirement to provide information within the NoT letter about the time of day of the migration is not practical, given the limits of the information provided by Openreach to CPs. We therefore agree that the obligation should only be to communicate the migration date.

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Virgin Media - <http://store.virginmedia.com/the-legal-stuff/terms-and-conditions-for-fibre-optic-services/early-disconnection-fees.html>

<sup>52</sup> UKCTA response, page 3, <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/UKCTA.pdf>

<sup>53</sup> CSMG Switching Models: Comments on Stakeholder Responses, 17 December 2013, paragraph

*Service affected and unaffected*

- 3.123 It is important that consumers are provided with clear and precise information on the services that will be affected by the switch away from their current provider. This should be specific to the consumer to whom the letter is addressed and not a 'default' letter, as suggested in BT's response. This will ensure that the consumer is better informed before making the decision to commit to switch. It will also prevent the LP presenting vague and confusing information about the possibility of loss of services, which may prompt the consumer to contact the LP or result in some consumers not being fully informed of the implications of their decision to switch.
- 3.124 We have amended our proposed modifications to GC 22.11(e), which covers services that may be affected by a switch, to reflect the concerns of stakeholders outlined above. As amended, the GC limits the requirement to provide details of affected direct and indirect communications services only to these services which are provided by the Losing Provider. Our intention is that this will limit opportunities for LPs to provide information that is unnecessary and irrelevant to the consumer and may cause them undue concern. This amendment is also reflected in GC 22.11(f) on services that are unaffected by the transfer. Details of these amendments can be found below.
- 3.125 However, Ofcom 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, where these are of a critical nature in respect of security or health. Ofcom will monitor CP practice in this area and may explore how any issues arising might be addressed, for example by changes to the OTA Best Practice Guide. We may also consider the need for introducing new requirements in this respect, if CPs fail to protect consumers.

Losing provider contact with consumer

- 3.126 In relation to the points raised by Virgin Media and KCOM regarding different scenarios involving a losing provider contacting, or being contacted by, its customers, we note that the relevant provisions of the existing GCs will not be affected by our modifications;
- 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.<sup>54</sup>
  - 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.

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<sup>54</sup> In line with the CAT's judgment in the *CPS* case, this provision prohibits any marketing activity initiated by an LP by use of the information provided by the GP that a customer has requested to switch. According to the Tribunal, use of information for the purposes of a "save call", i.e. an unsolicited call made to the customer during the 10-day cooling-off period, the purpose of which is to deflect the customer from switching, could provide a competitive advantage to the LP and is outside the purpose for which the information was originally supplied (Competition Appeals Tribunal, *British Telecommunications plc v Ofcom*, 2004, Case 1025/3/3/04, judgment of 4 December 2004).

3.127 We also note that the OTA provides a standard industry template for the Losing Notification letter to which CPs must have regard.

#### Cost of the requirement

3.128 In regards to Virgin Media's point that the proposed enhancements will cost more than CSMG estimated, we note that CSMG's costs are based on the assumption that CPs already have existing capabilities to calculate the ETC at the date of migration and the impact of the transfer on other services. CSMG has also included in its assumptions the incremental effort necessary to implement the system changes required to meet the obligations.<sup>55</sup> We have seen no clear evidence to suggest that their assumptions are incorrect.

#### Conclusion

3.129 We have decided, consistent with the position set out in our August 2013 Document, that in light of its qualitative and quantitative benefits, this enhancement is proportionate when weighed against its costs. We consider that the changes to the GCs meet the test at Section 47(2) of the Act, taking into account in particular the estimated costs of implementation and the fact that this measure is part of a wider solution to the problems associated with switching processes.

3.130 We discussed above in paragraphs 3.11 and 3.22 that we would provide further clarity for CPs by amending our proposed modifications to GC 22.10, GC 22.11 and GC 22.12.

3.131 Figure 2 sets out the amendments and our final wording for these GCs.

**Figure 2 – Amendments to GC 22.10 to GC 22.13**

<b>Amendments</b>	<b>Revised wording</b>
<p>GC 22.10</p> <p>When a Customer enters into a contract for the provision of Communications Services, the Gaining Provider must send that Customer a letter, <del>in paper or another Durable Medium</del>. The letter shall set out in clear and intelligible terms: [...]</p> <p>(e) a reasonable estimate of the Migration Date <del>(including date and time of the day)</del>;</p>	<p>GC 22.10</p> <p>When a Customer enters into a contract for the provision of Communications Services, the Gaining Provider must send that Customer a letter. The letter shall set out in clear and intelligible terms: [...]</p> <p>(e) a reasonable estimate of the Migration Date;</p>
<p>GC 22.11</p> <p>The Losing Provider must, in accordance with the industry agreed process, send the End-User a letter, <del>in paper or another Durable Medium</del>. The letter shall set out in clear, intelligible</p>	<p>GC 22.11</p> <p>The Losing Provider must, in accordance with the industry agreed process, send the End-User a letter. The letter shall set out in clear, intelligible and neutral terms: [...]</p>

<sup>55</sup> CSMG Switching Models: Comments on Stakeholder Responses, 17 December 2013, paragraphs 3.12 to 3.14.

<p>and neutral terms: [...]</p> <p>(e) all Communications Services or other types of services <u>provided by</u> that the Losing Provider <u>that it</u> reasonably expects to be directly or indirectly affected by the transfer</p> <p>(f) all Communications Services <u>that provided by</u> the Losing Provider <u>that it</u> reasonably expects to remain unaffected by the transfer</p> <p>(g) a reasonable estimate of the Migration Date <del>(including date and time of the day)</del>;</p>	<p>(e) all Communications Services or other types of services provided by the Losing Provider that the Losing Provider reasonably expects to be directly or indirectly affected by the transfer;</p> <p>(f) all Communications Services provided by the Losing Provider that the Losing Provider reasonably expects to remain unaffected by the transfer;</p> <p>(g) a reasonable estimate of the Migration Date;</p>
<p><del>22.12</del></p> <p><del>The letters under Conditions 22.10 and 22.11 must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.</del></p>	<p>22.13</p> <p>The letters under paragraphs 22.10 to 22.12 must be sent in paper or another Durable Medium. The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.</p>

### 3. Requirements regarding minimisation of loss of service

#### Introduction

3.132 An efficient switching process should minimise the risk of consumers experiencing breaks in, or loss of service, including where they switch multiple services (bundles) together. This continues to be a significant issue, as consumers are becoming increasingly reliant on communications services such as broadband for important functions such as banking and access to government healthcare and education services, and in the light of greater take-up of bundled products.

3.133 This sub-section summarises the assessment of the nature and scale of problems relating to loss of service that we set out in our August 2013 Document and describes the relevant existing requirements for CPs. It then recalls the reasons we gave for our proposal to mandate the use of functionality to help ensure a more seamless transfer of bundled voice and broadband services and explains why we believed this to be a proportionate measure. We then consider the responses and relevant evidence we have received on this issue from stakeholders, before setting out our final view.

3.134 In summary, we have decided that:

- Loss of service remains a significant issue for consumers, particularly where this involves the switching of a bundle of services.
- While current and forthcoming industry initiatives may help address the problem, their adoption by CPs is discretionary and not all CPs are using them.
- Further measures are required to limit the risk of consumers experiencing breaks or loss of service.

3.135 In light of the responses raised, we have made some amendments to GC 22.13 in order to provide further clarity on some aspects of the requirement.

#### Summary of the August 2013 Consultation

##### *Extent of the problem*

3.136 We noted in our August 2013 Document (paragraphs 5.176 to 5.203) that a significant proportion of consumers continue to suffer loss of service during the switching process and that the detriment can be significant. Our 2011 broadband consumer research indicated that about a fifth of broadband consumers who switched using GPL NoT (21%) or LPL MAC processes (22%) suffered a loss of service and that their loss of service lasted on average for about a week. Furthermore, our 2012 Customer Retention and Interoperability Research found that 'being without service during a switch' was a main or major issue experienced by 21% of fixed voice and broadband bundle switchers.

##### *Current requirement*

3.137 The section on loss of service in our August 2013 Document (paragraphs 5.170 to 5.205) explained that where consumers seek to switch a single service (fixed voice or broadband), current switching processes work reasonably well in terms of preserving continuity of service. However, as take up of bundled products has increased, we

noted that consumers are increasingly seeking to switch these two services together as a bundle.

- 3.138 There are two sets of tactical fixes and enhancements to switching processes available to CPs which aim to facilitate seamless switching of bundles. The first set is known as SIM Provide, which a CP can use to link separate orders of voice and broadband when a consumer switches away from an MPF provider to ensure simultaneous provision of services. The second set is known as the Parallel Orders (PO) Process, whereby a CP can manually manage the sequencing and timing of the switch of voice and broadband services in order to co-ordinate the seamless switch of a bundle.
- 3.139 We noted however that these enhancements are not fully robust in all bundled switching scenarios. SIM Provide for example does not support combined migrations from WLR+SMPF to WLR+SMPF. Furthermore voice provision under SIM Provide is prioritised over broadband, so some loss of service could occur where the voice service is delivered but the broadband is delayed. The PO process relies on CPs to manually co-ordinate transfers, which is not suitable where there are a high number of transfers.
- 3.140 We highlighted in paragraphs 5.198 to 5.199, and 9.77, that Openreach had developed a new SIM Provide process called SIM2. This is intended to address the weaknesses associated with the SIM Provide and the PO processes described above and so help to deliver a more seamless simultaneous transfer of fixed voice and broadband. SIM2 for MPF (voice) and GEA-FTTC<sup>56</sup> (broadband) was made available to CPs in November 2012. We noted that extensions to include scenarios where the GP is using GEA/WLR3<sup>57</sup> or SMPF/WLR3 to provide services were planned for September 2013.
- 3.141 We explained that SIM2 is intended to have a number of features and advantages over the original SIM Provide process. In particular it is intended to:
- lock switching orders for voice and broadband together, which should enable the two services to be delivered together;
  - automate transfer of bundled services with co-ordination at the back end. This should allow a higher proportion of SIM Provides to be successful, and the placement of a high volume of orders; and
  - support all migration types over time, as SIM2 is extended.
- 3.142 Our August 2013 Document recalled that support of the tactical fixes and processes by CPs is considered best practice, as set out in the OTA's Migrations Best Practice Guide. Where CPs do not support these fixes, we explained that bundled services are switched sequentially rather than simultaneously, and the consumer will suffer a loss in at least one of their services.
- 3.143 Nevertheless use of these fixes by CPs is not mandatory, and CPs have discretion in deciding whether to use such processes, which can incur costs. Information from

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<sup>56</sup> GEA-FTTC – Generic Ethernet Access – Fibre to the Cabinet. This is the FTTC variant of the wholesale service provided to CPs to supply superfast broadband services.

<sup>57</sup> WLR3 – This is the Openreach product for Wholesale Line Rental which gives CPs the ability to provide and manage fixed voice services.

Openreach showed that only six CPs regularly used the SIM Provide process between January and December 2012.

#### *August 2013 proposal*

- 3.144 In the light of the availability of processes to address the switching of bundles, and the consumer detriment suffered when loss of service occurs during switching, our 2013 consultation concluded that switching processes should include the seamless transfer of bundled fixed voice and broadband services over the Openreach copper network.
- 3.145 Accordingly, we proposed to require that fixed voice and broadband services are switched together where a consumer has requested a transfer to broadband and fixed voice services provided by the same CP, over the same line. This requirement would apply to any type of migration to and from services that are offered over the Openreach copper network. The requirement would be put in place through our proposed amendments to the GCs.

#### *Costs of the new requirement*

- 3.146 Our consultants CSMG estimated that the incremental costs of mandating functionality to achieve seamless transfer will be around £3.7m (net present cost over ten years). CSMG estimated that about £750,000 (20%) of the costs could be wasted, were Ofcom to decide subsequently that a move to an alternative switching solution such as a database, was proportionate.

#### *Impact of the new requirement*

- 3.147 We noted that it appears that only six CPs regularly use the SIM provide process. Consequently the requirement is likely to affect a number of CPs, because they do not presently support the relevant available processes. They will need to update their systems and processes in order to consume the appropriate functionality.

#### *Proportionality of the new requirement*

- 3.148 We noted that the ability to access communications services is of growing importance to many consumers, with broadband in particular seen as essential or relied upon by many, including small businesses. Any loss of service resulting from switching can give rise to significant consumer harm. Furthermore, loss of service affects a significant proportion of consumers who switch bundles and this, coupled with the increasing take-up of bundled services, presents an increased risk of consumer harm.
- 3.149 Based on the likely consumer benefits of reducing these risks and the costs to industry from adopting this new improvement, our August 2013 Document noted our view that mandating the functionality for orders to be 'locked together' to ensure that consumers are able to transfer their bundled voice and broadband services simultaneously meets the test at Section 47(2) of the Act in addressing the problem of loss of service within the GPL NoT process.

### **Stakeholder responses**

- 3.150 Twelve respondents commented on our proposed requirements for seamless transfer. Nine of these (BT, CCP, Entanet, EE, FCS, SSE, Universal Utilities, Zen



Internet, [§<]) expressed broad agreement with our proposal or aims, although some had reservations or issues.

3.151 Some respondents disagreed with the necessity for the requirement, as set out below. Virgin Media said that there was insufficient justification to require mandating these processes, particularly because processes may change as Ofcom introduces new switching enhancements.

3.152 We summarise the views raised as follows.

#### Necessity of requirement

3.153 Three respondents (KCOM, UKCTA, Virgin Media) said that they did not favour mandating these requirements. KCOM and UKCTA argued that mandating this requirement may not be necessary since CPs already have a commercial incentive to maximise or ensure consumer satisfaction in switching by submitting bundled orders as a simultaneous transfer.

#### Guidance on aspects of compliance with, and enforcement of, the requirement

3.154 BT raised a number of points related to meeting the requirement, and also suggested that further discussion would be needed to determine whether Openreach should report to Ofcom in this area. BT:

- Suggested that it would be possible for CPs to comply with the requirement for mandatory use of functionality only where the consumer places voice and broadband orders simultaneously with the GP. Compliance would be difficult to enforce because, where voice and broadband orders are placed separately, Openreach will not know whether or not the two orders should have been linked.
- Noted that simultaneous transfer using SIM2 where a change of technology is involved, for example WLR+SMPF to MPF+FTTC, can result in a break in service. BT explained that this is because there might be a failure related to the provision of the new broadband service, such as port capacity issues.
- Noted that although SIM Provide and SIM2 currently support all major migration types, some migration types that are lower-volume would remain unsupported, such as those involving sub-loop unbundling. In these cases there would continue to be a temporary loss of data service.

3.155 BT also highlighted Ofcom's acknowledgement, in footnote 330 of the August 2013 Document, that in some cases where engineering work is required, such as re-jumpering for switches between two MPF providers, there will be some unavoidable loss of service. BT suggested that such scenarios would usually result in a service interruption of only a few minutes and called for discussion regarding what loss of service might be acceptable in such scenarios.

3.156 UKCTA called for Ofcom to clarify how the obligation would apply when two different CPs provide the telephony and broadband services to the customer. UKCTA appeared to be envisaging a situation where a customer transfers two separate services from one or two LPs to two separate GPs, and the question of co-ordinated transfer of services to two GPs.

#### Implementation of requirement where CP has no direct relationship with Openreach

- 3.157 Some CPs ([redacted], FCS) argued that the wholesale products or facilities necessary for CPs to meet this requirement do not exist or are inadequate across the market, particularly for smaller CPs. For example some CPs retail and resell white label broadband products from an intermediate ISP. Such CPs do not always have a direct relationship with Openreach in order to access the products through which a simultaneous transfer of broadband plus voice can be effected. One CP ([redacted]) suggested that the lack of wholesale facilities for (usually smaller) CPs may account for the relative abundance of sequential, rather than simultaneous, transfers by these CPs.
- 3.158 One CP ([redacted]) called for this issue to be addressed by placing relevant reciprocal obligations on wholesale CPs. That is, wholesale CPs of white label broadband retail services should be required to provide the necessary linkages between their and Openreach's systems. This CP also noted that consequential changes on Openreach's systems may be required so that orders from a wholesale broadband customer on behalf of another CP and the direct orders made by that CP for fixed voice are recognised and linked.

#### Adequacy of functionality

- 3.159 EE noted that, since the SIM2 process had been only recently released, it was too early to comment on whether it is fit for purpose.

#### Risk of increased and unwarranted use of 'new provide order'

- 3.160 BT argued that some CPs might make use of 'new-provide' orders rather than use the transfer process, in order to avoid the associated mandated use of simultaneous provide functionality and the longer lead times on broadband transfers. This could cause consumer detriment in terms of requiring cessation of the existing service, as well as cease charges for both the customer and the losing provider, and an unnecessary engineering visit.
- 3.161 We note that BT raised a similar point in respect of our proposed requirements to reduce the occurrence of erroneous transfers under the WLT process, which we set out in paragraph 3.235.
- 3.162 To avoid the risk in respect of the requirement for seamless transfer, BT suggested that Ofcom should mandate the use of a transfer order rather than a new-provide order, wherever there is an existing service that can be switched.

#### Costs of requirements

- 3.163 Two CPs (Entanet and Universal Utilities) raised cost issues. Universal Utilities noted that where voice and broadband products have been agreed on separate dates, the LP may disconnect services prior to their commencement with the GP, and so the transfer will not necessarily be seamless. Universal Utilities noted that this should be avoided where possible, but stressed the need to consider the cost implications, particularly for small CPs. Entanet suggested that where the requirement is implemented, any systems changes (for example for CPs to adopt SIM2) should meet these requirements and therefore occur only once. This would avoid later additional amendments, with increased development costs.

#### **New evidence**

3.164 Openreach has continued to develop and make available its SIM2 process, which in November 2012 went live for MPF+GEA-FTTC transfers. By October 2013 it had expanded SIM2 to include WLR+GEA-FTTC and WLR+SMPF transfers. We understand from Openreach that some CPs have either already started to or intend to make use of available functionality. Openreach also said that it intends to develop further functionality during 2014.

### **Our assessment**

3.165 We set out our assessment of the responses and the additional evidence provided by stakeholders. We set out further guidance and/or consequential amendments to our proposed GCs.

#### Necessity of requirement

3.166 In our August 2013 Document we identified loss of service, particularly in respect of bundled services, as a significant consumer issue. Paragraphs 5.193 to 5.197 set out new evidence confirming this. For example we noted that being without service during a switch was a main or major issue experienced by 21% of fixed voice and broadband bundle switchers. We also noted that improvements in switching processes, facilitating seamless migration, are available but loss of service can still occur because CPs choose not to use these improvements.

3.167 To this extent, it appears that commercial incentives are insufficient to deliver switching processes and experiences that address consumer concerns about loss of service. It appears that CPs, in making commercial decisions about the use and costs of available functionality, take insufficient account of the consumer harm that might arise.

3.168 Openreach's further development of its SIM2 product, and indications from some CPs that they have made or intend to make use of this, offers some indication that some CPs are taking steps to improve the consumer experience. But to date few CPs have taken up SIM and SIM2 services, and we see this as evidence that the commercial incentives to address this issue are insufficiently strong, particularly in the light of consumer harm that might arise.

#### Guidance on aspects of compliance with, and enforcement of, the requirement

3.169 Respondents raised the question of how Ofcom would monitor compliance with the new requirement, and a number of specific related issues. We address these below.

#### *General monitoring and compliance issues*

3.170 Our proposed requirement was for an order to be submitted to Openreach for the simultaneous transfer of broadband and fixed voice services with minimal loss of service, in those cases where a GP elects to co-ordinate the migration of a bundle on behalf of a customer. Ofcom would expect CPs to be able to provide evidence relevant to their compliance with the GC, when requested to do so. Evidence of such compliance may include, but is not limited to, descriptions and audits that appropriate systems and other processes exist which aim to meet the GCs, in this case the requirement to ensure that a request is placed on Openreach for the simultaneous transfer of the components of a bundle.

- 3.171 In monitoring and enforcing compliance, we would also assess market functioning through external indicators such as complaint levels and our ongoing consumer research, as well as data and information provided by both Openreach and CPs.
- 3.172 We note in this respect that Openreach already holds and reports a range of data and information relating to transfers across its copper-based system. For example to assist us in monitoring market functioning as well as compliance with the existing GC 24,<sup>58</sup> Openreach provides reports to us concerning migration volumes, Cancel Own, Cancel Other, and WLT transfers, by CP and technology type.
- 3.173 We would expect Openreach to continue to collect and where necessary report on transfers across its network to assist in Ofcom's monitoring of market functioning, where the new GC requirements come into effect. During implementation we will consider the exact specification of such reporting, and we recognise that it will be helpful to agree specifications before system development.
- 3.174 In addition, we note that Ofcom is presently pursuing a formal monitoring and enforcement programme in relation to the current GC 24.<sup>59</sup> Under this programme, CPs formally provide us with a range of data and information concerning transfers and switches, which we may use, among other things, as indicators of whether, and how, compliance issues may be arising. We will need to decide, following entry into effect of the amended GCs, to what extent such formal monitoring and reporting by CPs will be required in future.

#### *Simultaneous placement of voice and broadband orders*

- 3.175 We note that our proposed requirement in respect of seamless transfer is aimed at ensuring simultaneous transfer, where a customer has requested to transfer to broadband and fixed voice services provided by the same CP over the same line.
- 3.176 To meet this aim, our proposed amendment to the GCs imposed an obligation on GPs to submit an order to Openreach where a consumer has submitted a request to transfer both services of a bundle together. This obligation will not apply where a consumer submits to a CP separate requests at separate times for services to be switched.
- 3.177 In response to comments by stakeholders and in order to provide further clarity in this respect, we have decided to amend the new requirement to clarify that it applies to a single request by a customer to transfer broadband and fixed voice services, rather than multiple and non-simultaneous requests. We set out our revised wording for the GC in paragraph 3.194 below.

#### *Co-ordinated transfer of services to two GPs*

- 3.178 In our August 2013 Document, we took the view that our proposed requirement in respect of seamless transfers was justified by the fact that an increasing number of consumers currently purchase bundles that include fixed voice and broadband. Hence, our proposed requirement aimed to address transfers of services provided by

<sup>58</sup> GC24: *Sales and marketing of fixed-line telecommunications services*. This aims to protect consumers from mis-selling of fixed line telecommunications

<sup>59</sup> Own-initiative investigation: Monitoring and enforcement of Fixed-Line Providers' compliance with rules concerning their sales and marketing activities and their use of Cancel Other. See: [http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw\\_01045/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01045/)

one or more LPs to a bundle to be provided by one GP. Our August 2013 Document set out our assessment and conclusions in paragraphs 5.200 to 5.205.

- 3.179 We also explained in paragraphs 5.198 to 5.199 of our August 2013 Document that Openreach has recently developed the SIM2 process which, among other things, will support migrations of bundled fixed voice and broadband services. We understand from Openreach that SIM2 will also support co-ordinated transfer of services from one or more LPs to one or more GPs.
- 3.180 We note that it will be open to CPs to use this functionality where consumers request transfers of services to two GPs. We have decided, however, not to extend the GC to require the use of this particular item of functionality.

#### *Loss of service and unsupported migration types*

- 3.181 Regarding the question of loss of service, we would emphasise here that our requirement aims to minimise the main drivers of loss of service for switches of bundled services, by requiring submission of an order for the simultaneous transfer of these services. It may be the case that when effecting such transfers, for example through use of Openreach's SIM2 process, technological and engineering factors still cause some loss of service. In these cases, CPs would not be in breach of the GC if they had met their obligation to ensure that a request for the simultaneous transfer of the bundle had been put forward to Openreach.
- 3.182 We also acknowledge that some small volume migration types and scenarios may not be supported by SIM2 or by other functionality aimed to ensure the simultaneous transfer of a bundle of services. In light of stakeholder comments, we have decided to amend GC 22.13 (amended to GC 22.14) to clarify that the requirement relates to available functionality. We set out our revised wording in paragraph 3.194 below.

#### *Implementation of requirement where CP has no direct relationship with Openreach*

- 3.183 Our requirements apply to all CPs which have a direct retail relationship with end consumers. We expect such CPs to enter into appropriate commercial and contractual relationships to ensure that orders for simultaneous transfer can be placed either directly with Openreach or, where appropriate, through a wholesale intermediary. We will take into account in any enforcement activity any exceptional problems that retail CPs encounter in obtaining the relevant services from wholesale suppliers. To give effect to this requirement, we have amended our proposals for the modification of GC 22.13 such that CPs must ensure that an order is submitted to Openreach, rather than requiring the CP itself to submit an order to Openreach. This should accommodate scenarios where CPs do not have a direct relationship with Openreach.
- 3.184 The amended GC makes clear that the obligation to ensure an order is placed applies only where such functionality is available. This is intended to address concerns that the functionality might not be provided by Openreach or other providers in respect of existing or future low volume transfer scenarios. We have also clarified that this obligation does not apply where a switch does not need to go via Openreach (e.g. where a switch is between two retail CPs which use the same wholesaler).
- 3.185 We set out our revised wording below in paragraph 3.194.

#### Adequacy of functionality

- 3.186 Concerning the question of whether SIM2 is fit for purpose or not, we note that our proposal requires the use of any available functionality to achieve seamless transfer of services with a minimal loss of service, rather than any one particular process.
- 3.187 Nevertheless, as we noted in paragraphs 5.198 to 5.199 of our August 2013 Document, Openreach's SIM2 process aims to provide the necessary functionality for achieving this objective. We noted in paragraphs 3.164 that some CPs have begun (or plan) to use the improved functionality and we have received no indications that the process is not fit for purpose.

#### Risk of increased and unwarranted use of 'new provide order'

- 3.188 We acknowledge that there is a risk that CPs will use a 'new provide order' to avoid having to use a process with simultaneous transfer. At this stage we have no clear evidence that this will be a material issue, particularly given the underlying incentive for CPs to ensure that they offer a good service for their new customers.
- 3.189 We have decided not to amend our proposed requirements to reflect this issue at this stage. Nevertheless we intend as part of our active programme of market monitoring to understand how and to what extent CPs choose to place new provide orders in preference to use of simultaneous transfer functionality. We would expect to move swiftly were we to see evidence of this practice emerging, particularly were consumer harm seen to arise as a result of reduced use of simultaneous transfer functionality, compared to usage levels that might otherwise have occurred.

#### Costs of requirements

- 3.190 In evaluating the proportionality of the requirement, we have attempted as far as possible to estimate and take into account the costs for CPs of meeting the requirements, in circumstances where it would be reasonable to effect a simultaneous transfer. Our consultants CSMG assessed costs, including those that might impact smaller CPs. Section 4 of CSMG's report, published as Annex 10 to our August 2013 Document, set out the cost methodology used, including how costs to smaller CPs were reflected in the overall cost assessment.
- 3.191 In the light of the cost assessments, our August 2013 Document (paragraphs 9.87 to 9.91) explained our view that costs that may be incurred by industry overall were likely to be proportionate to the benefits of the requirement. We note that no evidence was provided by stakeholders in response to our consultation that would cause us to revisit this assessment of the costs of this requirement.
- 3.192 Regarding costs that may arise for CPs in meeting this requirement, we would also note that it is likely to be possible for smaller CPs to contract with Third Party Integrators (TPIs) as well as wholesalers. These intermediate providers are likely to be able to develop and provide the necessary functionality in ways that are more cost-effective for smaller CPs. CSMG took account of this likelihood in assessing the overall costs likely to arise for industry in meeting this requirement.

#### Conclusions

- 3.193 We have decided that this enhancement, as revised, meets the test at Section 47(2) of the Act in addressing the problem of loss of service within the harmonised GPL NoT process. We took into account, in this regard, the estimated costs of implementation, the benefits we consider will be delivered, and the fact that this

measure is part of a wider solution to the problems associated with switching processes.

3.194 We discussed above in paragraphs 3.177, 3.182 to 3.184 that we would provide further clarity for CPs by amending our proposed GC 22.13. We have decided to make amendments in respect of three issues:

- Simultaneous placement of voice and broadband orders  
Amend GC 22.13 to refer to ‘a transfer of Broadband and Fixed-line Telecommunications Services to be provided...’.
- Switches which do not go via Openreach. Amend GC 22.13 to add ‘where applicable’.
- Loss of service and unsupported migration types  
Amend GC 22.13 by inserting ‘where available’.
- Implementation of requirement where CP has no direct relationship with Openreach.

3.195 Figure 3 sets out the amendments and our final wording for GC 22.13.

**Figure 3 – Amendments to GC 22.14 (previously GC 22.13)**

Amendments	Revised wording
<p>Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested <del>to a transfer to of</del> Broadband and Fixed-line Telecommunications Services <b>to be</b> provided by it over the same line, it shall <b>ensure that, where applicable, an order is submitted</b> <del>submit</del> to Openreach <del>an order</del>, <b>where available</b>, for the simultaneous transfer with minimal loss of service of both Communications Services.</p>	<p>Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested a transfer of Broadband and Fixed-line Telecommunications Services to be provided by it over the same line, it shall ensure that, where applicable, an order is submitted to Openreach, where available, for the simultaneous transfer with minimal loss of service of both Communications Services.</p>

## 4. Requirements that reduce the occurrence of Erroneous Transfers under the WLT process

### Introduction

3.196 Switching processes should, as far as possible ensure that the correct customer has the correct service switched. This sub-section is concerned with the situation in which switching processes, including those for home movers, do not operate as intended and a consumer's line or service is transferred in error. This is known as an Erroneous Transfer (ET).

3.197 We explained in our February 2012 Consultation and our August 2013 Document that ETs are generally the result of deficiencies or weaknesses in the underlying switching process. Furthermore, we found that the majority of ETs appear to occur in the context of a Working Line Takeover (WLT) process. This process is intended to allow a customer who is moving home to arrange for the working line, which is owned by the current occupant at the target address, to be 'taken over' on the day that they move into their new premises. An ET can occur if the wrong target line or address is selected, so that a consumer at the incorrectly targeted address suffers an unwanted change of supplier.

3.198 This can cause harm to:

- i) the home mover, because they do not receive the services they expected on the day of their arrival at the new premises; and
- ii) the occupant at the address which has been erroneously targeted, who has not requested a switch, and may suffer because their line or service is switched in error, causing potential loss of service or liability for ETCs.

3.199 In this sub-section we start by summarising our assessment of the issue in our August 2013 Document, including the reasons for our proposal to mandate two key elements of the Best Practice Guide to the WLT process.<sup>60</sup> We then summarise stakeholder responses to our consultation, followed by new evidence concerning recent trends in the level and causes of ETs. We then provide our final analysis and conclusion, in the light of all the available information.

3.200 In summary, we have decided to introduce the following requirements:

- GPs shall not submit the WLT order if no exact match for the target line has been identified. GPs will also be required to take all reasonable steps to identify the target line, having regard to industry best practice.
- Where a WLT order is placed, the incumbent CP<sup>61</sup> must, upon receipt of the order, send a notification letter to its end user, in accordance with the industry agreed process, which clearly sets out specified information. The notification is to be sent via post or another durable format (if so agreed by the consumer).

<sup>60</sup> Annex B "Homemovers Working Line Takeover (WLT) Best Practice Guide" to: *Industry Best Practice Guide: Migrations and Home moves for Fixed Line Voice and Broadband Services* Office of the Telecommunications Adjudicator (OTA). See:

<http://www.offta.org.uk/HomemoversBPG-WLT-AnnexB-v7.1.pdf>.

<sup>61</sup> incumbent CP i.e. the CP which currently owns the working line being targeted by the WLT order submitted by the GP.



3.201 We are therefore modifying the General Conditions accordingly, as set out in Annex 2.

## Summary of the August 2013 Consultation

### *Extent of the problem*

3.202 We explained in our August 2013 Document, paragraphs 5.30 to 5.62 and 5.104 to 5.105, that we had commissioned and reviewed a range of sources from which we assessed the incidence of ETs and associated consumer harm. These sources included:

- Omnibus consumer research. This found that around 1% of adults said that their fixed voice and/or fixed broadband service had been switched without their consent in the previous 12 months.
- Mott MacDonald (MM)<sup>62</sup> analysis of a number of mis-selling complaints made to Ofcom's CCT. This aimed to determine the accuracy of Ofcom's fixed-line mis-selling complaints data. MM found for example that Ofcom's assessment of complaints had understated the proportion attributable to ETs.
- CCT data on the number of complaints received in relation to ETs. These showed that, in the light of more accurate categorisation of complaints data, Ofcom has over the last year or so received on average 100 ET complaints per month.

3.203 Based on the omnibus survey and the MM study, we estimated that around 118,700 households suffered an ET in the year to February 2013, equating to 0.46% of households. We noted that this was similar to our estimate that approximately 130,000 households suffered an ET in 2010-2011.

3.204 We also explained, in paragraphs 5.107 to 5.127, that we had sought to understand whether the root causes of these ETs had remained the same or whether new issues had arisen. We asked the OTA to undertake a root cause analysis to help with this. Through this work, the OTA found that the majority (around 77%) of ETs related to WLTs (provisioning of services for a new home or premises) rather than migrations (switch of supplier and/or service within an existing home or premises), confirming the findings of our 2012 consultation. We estimated that this means around 16% of all WLTs result in an ET.

3.205 The root cause analysis set out in paragraphs 5.107 to 5.127 of our August 2013 Document also found that issues with Openreach data were a significant new root cause of ETs, accounting for around 25% of all ETs, including those associated with WLTs.

3.206 We estimated the quantifiable annual costs to consumers of all ETs in the range £0.5m to £1.0m (paragraphs A6.59 to A6.61). We also noted that many consumers can suffer significant distress or other detriments as a result of an ET; for example, the loss of a telephone number. We did not attempt to quantify the consumer harm caused by these effects. We estimated that CPs incurred corresponding annual costs of around £2.6m in restoring services (footnote 388 of our August 2013 Document).

### *Current requirement*

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<sup>62</sup> *Analysis of Fixed-Line Mis-selling Complaints Final Report August 2012 Ofcom* Mott MacDonald  
See: <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/fixedline-mis-selling.pdf>

- 3.207 Our August 2013 Document explained how the current GPL NoT process can give rise to ETs. We noted that two approaches were available to CPs which could assist in minimising the occurrence of ETs, including through a WLT process:
- The MPF ALID helpline; and
  - The OTA's Best Practice Guide.
- 3.208 We explained, in paragraphs 5.128 to 5.131 of our August 2013 Document, that CP's lack of MPF visibility continues to be a root cause of ETs. That is, in a migration or home mover scenario, where a premises has multiple MPF lines, the GP may be unable accurately to identify the correct line to be migrated or taken over. One reason for this is that Openreach Dialogue Services do not recognise CLIs associated with MPF lines.
- 3.209 In November 2012 the two largest MPF-based suppliers, Sky and TalkTalk, facilitated by the OTA, launched an MPF Access Line ID ('MPF helpline') facility<sup>63</sup>. This aims to allow a CP to identify positively a specific MPF line for premises where multiple MPF lines are known to exist.
- 3.210 The process involves the following steps:
- CP sends the premise's postcode and CLI associated with the target MPF line to the 'owning' MPF CP (Sky or TalkTalk).
  - If the postcode and CLI are correct, the MPF CP will email the GP with the ALID, ie. the relevant asset identifier.
  - If neither Sky nor TalkTalk can make a positive identification, the GP will be notified of a 'rejection'. In this case the GP should raise a 'New Line Provide' order (rather than raising a WLT order which could lead to an ET).
- 3.211 The OTA has produced and maintains an Industry Best Practice Guide: Migrations and Home Moves for Fixed Line Voice and Broadband Services. Annex B of this document - *Homemovers Working Line Takeover (WLT) Best Practice Guide* (the "Best Practice Guide", see footnote 60 above) - sets out guidance for WLT orders. This recommends a number of specific actions which should be taken by both the GP and the LP throughout the course of a WLT order process which, taken together, should significantly reduce the incidence of ETs.
- 3.212 These actions include that the GP agent uses the appropriate systems tools to identify precisely the target line/address. It also recommends that the LP notifies the current occupant (its customer) at the target address. This ensures that the occupant is well informed on any planned takeover of their line and enables the losing CP to cancel the transfer if the occupant confirms it is in error.
- 3.213 Compliance with the Best Practice Guide is currently voluntary. The OTA identified that best practices are not always followed and that ETs are more prevalent as a result.

#### *Future ETs*

<sup>63</sup> Process description in *MPF 'Access Line Identifier' Help Line Tactical Process* OTA See: <http://www.offta.org.uk/MPFALIDHelpLineTactical%20Process.pdf>

3.214 In our February 2012 consultation we expressed concerns that the level of ETs was likely to increase in the future because the use of CLI as a unique asset or service identifier might become less reliable. This could occur for two main reasons:

- Transfers from and between MPF providers were increasing. In these cases the CLI is not visible via Openreach Dialogue Services.
- The use of fibre-based services such as FTTP could increase significantly. In these cases the CLI may not be visible. Furthermore since fibre services can support multiple services over a single asset, an available CLI may be an unreliable identifier of the service or asset to be switched.

3.215 Our August 2013 Document reiterated that CLIs as an asset identifier may become less effective where services are supplied that do not have associated CLIs (e.g. VoIP) and for networks that deliver multiple services over a single asset (e.g. FTTP). However, we noted that, relative to our position in the 2012 Consultation, our concerns had diminished, for two reasons. First, the establishment by industry of the MPF helpline was helping to improve visibility of MPF CLIs, where CPs make use of this facility. Second, we lowered our expectation of consumer take-up of FTTP connections, compared to the February 2012 consultation.

#### *August 2013 proposal*

3.216 Our August 2013 Document set out our decision to harmonise to a GPL system. We decided that the most appropriate way to proceed would be to implement those elements from the enhanced GPL NoT system that would be proportionate to proceed with in the short term. Regarding ETs, and recalling that the majority of these arise as a result of WLTs, we identified two key elements of the Best Practice Guide which, where used, could be expected to reduce or minimise the extent and effect of ETs.

3.217 We therefore proposed to mandate the following two key elements of the Best Practice Guide to the WLT process:

- GPs place a WLT order only where there is an exact match for line identification. Where the target line cannot be identified the CP shall not be allowed to submit the WLT order, and in this case a 'new line provide' process should be followed instead. This approach should minimise outcomes where an ET occurs because the wrong asset has been targeted during a WLT process. CPs would be 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. This aims at ensuring that the consumer is made aware of any planned takeover of their line, so that there is an opportunity to cancel the WLT order where the incorrect target address or service has been identified.

3.218 Our proposed modification to the GCs, given in Annex 11 of our August 2013 Document, sets out these requirements (in particular, Annex 2 to Condition 22).

#### *Costs of the new requirement*

3.219 CSMG estimated the cost of the first of these enhancements, concerning 'exact match', at £3.2m and the second, concerning notification of the end user, at £3.5m,

on a ten-year net present cost basis. CSMG further estimated that, were a hub and database system to be adopted at a later stage, the exact match requirement would be superseded, and the costs incurred in the set-up and maintenance of this requirement (between £1.6m and £1.9m) would be wasted.

- 3.220 Since the requirement on notification letters is common to all GPL options, no wasted costs are anticipated as a result of implementation of this enhancement.

#### *Impact of the new requirement*

- 3.221 We explained (in paragraphs 9.92 to 9.123 of our August 2013 Document) the basis on which we were consulting on our proposals. This included our assessment that both enhancements will require all CPs to update their front-end customer facing processes to ensure compliance. Since the requirement on notification letters for a WLT is similar to the present GPL NoT process which requires the LP to notify their customer of a planned switch, this element of the requirement should be relatively straightforward for the CP to implement.

#### *Proportionality of the new requirement*

- 3.222 We explained in paragraphs 9.113 to 9.123 of our August 2013 Document that we consider that mandating these key Best Practice elements as described above can be expected to reduce the incidence of ETs linked to WLTs and the harm that these bring to consumers.
- 3.223 Overall we explained our belief that these types of benefits, taken together with our quantitative estimates of consumer harm suffered and costs to industry under the status quo, mean that our proposed improvements are proportionate when weighed against their costs. We correspondingly noted that our proposed changes to the GCs meet the test at section 47(2) of the Act.

### **Stakeholder responses**

- 3.224 Fifteen respondents commented on our proposal for requirements that reduce the occurrence of ETs under the WLT process. Most industry respondents (including BT, Entanet, EE, [3<], KCOM, SSE, TalkTalk, Telefonica, Zen Internet, FCS, UKCTA) and those representing consumers (CCP, MIC) as well as the ICO, broadly agreed with our aims. There were, however, a number of reservations concerning the exact match requirement.
- 3.225 Concerning our proposals to require an exact match, many of those respondents that commented supported this directly or with some reservations (BT, CCP, FCS, KCOM, SSE, TalkTalk, Zen Internet, [3<]). Two respondents (EE, UKCTA) referred to Ofcom's view in paragraph 7.96 of the August 2013 Document that the exact match requirement may be difficult to enforce, and concluded that it would be more appropriate for Ofcom only to mandate the requirement for the losing (incumbent) CP to notify the end user.
- 3.226 Concerning our proposals to require notification of the end user, most respondents that commented on this supported our view (BT, EE, FCS, KCOM, SSE, UKCTA, Zen Internet, [3<]). BT and EE expressed some reservations concerning compliance and enforcement.

3.227 Universal Utilities disagreed with the need for either of our proposed requirements, expressing the view that the current WLT process is adequate for WLR to WLR transfers and that it had a successful procedure in place for MPF to WLR transfers.

3.228 We summarise views raised as follows.

### **The requirement for exact match**

#### Implementation and enforcement of exact match requirement

3.229 CPs' concerns here related to difficulties with achieving or demonstrating an exact match, in particular because of issues with the accuracy of Openreach's address and asset database, and the question of asset identification.

#### *Difficulties with achieving or demonstrating an exact match*

3.230 Some CPs (BT, KCOM, SSE, TalkTalk, FCS, UKCTA) expressed concern that the exact match requirements might be difficult to implement operationally or enforce. Some CPs (KCOM, SSE, TalkTalk) noted that ETs for WLT orders can occur even where exact matches are made. For example this can occur because:

- a customer may give or enter an incorrect address (e.g. directly through a website portal), which nevertheless generates an exact match; or
- inaccuracies in Openreach's database can result in ETs even where an exact match has been achieved.

3.231 The question of the accuracy of Openreach's database and Openreach's performance was highlighted by a number of respondents (Entanet, EE, KCOM, SSE, UKCTA, Virgin Media, Zen Internet, [§<]). They argued that inaccuracies can be a significant source of ETs and a significant impediment to achieving an 'exact match'. Entanet highlighted the magnitude of the task of addressing database accuracy issues.

3.232 CPs suggested a range of responses to these issues:

- Several (BT, FCS, SSE) called for guidance from Ofcom on how the requirement for exact match would be implemented or the extent to which CPs should endeavour to ensure certainty of exact match.
- SSE and KCOM proposed that instead of the exact match requirement, CPs when arranging a WLT should have an obligation to take 'reasonable' measures or steps to identify a correct match.
- Some (EE, KCOM, SSE, UKCTA) argued that it is necessary to address database issues, for example by placing obligations on Openreach to improve the accuracy of its database of UK addresses and associated assets. EE and UKCTA called for requirements on exact match to be accompanied by obligations on Openreach to maintain an accurate database. FCS and SSE put forward arguments that some form of industry-owned database could form a solution and minimise inaccurate address matching.

- Virgin Media said that ‘Ofcom must reflect the lack of address accuracy within the Openreach database in the wording of GCs.’<sup>64</sup>
- UKCTA argued that it would not be reasonable to require placement of a WLT Order only where there is an exact match because there are some home mover scenarios where the correct target line cannot be advised by the customer, the CP or Openreach.
- [§<] noted the role of Openreach performance in general and called in particular for ETs to be covered by performance standards on BT Openreach in Ofcom’s 2014 Wholesale Local Access Market Review (‘WLA Review’).

#### *Asset identification*

3.233 A number of CPs expressed views about how useful asset identification through CLI and for MPF lines might be in terms of identifying the target line and/or achieving an exact match:

- UKCTA questioned Ofcom’s view that the ability to ‘validate the CLI can be useful when placing a WLTO’. UKCTA said its practical experience was that customers do not always know the relevant CLI at the target address, and that Openreach is increasingly unable to offer this functionality as an increasing proportion of lines are provided via MPF.
- Universal Utilities suggested that, while it did not necessarily experience problems with its existing procedures for transfers, any changes that allow for greater visibility of assets on MPF lines would be likely to assist some CPs.
- EE expressed its belief that Openreach is able to use its Dialogue Services tool to provide better information about the CLI of MPF lines, and that Ofcom could mandate Openreach to do this.
- BT said it favoured making use of the MPF helpline mandatory, where the target line is an MPF line and there is more than one MPF line at the address.

#### Mandating use of cancel other

3.234 BT argued that it is essential in the case of WLT orders to require a losing (incumbent) CP that provides voice services to make use of ‘Cancel Other’ functionality where the end customer is not moving home but an ET has been attempted. They argued that this is necessary since in such situations where the end customer is unable to tell the GP to cancel the order.

#### New line provide orders

3.235 Two CPs (BT, TalkTalk) suggested that our proposed requirements concerning WLTs may have the unintended consequence that some CPs may choose a new line provide order in preference to a WLT. BT said that evidence from Openreach suggests that a significant number of new provide orders are already being placed which probably could have been a WLT order. Both CPs noted that unwarranted new line orders may increase costs and prices to end users. BT suggested that

<sup>64</sup> Virgin response, page 10, paragraph 37, [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Virgin\\_Media.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/Virgin_Media.pdf)

consequently Ofcom should require CPs to use the WLT process for all home move situations where the CP is able to obtain an exact match on an existing working line.

- 3.236 UKCTA raised a related point, suggesting that the question arises for Ofcom of what order type should be placed where a WLT order cannot be placed. It noted that one alternative - a new line provide order - had a number of drawbacks, including installation of a superfluous line and socket, and that network records may become inaccurate.

### **The requirement for notification**

#### Notification timescale

- 3.237 BT suggested that the requirement for notification by the LP is not completely failsafe since a letter sent may not be read. BT also highlighted that it was not clear how this requirement could be enforced by Ofcom. It suggested that one possibility would be to monitor and investigate complaints about ETs, but noted that this would not necessarily be robust – for example, where a CP says it sent a letter but the end customer says it was not received.
- 3.238 EE noted that the notification requirement does not mandate the timescale in which the letter should be sent. It expressed a related concern that the total transfer time could be extended as a result of the requirement since it can take several days for Openreach to inform the losing (incumbent) CP of a WLT, which then needs to time to process the order and notify the end customer.

### **Both requirements for exact match and notification**

#### Data protection

- 3.239 The ICO noted that Ofcom's two proposed requirements may not address other underlying problems with the data that are being relied upon. The ICO noted that, according to the fourth data protection principle,<sup>65</sup> organisations are obliged to ensure that the personal data they hold and use are accurate and up to date.

### **New evidence**

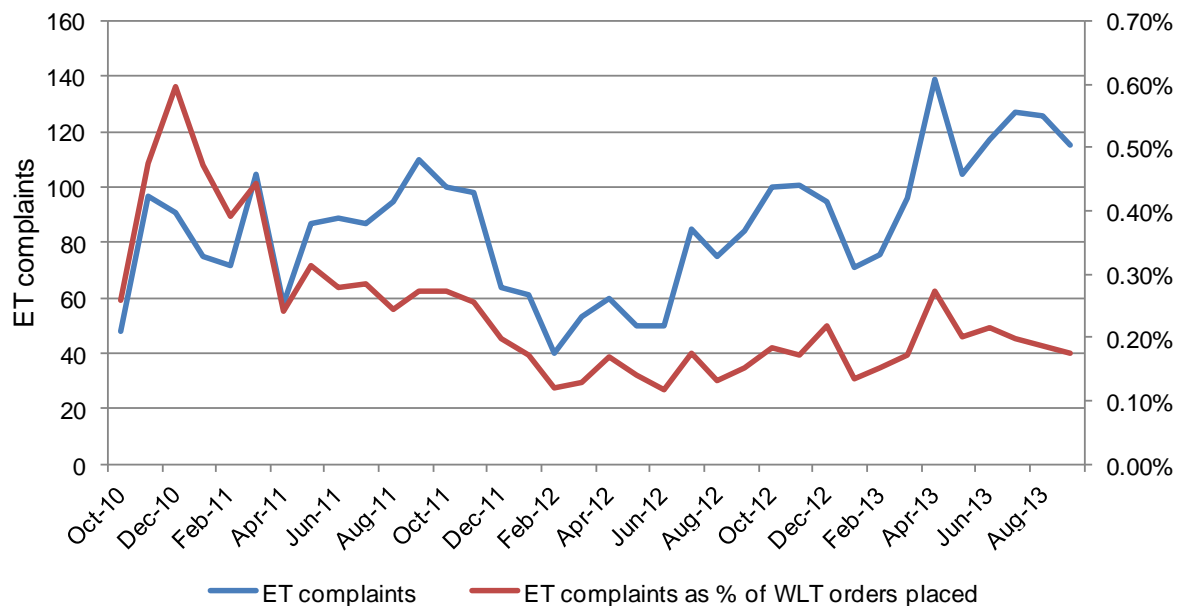
- 3.240 ETs continue to cause harm to consumers. Complaints relating to ETs received by Ofcom trended modestly upwards during the summer of 2013, compared to the period since October 2010. It seems likely that this is at least partly linked to the increased WLT order volumes experienced over the same period. Figure 4 illustrates the trends.<sup>66</sup>
- 3.241 The OTA has continued its work to understand the extent and cause of ETs, as we set out in our August 2013 Document (eg. paragraphs 5.107 to 5.121). In particular it has been analysing complaints received by Ofcom relating to ETs.

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<sup>65</sup> The ICO has set these principles out, see:

[http://www.ico.org.uk/for\\_organisations/data\\_protection/the\\_guide/the\\_principles](http://www.ico.org.uk/for_organisations/data_protection/the_guide/the_principles)

<sup>66</sup> Note that complaint levels concerning ETs are likely to be lower than the level of ETs that were actually experienced by consumers. The ratio of ET complaint levels to WLT order levels is correspondingly lower than would be the case for the ratio of ETs experienced to WLT order levels.

**Figure 4 – Erroneous transfer complaints**

Source: CCT complaints

- 3.242 Analysis is at a preliminary stage, but early results suggest that the root causes identified in our August 2013 Document remain relevant. In particular it appears that many ETs continue to stem either from inaccuracies in Openreach's database or agent or customer difficulties in identifying the right line or asset. There is also some evidence that not all CPs always choose to follow the Best Practice Guide.
- 3.243 On the more positive side, recent data provided by Sky and TalkTalk suggest that CPs have been making increased use of the MPF helpline facility. The volume of CP requests to the helpline roughly trebled to over 500 per month in October 2013, compared to around 180 in January 2013. This increased use should facilitate better asset and line identification, and it is likely to have helped CPs avoid ETs that might otherwise have occurred.

## Our assessment

- 3.244 We have reconsidered our consultation proposals set out in our August 2013 Document in the light of respondents' views and, where relevant, new evidence set out above. Our assessment is as follows.

### Implementation and enforcement of exact match requirement

#### *Difficulties with achieving or demonstrating an exact match*

- 3.245 Our August 2013 Document (paragraph 5.127) estimated that about a sixth (16%) of all WLT orders, or around 91,000, resulted in an ET in the year to February 2013. Given the consumer harm that arises as a result, we consider it important to address the causes of ETs arising from WLT orders.
- 3.246 We noted (paragraphs 5.128 to 5.137) that ETs can occur because CPs lack visibility of MPF assets and because CPs are failing to take all the steps they can to identify the correct line, notify consumers of orders and cancel orders that have been placed



in error. The Best Practice Guide sets out the steps that CPs should take. Accordingly, regarding asset identification we have decided to implement requirements that:

- Before a Working Line Takeover Order is placed, a GP shall take reasonable steps, having regard to industry best practice, to identify the target line; and
- A GP may only place a Working Line Takeover Order if it has identified an exact match for the Target Line.

3.247 Regarding this first requirement on asset identification, we can clarify further that CPs will be required to take reasonable steps to obtain and verify data from the consumer initiating a WLT, including use of appropriate system capabilities, as set out in the Best Practice Guide, in deciding whether or not to confirm an exact match with the data held by Openreach or other operators. In considering compliance, we would be likely to seek evidence as to, for example, audits and processes deployed by the CP.

3.248 Regarding the second requirement on asset identification, we can clarify and emphasise that CPs must achieve an exact match in order to place a WLT order. We acknowledge, to the extent that details provided to the GP by the customer or the asset or address details to be checked against are incorrect, it is possible that even where industry best practice is followed, an exact match can be made which is nevertheless erroneous. This possibility does not in our view diminish the importance of seeking to identify correctly the target line, as this would significantly decrease the risk of an ET occurring. We also note that such a search might in many cases be usefully facilitated by the GP asking the consumer to provide additional information.

3.249 Where a CP achieves an exact match based on having taken reasonable steps, having regard to industry best practice, to identify the target line, it would not be found in breach of the GC even if the exact match identified turned out to be erroneous. We note, however, that the risk of an erroneous exact match will vary depending on the WLT order scenario and process followed. In achieving an exact match and taking reasonable steps to identify the target line, we would therefore expect CPs to anticipate risks and seek to minimise them. For example:

- Where initial attempts to achieve an exact match on the basis of pro-forma data provided by the customer fail, it might in many cases be achieved where the GP asks the consumer to provide additional information concerning the line, service, or address.
- Risks of an erroneous exact match may increase where a WLT order is raised by a customer online and where the target line is at a property where multiple possible target lines are listed (eg. a house converted into flats). In these circumstances we would expect CPs to implement additional checks in the process, such as a telephone conversation between its agent and the customer, in attempting to confirm whether or not an exact match can be made.

3.250 We also recognise that, to the extent that the Openreach database is accurate, the risks of erroneous exact matches occurring may be correspondingly reduced. We intend to consider further with industry stakeholders options for addressing poor quality address data as part of continuing work to address ETs (as set out in Section 5 on Next Steps).

#### *Asset identification*

- 3.251 Our August 2013 Document (see for example paragraphs 7.81 to 7.83 of Annex 7) explained how visibility of the CLI for all lines within the Openreach footprint would provide better information to help CPs place an order against the correct line, thereby reducing ETs. We noted that the MPF helpline could be helpful, but that it was currently uncertain how effective it would be in ensuring that consumers do not suffer ETs. We went on to explain in Annex 8 (paragraphs A8.161 to A8.162) that achieving this visibility would not be straightforward and concluded that it would not be appropriate to take forward mandating this enhancement at this stage.
- 3.252 Recent evidence (see paragraph 3.243 above) suggests that CPs are increasingly utilising the MPF helpline. For the reasons set out above, we would expect that this would have a positive impact in reducing ETs, compared to a situation where the MPF helpline was used less extensively. However we cannot yet draw firm conclusions regarding the effect of the MPF helpline on the level of ETs, so we do not consider that the basis for our reasoning set out in our August 2013 Document concerning CLI visibility has changed.
- 3.253 We intend to return to the question of what further enhancements may be proportionate in a second stage of work.

#### Mandating use of 'Cancel Other'

- 3.254 Our August 2013 Document explained that the Cancel Other process is an existing consumer protection mechanism that allows LPs to cancel a switch where the customer alleges that their line has been taken over without their express knowledge and/or consent ('slammed') or where the GP has failed to cancel the transfer when requested by the customer. We noted that the process can provide an important safeguard for consumers against slamming. We noted however that abuse of the process can frustrate the consumer's attempt to switch between CPs (e.g. in paragraphs 4.83 to 4.86), and that use of Cancel Other is not mandatory for WLTs (paragraph 5.67).
- 3.255 We explained further that we had identified the requirement to 'mandate use of the Cancel Other process' as an appropriate element of the Enhanced GPL NoT specification, which would help protect customers from the risks of slamming. However, we decided not to mandate use of the Cancel Other process at this stage as explained at paragraphs 8.85 to 8.91 of the August 2013 Document. Our reasons included:
- The fact that CPs have the capability and incentive to protect their consumers from slams;
  - Evidence that slamming was less of a problem than we thought at the time of the 2012 consultation and that our strengthened provisions concerning record of consent would help reduce the occurrence of slamming; and
  - That potentially 100% of the costs of mandating Cancel Other could be wasted were there to be a subsequent move to a database solution.
- 3.256 Regarding BT's point on the use of Cancel Other in respect of WLT orders, we further note that our proposed requirement for the losing (incumbent) CP during the WLT order process to notify the incumbent end user of a WLT aims at providing an important safeguard against an ET from occurring. The Best Practice Guide also sets out the cancellation process to be followed in the event that the occupant at the targeted address declares either that the house move has fallen through or that they

are not moving at all (ie. wrong address targeted). In these cases the current CP should submit a 'cancel other' order to Openreach (it is also possible for the 'moving in' consumer to cancel via their Gaining CP). We would expect CPs to follow the Best Practice Guide in such circumstances and so submit a cancel other request.

- 3.257 Respondents have not presented any new evidence that leads us to question our reasoning. In particular, we consider that the risk remains that the costs of implementing such a requirement would be wasted were we to move to a database solution. Furthermore, we understand that most large CPs already have a Cancel Other functionality for voice services.

#### New line provide orders

- 3.258 Subject to requirements on asset identification and exact match, where a GP elects to carry out a WLT pursuant to a Home-Move request, they must ensure that a WLT Order is placed. Placement of WLT orders in this way should in itself help to minimise the occurrence of misplaced new line provide orders.

- 3.259 We recognise that our requirement also means that, where GPs cannot achieve an exact match, no WLT order is allowed. In these cases CPs should instead cease the existing order and place a new line provide order at the new address.<sup>67</sup> Our August 2013 Document (paragraphs 9.115-7) acknowledged that such a cease and new line provide process could create additional costs for the inbound customer and that we did not view it as a long term solution to resolving ETs. Rather, we saw it as a measure for use in specific circumstances to limit the extent of consumer harm that can arise from an ET, particularly given that, in a WLT context, two consumers may suffer.

- 3.260 We acknowledge therefore that in principle there is a risk that the volume of new line provide orders may increase, to the extent that exact matches cannot be found or that CPs do not make use of the WLT order process. It will be necessary to monitor developments here following implementation of the GPL NoT+ process. It will be open to us to address any significant effects if they occur.

#### Notification timescale

- 3.261 We are requiring CPs to notify the end-user in accordance with the industry agreed process. The Best Practice Guide sets out the relevant industry agreed process, including the process for end user notification. Where CPs are already following this best practice, we have not been made aware that the notification process unduly affects or lengthens transfer timescales, or is unclear.

- 3.262 Regarding the question of compliance with this requirement, we note that we would follow our normal practice here. That is, to the extent that our normal market monitoring or third parties identifies possible compliance issues, we may decide to open an investigation or enforcement proceedings. These may include asking CPs what procedures they have in place to enable them to meet the requirements, and whether despatch of notification letters is integral to their processes.

#### Data protection

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<sup>67</sup> This is also in line with recommended approach in the Best Practice Guide.

3.263 As the ICO points out, it is incumbent on organisations to ensure that records of personal data are accurate and up to date and we would remind organisations of their obligations here.

### **Conclusions**

3.264 We have decided, consistent with the position set out in our August 2013 Document, that in light of its qualitative and quantitative benefits, these enhancements concerning requirements for exact match and notification would be proportionate when weighed against their costs. We consider that the changes to the GCs meet the test at Section 47(2) of the Act, taking into account in particular the estimated costs of implementation and the fact that this measure is part of a wider solution to the problems associated with switching processes.

## Section 4

# Implementation

## Introduction

- 4.1 Implementing the proposals which we have outlined in this document will involve changes to systems and processes for CPs. It is important that we set a timetable for implementation which is realistic and which will deliver the benefits of the proposals to consumers as soon as possible.
- 4.2 This section summarises our assessment of implementation timescales as set out in the August 2013 Document and responses from stakeholders. Having considered these, we conclude that it would be proportionate to implement the requirements for the amended GC in two phases:
- The first phase: the implementation of the changes to the NoT process ('NoT+'). These do not depend on Openreach systems development. We will allow nine months from publication of the GCs for this.
  - The second phase (conducted in parallel with the NoT+ implementation): the implementation of a harmonised GPL switching process. We believe it is appropriate to extend the timescale that we proposed for this from 12 months to 18 months. This should allow sufficient time for Openreach and CPs to complete their systems development.

## Summary of the August 2013 Document

- 4.3 In the August 2013 Document we proposed that implementation of GPL NoT+ should take 12 months from the project start date. We explained, in paragraphs 9.124 to 9.125, that this was based on estimates by Gemserv.<sup>68</sup>
- 4.4 We estimated that the time required to implement the different aspects of NoT+ would range from three to nine months. We anticipated that the development work required to harmonise switching of the relevant services to GPL and to remove the MAC process would take the most time, with an implementation period of 12 months. As the other improvements could be made in parallel, we explained our view that allowing 12 months for implementation for all of the changes was appropriate.

## Stakeholder responses

### *Implementation Period*

- 4.5 Some respondents ([&], SSE and FCS) agreed with the implementation timescales proposed in the consultation, but most disagreed. Some CPs (Entanet, KCOM, TalkTalk, Virgin Media, Zen Internet and Vodafone) argued that the proposed timescales were too short, but most respondents did not provide their own alternative estimate of how long implementation would take. Only Zen Internet responded with a suggestion that the processes could be implemented by mid to late 2015.

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<sup>68</sup> We commissioned a report from Gemserv to consider the implementation issues related to some of the options we considered in the 2012 Consultation (focussing on Enhanced NoT, GPL TxC and LPL TxC), to help us understand the challenges involved in implementing each of the options. [http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/annexes/Annex\\_12.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/annexes/Annex_12.pdf)

- 4.6 Others (EE and the CCP) urged Ofcom to explore how the proposed timetable could be compressed. EE proposed a number of areas where incremental improvements could be made more quickly; for example by reducing the time LPs have to issue a MAC to one working day. SSE and [X] proposed that the current LPL MAC process could be amended to provide a GPL front end, with other developments such as Cancel Other and mitigating the loss of service to take place in parallel.
- 4.7 In their response to the consultation, BT suggested that Openreach could have a system ready for industry testing by February 2015, provided that an industry forum tasked with co-ordinating the implementation process was set up before the end of 2013. Subsequently, BT has clarified that it expects its changes to be ready by the end of January 2015 for CP testing and the technical documentation to be published in November 2014. They thought that other CPs would then need six months for testing prior to the launch of the new process, although this could be brought forward to three months if CPs carry out their development work in parallel. Discussions with CPs providing wholesale services also suggested that they would be able to make the appropriate changes to their own systems within six months, incorporating switches which involve Openreach (such as those that may involve more than one wholesale CP) and switches between retail CPs served by the same wholesale CP.
- 4.8 There were also some more detailed comments about the implementation of particular aspects of NoT+. Virgin Media provided as evidence examples of similar large-scale system changes which took significantly longer than the change proposed in the August 2013 Document. For example, Virgin Media described their implementation of an automated call recording system which took over two years from start to fruition (compared to the 6 to 9 months proposed by Ofcom for the record keeping element of NoT+). In addition, Virgin Media thought that it would need at least 36 months to develop automated systems in order to use the NoT+ process. BT suggested that due to dependencies on a number of systems changes, the provision of more detailed information in gaining and losing NoT letters was likely to take at least nine months, rather than the 4 to 6 months we had estimated.
- 4.9 A number of respondents (BT, TalkTalk and KCOM) noted that the implementation period depended on timely delivery of new systems by Openreach. BT also noted that in some cases BT Wholesale and other wholesalers would need to inform their downstream customers of their implementation timescales. Vodafone explained that their implementation timescales would need to take into account the changes required for their direct customers and also the impact on wholesale processes and customers. [X] warned that the proposed approach would allow Openreach to engage in a lengthy re-engineering process at the expense of industry without having considered a simpler solution.
- 4.10 BT recommended that the Switching Working Group should be reconvened, in advance of the Statement, to allow industry to discuss the principles of implementation, future engagement, methods and implementation timelines before the final statement is published. BT suggested that this forum could be used to provide input from industry to Ofcom on the appropriate date from which the new GCs should come into effect.
- 4.11 Entanet and Vodafone asked Ofcom to publish some form of 'Implementation Strategy' or project plan, with clear milestones. Entanet added that they were unable to provide further comments without the detail of the implementation plan. UKCTA asked Ofcom to ensure that an appropriate timescale for the changes was mandated.

### *Implementation Approach*

- 4.12 BT and Vodafone proposed that the new switching process should be delivered at the same time by all CPs which used the process. BT explained that a phased approach would be extremely costly and technically complex, due to the running of parallel 'live' systems, adding that it would also create customer confusion. However, it also noted that a 'big bang' approach would require significantly more co-ordination and collaboration across industry. Vodafone also suggested that there would be clear consumer harm if different providers offered different processes in the interim.

### *Impact on CPs*

- 4.13 BT noted that these changes would affect all CPs, including those who serve large business customers, as CPs tend to operate the same switching processes for the same services regardless of the size of the customer. They added that the impact on smaller CPs, Internet Service Providers (ISPs), TPIs and resellers was also likely to be significant, particularly on those who had used the MAC process only for switching. They requested that Ofcom should take a lead to ensure that these providers were aware of the changes.
- 4.14 [X] expressed its concern that the proposed changes would give Openreach the opportunity to take a long time over implementation and impose costs on industry.

### *Other issues*

- 4.15 BT provided comments on a number of other issues which they thought industry and Ofcom needed to discuss. These relate to different aspects of the NoT process which would need to be amended to incorporate switches of broadband services:
- the use of Reseller IDs (RIDs) in broadband and voice transfers and for WLT;<sup>69</sup>
  - the application of the emergency restoration process;<sup>70</sup>
  - Key Performance Indicators (KPIs) required to support Ofcom's enforcement;<sup>71</sup>
  - the best way to deal with bulk and mass migrations;
  - the need for extra 'Keeping Customers Informed' notices (KCIs) to be issued by BT Wholesale and other broadband CPs;<sup>72</sup>
  - the development of 'Cancel Other' functionality for switches to and from broadband CPs;
  - dealing with the broadband 'point of no return' within the new process; and
  - the impact of extending the minimum lead time to 10 working days across all product migrations.<sup>73</sup>

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<sup>69</sup> RIDs are currently used in NoT orders to identify the CP placing the migration request.

<sup>70</sup> The emergency restoration process restores services to the customer where they have been transferred erroneously.

<sup>71</sup> KPIs help Ofcom to monitor CPs' use of the switching processes

<sup>72</sup> KCI notices are sent by a wholesale CP to update their downstream customers of changes to their services.

<sup>73</sup> The current minimum lead time in the MAC process is five days. As we explained in the August 2013 Document, there is a 10 day switching period under the NoT process to allow notification letters to be sent to customers so that they are informed about the implication of the switch before it occurs.

- 4.16 BT asked Ofcom to confirm that this work would not result in any new migration paths between products where they currently do not exist, for example due to very low volumes.

## **Our assessment**

### *Implementation Period*

- 4.17 The varied responses from stakeholders on implementation suggest that the work required to develop systems to meet the requirements of the new GC 22 will vary by CP. Some CPs already have in place the processes needed to support the requirements, such as WLT best practice, but others will need to upgrade from a more manual process. However, few stakeholders who challenged our proposed timescales provided evidence to support alternative timescales.
- 4.18 Of those who did only BT, Virgin Media and Zen Internet said that longer than 12 months would be required. BT initially thought that it would need at least 15 months to make the Openreach systems available for testing; it later revised this to 13 months. BT suggested that CPs would need an additional six months for testing, before the launch of the new switching process, although this might be shortened if CPs were able to conduct significant development work in parallel to Openreach's systems development.
- 4.19 Since all types of CPs need to be able to place their orders via the Openreach systems, either directly or indirectly via a third party, there needs to be sufficient time in the implementation period for CP testing of Openreach system changes. Some CPs may have in-house specialists who are able to carry out this work in parallel with Openreach, but others will expect to outsource this work once the Openreach development work is complete. We have therefore concluded that six months for CP testing is appropriate.
- 4.20 CPs providing wholesale services also noted that six months should give them sufficient time to make the relevant changes to their systems to roll out the harmonised switching process to their downstream retail customers.
- 4.21 If the Openreach systems development and CPs' own development were to take place sequentially it would take at least 19 months to deliver the harmonised switching process. However, since Openreach plans to publish its technical documentation in November 2014, we believe that CPs should be able to begin their development work at that point, i.e. prior to the commencement of testing at the end of January 2015. We therefore believe that extending our estimate of the implementation period for harmonised GPL NoT+ from 12 to 18 months should give sufficient time for CPs to carry out their implementation work.
- 4.22 In order to implement the new harmonised process we will manage a programme of work through an industry working group, chaired by Ofcom and supported by the OTA. On request, Openreach have provided us with some suggested early milestones for meeting the 18 months implementation deadline. Some of these are set out in table below but are subject to further discussion with industry following the commencement of the working group:



**Figure 5 - Likely key implementation milestones**

<b>Date</b>	<b>Milestone</b>
January 2014	Kick off industry working group meeting to agree governance arrangements for this implementation work and underlying principles of the harmonised switching process.
March 2014	Stakeholder agreement on implementation strategy.
April 2014	Stakeholders to submit Implementation Commitment Plans to indicate their proposed approach to meeting the requirements of the revised General Conditions and to agree end to end process.
May 2014	Openreach to issue a 'straw man' of the interface specification. Stakeholders to commence detailed design.
June 2014	Wholesale CPs <sup>74</sup> to submit 'straw man' of their interface specifications.
October 2014	Openreach and wholesale CPs to confirm the completion of the detailed design.
November 2014	Openreach and wholesale CPs to publish final technical specifications and CPs to begin interlock testing.
January 2015	Final release of Openreach systems updates for CP testing.
January – June 2015	Business readiness and testing.
June 2015	Launch of harmonised switching process.

- 4.23 We accept Virgin Media's point that some CPs currently manage broadband switches through a non-automated process and that our proposals may therefore require them to undertake development work. However, a number of TPIs provide services to help CPs interface for WLR3, through the web or through a set of simplified Application Programming Interfaces (APIs). Where it is disproportionate for CPs to develop their own systems, we would expect them to explore how they can place orders to Openreach via a wholesale provider or a TPI. It should not take longer for CPs which follow this TPI route to be able to use the NoT+ process than those who develop their own systems.

<sup>74</sup> This may also include resellers, TPIs and others who interface with downstream retail CPs.

*Implementation Date*

- 4.24 We proposed in the August 2013 Document that the five proposed NoT+ changes could be implemented in parallel with the development of a harmonised GPL switching process, and set a single implementation period for this of 12 months. We now consider that, as implementing NoT+ changes does not rely on the GPL-focused developments, the two implementation timetables could be set independently from one another.
- 4.25 Given that all of the enhancements can be developed independently of one another, and given that we estimated that none of the other enhancements would take longer than nine months to deliver, we now consider that all of the remaining enhancements could be introduced on a single date nine months after the publication of this Statement.
- 4.26 We believe it is proportionate to bring forward the implementation timetable for the enhancements from 12 to nine months. This would bring forward the date at which consumers could benefit from the enhancements but should not create significant additional development resource demands on stakeholders, who would also have had to run the two processes in parallel under our August proposal. Furthermore, no stakeholder has disputed our claim that any one of the enhancements would take more than nine months to implement. (In relation to the requirement to record and store consent to switch, Virgin Media noted that it took them more than two years to implement an automated call recording system. However, we conclude from this that Virgin Media already has in place a system which allows it to record consent to switch and that it does not therefore need to undertake significant further development).

*Other issues*

- 4.27 In their response, BT noted a number of issues relating to the harmonised process which would need to be discussed in more detail by CPs during implementation. We met with Openreach to provide guidance on some of these high level principles so that Openreach could begin to consider the changes that would need to take place to deliver the harmonised process. We confirmed that we expected a ten-day switching period to be applied to the broadband switches under NoT+, just as they apply to current NoT switches, and that switching orders should be placed with a RID. We also explained that the Cancel Other process should continue under the current rules, so that where a slam is alleged, the transfer can be stopped by the use of Cancel Other by the provider of the losing line (e.g. the voice provider).

**Conclusions**

- 4.28 In light of the above, we have decided to confirm the timescales for the implementation of our decision to harmonise all switches over the Openreach network to the GPL NoT+ process at 18 months.
- 4.29 We have concluded, however, that all the NoT+ enhancements can be delivered independently of the changes for harmonisation and that consumers would benefit if these enhancements were delivered earlier in relation to the switches to which the GPL NoT process already applies. We have concluded that it is appropriate to allow nine months for implementing the NoT+ changes. This separate timetable will therefore apply to the following requirements:
- Record of Consent to protect against slamming.

- Provision of better information on the implications of switching.
  - Mandatory use of functionality to ensure seamless transfer of bundled services.
  - Mandate CPs to place a WLT order only where there is an exact match.
  - Notification of end-users under the WLT process.
- 4.30 In order to give effect to our decision, we have decided that our modifications to GCs 22 and 24 should come into effect after nine months, with the obligations pertaining to our decision to harmonise all switches to GPL NoT+ coming into effect after 18 months. As our review did not cover switches over KCOM's network, these are not within the scope of our modifications.
- 4.31 In order to meet the implementation deadline, we recommend that all CPs engage in the design process which will begin following the publication of this statement. Timely input from the relevant stakeholders will ensure that the requirements of different types of CPs are considered before implementation. Industry discussion is essential to ensure that Openreach delivers systems changes that cater for different types of CPs.
- 4.32 We are therefore convening the first industry working group meeting on 22 January 2014, to be chaired by Ofcom and supported by the OTA. This meeting will begin the industry process for implementation of the harmonised switching process. Through this group we will also set out the interim milestones to be met to ensure that CPs are able to complete the necessary development work within the implementation period.
- 4.33 Please email [consumer.switching@ofcom.org.uk](mailto:consumer.switching@ofcom.org.uk) by Friday 17 January 2014 to register your interest in attending this meeting.

## Section 5

# Next steps

## Introduction

- 5.1 Our aim in switching is to facilitate an easy and convenient consumer experience under which efficient competitive outcomes are supported. This section explains how we intend to take forward our work to achieve this.

### Two-stage approach

- 5.2 In our August 2013 Document we explained that we were adopting a two-stage approach to changing the process for switching fixed voice and broadband services.
- 5.3 The first stage involved the policy decision to deliver a harmonised GPL solution for switches over the Openreach copper network. We also consulted on changes designed to improve the existing GPL NoT process ('GPL NoT+'). This Statement sets out our conclusions on these improvements, along with the General Conditions necessary to bring them into effect and the timescales for their implementation.
- 5.4 As set out in section 4 on implementation timescales, we intend to work with both industry and the OTA to ensure that the GPL NoT+ improvements are delivered efficiently and in a timely manner. Where possible, we will require early delivery of those improvements which require relatively little development and implementation work.
- 5.5 We are convening the first industry working group meeting on 22 January 2014, to be chaired by Ofcom and supported by the OTA. This meeting will begin the industry process for implementation of the harmonised switching process. Through this group we will also set out the interim milestones to be met to ensure that CPs are able to complete the necessary development work within the implementation period. Please email [consumer.switching@ofcom.org.uk](mailto:consumer.switching@ofcom.org.uk) by Friday 17 January 2014 to register your interest in attending this meeting.
- 5.6 The second stage of work will consider whether it is appropriate to make further changes in order to address two key switching issues:
- i) **The extent and cause of ETs.** We estimated that three-quarters of ETs arise as a result of WLT orders. One of the enhancements we have made to the NoT switching process - the requirement for an exact address match and notification of end users when WLT orders are placed - is intended to help address this.

Industry is also seeking to improve switching processes and to reduce the occurrence of ETs by facilitating more accurate asset identification. Initiatives include the introduction and availability of the MPF helpline and work by Openreach and the OTA to address the accuracy of the Openreach database.

Nevertheless, ETs that arise either through WLT orders or through transfer of provider, continue to be a significant problem for consumers. Although complaint levels about ETs are falling as a proportion of WLT orders made, they appear to be broadly stable in absolute terms. Furthermore, it is possible that take-up of new technologies such as FTTP could lead to a rise in ETs.

As a result, we believe it is important that we conduct further work to address the issue of ETs. This will include monitoring the incidence of ETs in the light of the implementation of our new NoT requirements, adoption of industry-led initiatives, and consideration of the issues raised by the emergence of new technologies.

- ii) **The feasibility of extending CP systems and processes to include other technologies and networks.** We will consider the question of whether a harmonised process for switching between different networks or wholesale services could ensure a similar end-to-end switching experience, regardless of the underlying technology or wholesale service. This will include examining switching processes for voice and broadband services over the cable, FTTP, and KCOM networks.

- 5.7 In carrying out this second stage of work, we will need to consider the extent to which the GPL NoT+ process may warrant further development, or whether an alternative option such as a hub and database solution might be proportionate.
- 5.8 We may also consider the consumer switching experience for other services (and bundles of services) such as pay-TV and mobile.
- 5.9 We note in this context the position of the UK Government, as set out in DCMS's paper 'Connectivity, Content and Consumers: Britain's digital platform for growth', published in July 2013. In particular, we note the objectives to move to GPL processes for switching 'across the board', and to ensure consistent and effective experiences for consumers switching between bundles. We also note that the UK Government in September 2013 announced a Telecoms Consumer Action Plan<sup>75</sup>, which among other things will look at making it easier to switch telecoms and broadband providers.

### Respondents' views

- 5.10 A few respondents (BT, FCS, SSE, Which?) explicitly supported or emphasised the need to pursue further switching issues on the Openreach system, including the causes of ETs. Telefonica however recommended that Ofcom allow time to assess the impact of implementation of the GPL NoT enhancements before making further changes.
- 5.11 Views on the merits of some form of longer term 'database' solution were mixed, with some (BT, Entanet, Sky, Vodafone) expressing doubts. Others (SSE, FCS) favoured such an approach. They also stressed the need for formal industry governance processes to oversee or drive switching process developments.
- 5.12 Concerning further work on addressing switching processes beyond those on the Openreach network, several respondents (BT, CCP, Entanet, Melinek, SSE, TalkTalk) said they favoured extension to, or harmonisation of, mobile, pay-TV and/or cable services. But, Vodafone expressed concerns that implementation of the current proposed enhancements could be made redundant by subsequent developments. Virgin Media expressed concerns that Ofcom might already have prioritised regulatory intervention in cable network switching processes, before the costs and benefits of such regulation are known.

### Conclusions on next steps

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<sup>75</sup> See <https://www.gov.uk/government/news/government-vows-to-end-unfair-consumer-bill-and-subscription-practices>

- 5.13 We plan to publish details and timelines for carrying out further work in this area in Spring 2014. This will include looking at how we propose to engage with industry stakeholders to develop our thinking. It will consider appropriate governance arrangements and implementation issues, such as data protection, data security and implementation timescales and will take account of relevant initiatives in government to improve switching processes.

## Annex 1

# Other issues considered

## Introduction

- A1.1 We asked stakeholders as part of our consultation whether there were other key issues that need to be taken into consideration as part of our decision to implement GPL NoT+.
- A1.2 Stakeholders responded with a range of issues. Some were linked to the five specific enhancements we consulted on, and we have addressed these in relevant sections above.
- A1.3 Some stakeholders commented on our decision to harmonise to a GPL system. Our August 2013 Document set out our decision to harmonise to a GPL system and to proceed with those elements of the Enhanced GPL NoT Process that we considered it was proportionate to proceed with in the short term. In taking this decision we took into account and addressed the outputs of the SWG and consultation responses from all stakeholders to our September 2010 and February 2012 consultations. Our views and conclusions were shaped by further analysis which we undertook in response to views received.
- A1.4 Having made our decision to harmonise to the existing GPL NoT process and to propose five specific enhancements to it, we consulted on the implementation of these enhancements and the changes to the GCs required to put them into effect. Stakeholder responses to this consultation therefore fall outside the scope of the present stage of our work, to the extent that they relate to our decision to proceed with harmonisation to GPL NoT+. In this regard, respondents are referred back to our reasoning for our decision as set out in the August 2013 Document.
- A1.5 This section summarises respondents' views on remaining issues and sets out our responses.

### 10 day transfer period

#### *Stakeholder response*

- A1.6 BT noted that there are a number of design issues to be debated including the 'point of no return' within the new process. Similarly, the FCS requested guidance on the customer's right to cancel. It considers that 'the 10th working day needs to be the 'point of no return', that is, the day before transfer, rather than the day of the transfer itself.'<sup>76</sup>

#### *Our response*

- A1.7 Under the NoT process the customer has the right under GC 24.9 to terminate the contract at the point of sale to the completion of the 'Transfer Period' which is defined as 'the period of 10 working days from before a customer's order can be activated.' If the consumer chooses to cancel their contract at any point during this period, then the CP must terminate the contract.

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<sup>76</sup> FCS response, Page 4 <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/responses/FCS.pdf>

- A1.8 We note that our decision to harmonise all switches to GPL NoT on the Openreach network means that all migrations will require a transfer period of at least 10 days. We do not agree that this should be regarded as an 'extension', where previously the MAC process was used. Under the LPL MAC process the consumer needs to first contact their provider and request a MAC, which must be issued within five working days of the request. Once issued, a MAC is valid for 30 days. Even where the consumer acts immediately upon receiving the MAC and gives the MAC to the GP of their choice, it can take a further five days for the switch to take place once the consumer gives the MAC to the GP. The transfer period is therefore likely to be comparable with GPL NoT, if not longer if the consumer does not give the MAC to the GP immediately.

*Stakeholder response*

- A1.9 [S&C] argued that the 10 day cooling-off period is inconsistent with Distance Selling Regulations.

*Our response*

- A1.10 The 10 day transfer period and the Distance Selling Regulations are two different requirements providing different protections to consumers. It is for the CP to decide how best they want to manage both of these requirements in terms of when they place the order and when the transfer/switchover period starts in light of consumer's cancellation rights.

No cost cancellation

*Stakeholder response*

- A1.11 SSE asked for clarification over whether the CP could charge the consumer for the costs of providing equipment (such as routers and cables) required for the provision of broadband services, if the consumer exercised their right to cancel the contract. SSE pointed out that costs would be incurred by the CP whether equipment is returned or not. The CP suggested an exception to the 'no cost cancellation' requirement set out in GC 22.5 should be made if such a situation occurred.

*Our response*

- A1.12 Under GC 22.5 (as amended), a customer has the right to terminate the contract without charge or any other form of compensation. We acknowledge that, when cancelling a transfer, consumers may be liable for charges relating to the provision of equipment, e.g. postage costs for the sending of routers. Such charges would not in principle fall within the scope of GC 22.5 provided they do not act as a means of penalising consumers for deciding to cancel the transfer. Regard will be given in this respect to the circumstances of each case, particularly in light of the method for calculating such charges, their relationship to the actual costs incurred and the relevant contractual provisions.

Data protection

*Stakeholder response*

- A1.13 The Information Commissioner's Office commented on those elements of our proposed enhancements which could impact on individual rights. In particular it noted that a number of elements of our proposals could raise data protection issues



and that they should be seen and addressed in the context of the relevant legislation and data protection principles.

*Our response*

- A1.14 We acknowledge that a number of our proposed enhancements relate to data concerning individuals. CPs will need to implement our requirements with full regard to data protection principles and relevant legislation.

Switches for businesses with more than ten employees

*Stakeholder response*

- A1.15 [3<] expressed concerns about 'BT Openreach unlawfully mandating a GPL process for switches outside the scope of the draft GC. As far as [3<] is concerned, any switch requested by any [3<] customer that is in excess of 10 employees is at our discretion.'

*Our response*

- A1.16 The new GC only applies only to consumers and businesses with ten employees or fewer. It will be up to individual CPs through their commercial agreements with Openreach to determine which switching process is used when dealing with large businesses.

Email address portability

*Stakeholder response*

- A1.17 CCP raised concerns that the prospect of changing email address is a significant issue for those considering switching. This may particularly be the case for those aged over 55, because they are more likely to use a provider-specific email address.

*Our response*

- A1.18 We undertook extensive qualitative and quantitative research into consumers' attitudes and experiences of switching in the fixed-voice and fixed broadband markets. This research identified the most common difficulties faced by consumers and these findings are reflected in our assessment of the main problems with the current switching processes in our February 2012 Consultation and August 2013 Statement.
- A1.19 Research conducted in 2010 and 2012 showed that consumer concerns over losing their email address was not a common difficulty faced by consumers when switching.<sup>77</sup> We note that the 2010 research identified that those aged 55 and over are more likely to have experienced difficulties continuing to use their email address, although this remains a problem identified by a minority (7%) of switchers in this age group.

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<sup>77</sup> Consumer Switching and Bundling research, September 2010, pages 53 – 55, <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/annexes/switching-bundling.pdf>  
Customer Retention and Interoperability Research, June 2013, page 48, [http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/customer-retention/CRI\\_Report\\_Final.pdf](http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/customer-retention/CRI_Report_Final.pdf)

A1.20 For these reasons we have not addressed any question of email change or portability in reaching our decision or consulting on enhancements. But we plan to monitor this issue, and may return to it to the extent that it emerges as a significant impediment to switching.

Defunct Digital region

*Stakeholder response*

A1.21 Entanet noted that customers of Sub Loop Unbundled ('SLU') services such as the now defunct Digital Region do not have access to any migration process other than cease and re-provide.

*Our response*

A1.22 CPs will be required to comply with the requirements of our amended GC for all services which fall within its scope, including SLU services. Ofcom notes that obligations under the GPL NoT+ process will apply in each instance where a GP elects to co-ordinate a migration on behalf of a customer.

## Annex 2

# Modifications to the General Conditions of Entitlement

A2.1 In order to give effect to our decision set out in the August 2013 Document and the present document, we have decided to modify GC 22 and revoke GC 24 of the General Conditions of Entitlement. The first part of this Annex sets out an overview of the main changes that we are making to our proposed modifications as set out at Annex 11 to our August 2013 Document, having taken into account stakeholder responses to our consultation. The second part sets out, for reference, the main comments made by stakeholders for each provision of the proposed GC and Ofcom's response, and where we have made changes, the action taken.

## Scope

A2.2 We have made changes to the effect that switches of broadband services over KCOM's Access Network remain subject to the existing requirements as set out in GC 22, which will now be set out at Annex 3 of the revised GC. These switches will also be subject to the NoT process set out in current GC 24 but our enhancements to this process will not apply to them.

A2.3 In order to specify the scope of each of the individual requirements, we have made reference to services provided over KCOM's Access Network and/or services provided over Openreach's Access Network as applicable.

## Effect

A2.4 Our proposed modifications to GC 22 will come into effect on 20 September 2014, at which time GC 24 will be revoked.

A2.5 Obligations on CPs will come into effect in two stages for switches over Openreach's Access Network:

### First stage

A2.6 For processes initiated on (and including) the 20 September 2014, CPs will be required to comply with the following obligations, in relation to *Fixed-line Telecommunications Services*:<sup>78</sup>

- all obligations transferred from current GC 24, as well as the enhancements that we have decided to introduce to that process ("GPL NoT+"). These obligations are set out in the revised GC under the heading "Communications Provider Migrations" and at Annex 1 of the revised GC;
- these obligations also include requirements in relation to Home-moves, as set out at Annex 2 of the revised GC;

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<sup>78</sup> One of our proposed enhancements (in relation to Simultaneous Transfers) will also apply to transfers of bundles of Fixed-line Telecommunications and Broadband Services (see paragraph 22.14 of the revised GC).

- obligations relating to “Communications Provider Migrations without change of location”, notably the requirement to comply with the provisions of Annex 1 and the prohibition of requiring, in order for a migration to be put into effect, any contact to be made by the End-User with the LP, including for the purposes of providing him or her with any information.

#### *Interim period*

A2.7 In the period from (and including) the 20 September 2014 and prior to (and excluding) the 20 June 2015 (the “Harmonisation Date”), CPs will be required to comply with the obligations set out in current GC 22, in relation to switches of *Broadband Services*. These obligations will be set out at Annex 3 of the revised GC.

#### Second stage

A2.8 For processes initiated on (and including) the 20 June 2015, CPs will be required to comply with all obligations derived from our decision to harmonise to GPL NoT. This refers to:

- all obligations set out in current GC 24, as amended to reflect the five enhancements (“NoT+”);
- obligations relating to Communication Providers Migrations without change of location, notably the requirement to comply with the provisions of Annex 1 and the prohibition of requiring, in order for a migration to be put into effect, any contact to be made by the End-User with the LP, including for the purposes of providing him or her with any information (such as a MAC);
- obligations relating to other Migrations of Broadband Services, replicating the current requirement in GC 22.2.

A2.9 These obligations will apply in relation to all migrations that are initiated from (and including) the Harmonisation Date.

#### **General requirements**

A2.10 General requirements on responsibility, training and monitoring will come into effect on 20 September 2014.

#### **Changes to specific requirements**

A2.11 We have made amendments to our proposed requirements in as set out in section 2. These are detailed in the table below.

#### **Drafting modifications**

A2.12 We have made minor modifications to our proposed requirements in order to address stakeholder comments and to provide further clarity. These are set out in the table below.

## Detailed comments on the proposed General Conditions

Proposed GC (as per our August 2013 Document)	Stakeholder comments	Ofcom response and action <sup>79</sup>
<p><b>Migrations of Broadband Services</b></p> <p>22.1 Communications Providers shall:</p> <p>(a) facilitate the migration (or where applicable, connection) of the Broadband Service in a manner that is fair and reasonable;</p> <p>(b) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out within a reasonable period; and</p> <p>(c) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out with minimal loss of the Broadband Service.</p>	<p>See paragraphs 4.5 to 4.16 of this document.</p>	<p>For our response to stakeholder comments see paragraphs 4.17 to 4.25 and 4.27 to 4.29 of this document.</p> <p>We have inserted the words “from the Harmonisation Date” to clarify that the obligations will apply from that date onwards.</p> <p>This condition has been renumbered (now in paragraph 22.25 of the revised GC)<sup>80</sup>.</p> <p>We have also clarified in a new provision (paragraph 22.24 of the GC) that CPs shall, prior to the Harmonisation Date, comply with the requirements set out in Condition A3.23 of Annex 3 to the GC, which reflect the requirements in the existing GC 22.2.</p>
<p><b>Communications Provider Migrations</b></p> <p>22. 2. Communications Providers shall in relation to Communications Provider Migrations comply with Conditions 22.3 to 22.14.</p>	<p>See paragraphs 4.5 to 4.16 of this document.</p> <p>KCOM also said that much of the drafting in our proposals excluded switches on its network.</p>	<p>For our response to stakeholder comments, see paragraphs 4.17 to 4.25 and 4.27 to 4.29 of this document.</p> <p>We have amended this provision to clarify that paragraphs 22.3 to 22.15 of the revised GC will apply, from the date on which our modifications come into effect, only in relation to Communications Provider Migrations of Fixed-line Telecommunications Services provided within KCOM’s and Openreach’s</p>

<sup>79</sup> References to changes are in relation to our proposals in the August 2013 Document.

<sup>80</sup> In our modifications we refer to the individual provisions of the revised GC as “paragraphs” (rather than “Conditions”) to avoid confusion.

		<p>network (as applicable).</p> <p>The requirement has also been renumbered (now in paragraph 22.1 of the revised GC).</p> <p>We have inserted an additional provision to the effect that paragraphs 22.3 to 22.15 of the GC will only apply in relation to Broadband Services provided within the Openreach network, from the Harmonisation Date (See paragraph 22.2 of the revised GC).</p>
<p><u>Mis-selling Prohibition</u></p> <p>22.3. When selling or marketing Communications Services, the Gaining Provider must not:</p> <p>(a) engage in dishonest, misleading or deceptive conduct;</p> <p>(b) engage in aggressive conduct;</p> <p>(c) contact the Customer in an inappropriate manner; or</p> <p>(d) engage in Slamming.</p>	<p>No comments.</p>	<p>No changes.</p>
<p><u>Information at point of sale</u></p> <p>22. 4 The Gaining Provider must take all reasonable steps to ensure that before entering into a contract for the provision of Communications Services, the Customer who is requesting a Communications Provider Migration:</p> <p>(a) is authorised to do so;</p> <p>(b) intends to enter into the contract; and</p> <p>(c) is provided with the</p>	<p>Entanet argued that “all reasonable steps” is (too) high a bar.</p>	<p>This provision was not part of the GC amendments we consulted on. We therefore made no changes to it as a result of this statement.</p> <p>The provision has nevertheless been amended to reflect the changes set out in the “Simplifying non-geographic numbers, Final statement on the unbundled tariff and making the 080 and 116 ranges free-to-caller”, published on 12 December 2013 (modifications entering into effect on 26 December</p>

<p>information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:</p> <ul style="list-style-type: none"> <li>i. the identity of the legal entity the Customer is contracting with and its telephone, website and/or e-mail contact details;</li> <li>ii. a description of the Communications Service requested; the key charges, including minimum contract charges, and any early termination charges, if applicable; payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost from the point of sale to the completion of the Transfer Period; the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service and any minimum period of contract.</li> </ul>		2013).
<p><u>Termination Rights</u></p> <p>22.5 When the Customer enters into a contract for the provision of Communications Services, the Gaining Provider must allow the Customer to terminate the contract from the point of sale to the completion of the Transfer Period without charge or any other form of compensation being required to be given by the Customer to the Gaining Provider.</p>	<p>See paragraph A1.9, and A1.11 of this document.</p>	<p>For our response to stakeholder comments, see paragraph A1.10 and A1.12 of this document.</p> <p>We have made no changes to this provision.</p>
<p>22.6 The Gaining Provider must have procedures in place to enable the Customer to</p>	<p>No comments.</p>	<p>No changes.</p>

<p>exercise their right to terminate their contract pursuant to Condition 22.5 without unreasonable effort. These procedures must include the ability to contact the Gaining Provider to terminate the contract by any of the following contact methods:</p> <p>(a) telephone</p> <p>(b) e-mail;</p> <p>(c) post.</p>		
<p><u>Records retention</u></p> <p>22.7 The Gaining Provider must use reasonable endeavours to create and keep all records regarding the sale of its Communications Services, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.</p>	<p>BT, Entanet and Virgin Media expressed concerns about confusion or inconsistency between paragraphs 22.7 and GC 22.8 of the proposed GC.</p>	<p>We have added the words “without prejudice to paragraph 22.8” to clarify that both requirements apply simultaneously.</p>
<p><u>Record of consent</u></p> <p>22.8 For each contract entered into with a Customer for the provision of Communications Services, the Gaining Provider must create and keep individually retrievable records of the following, for a period of not less than twelve months:</p> <p>(a) a direct record of consent, as provided by the Customer, to:</p> <p>i.migrate from the</p>	<p>See paragraphs 3.24 to 3.36 of this document.</p>	<p>For our response to stakeholder comments see paragraphs 3.40 to 3.65 of this document.</p> <p>We have made no changes to this provision.</p>



<p>Communications Services supplied by the Losing Provider to the Communications Services supplied by the Gaining Provider; or, as relevant,</p> <p>ii.begin acquiring Communications Services over the Target Line;</p> <p>(b) an explanation from the Communications Provider that they are required to create a record of the Customer's consent;</p> <p>(c) the name and address of the Customer;</p> <p>(d) the time, date and means by which the consent in sub-section (a) above was given;</p> <p>(e) where appropriate, the place where the consent in sub-section (a) above was given and the salesperson(s) involved;</p> <p>(f) the Target Address; and</p> <p>(g) where appropriate, the Calling Line Identification of the Target Line.</p>		
<p>22.9 The Gaining Provider shall keep the records required in paragraph 22.8 irrespective of whether the contract for the provision of the Communications Services is cancelled or terminated.</p>	<p>No comments.</p>	<p>No changes.</p>
<p><u>Notification letter</u></p> <p>22.10 When a Customer enters into a contract for the provision of Communications Services, the Gaining Provider must send that Customer a letter, in paper or another</p>	<p>See paragraphs 3.89 to 3.110 of this document.</p>	<p>For our response to stakeholder comments see paragraphs 3.111 to 3.131 of this document.</p> <p>We have removed reference to a requirement to set out the estimated time of the day</p>

<p>Durable Medium. The letter shall set out in clear and intelligible terms:</p> <ul style="list-style-type: none"> <li>(a) the date of the letter;</li> <li>(b) that the Customer is transferring their Communications Service;</li> <li>(c) all Communications Services that will be transferred;</li> <li>(d) where relevant, the Calling Line Identification of all Communications Services that will be transferred;</li> <li>(e) a reasonable estimate of the Migration Date (including date and time of the day);</li> <li>(f) the right of the Customer to terminate the contract as set out in Condition 22.5, the means by which the right to terminate can be exercised and the date by which the right to terminate must be exercised; and</li> <li>(g) relevant contact details.</li> </ul>		<p>for the Migration and to the required format of the letter from this provision.</p>
<p>22.11 The Losing Provider must, in accordance with the industry agreed process, send the End-User a letter, in paper or another Durable Medium. The letter shall set out in clear, intelligible and neutral terms:</p> <ul style="list-style-type: none"> <li>(a) the date of the letter;</li> <li>(b) that the End-User is transferring their Communications Service;</li> <li>(c) all Communications Services that will be transferred;</li> <li>(d) where relevant, the Calling Line Identification of all</li> </ul>	<p>See paragraphs 3.89 to 3.110 of this document.</p>	<p>For our response to stakeholder comments see paragraphs 3.111 to 3.131 of this document.</p> <p>We have specified that the obligation of the Losing Provider to inform the End-user of (Communications) services that it reasonably expects to be affected/unaffected by the transfer only refers to services provided by the Losing Provider itself. We have also clarified that the Early Termination Charge should refer to the “estimated” Migration Date.</p>

<p>Communications Services that will be transferred;</p> <p>(e) all Communications Services or other types of services that the Losing Provider reasonably expects to be directly or indirectly affected by the transfer;</p> <p>(f) all Communications Services that the Losing Provider reasonably expects to remain unaffected by the transfer;</p> <p>(g) a reasonable estimate of the Migration Date (including date and time of the day);</p> <p>(h) 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;</p> <p>(i) an explanation that after the transfer, the Customer will receive a final bill including any Early Termination Charge that is due;</p> <p>(j) an explanation of the applicable Early Termination Charge as set out in the contract;</p> <p>(k) the means by which the Early Termination Charge must be paid;</p> <p>(l) the amount of the Early Termination Charge due at the expected Migration Date;</p> <p>(m) where applicable, the impact of the transfer on the prices of all continuing Communications Services;</p>		<p>We have separated the provisions that related to the NoT enhancements from the requirements that are already included in the existing GC 24 to ensure that KCOM is only subject to the existing obligations (see paragraphs 22.11 and 22.12 of the revised GC).</p>
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and  (n) relevant contact details.		
22.12 The letters under Conditions 22.10 and 22.11 must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.	See paragraph 3.95 of this document.	See paragraph 3.113 of this document.  The provision has been renumbered (now in revised paragraph 22.13 of the GC).  We have added reference to the format of the letter to this provision.
<u>Simultaneous transfers</u>  22.13 Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested to transfer to Broadband and Fixed-line Telecommunications Services provided by it over the same line, it shall submit to Openreach an order for the simultaneous transfer with minimal loss of service of both Communications Services.	See paragraphs 3.148 to 3.161 of this document.  BT said that whilst orders for voice and broadband are co-ordinated or “glued together”, there still needs to be two separate orders (rather than one single order).	For our response to stakeholder comments see paragraphs 3.163 to 3.193 of this document.  The provision has been renumbered (now in paragraph 22.14 of the revised GC).  We have made the following changes:  - referred to a transfer of broadband and fixed-line telecommunications services - inserted the words “where available” and “where applicable”.  In relation to BT’s point, we note that the GCs are to be construed pursuant to the Interpretation Act 1978. Section 6(c) thereof provides that words in the singular include the plural.
<u>Reactive save</u>  22.14 Where the Losing Provider communicates with the Customer in order to comply with this Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the	No comments.	No changes of substance have been made to this provision.  The provision has been renumbered (now in paragraph 22.15 of the revised GC).

<p>Gaining Provider and/or remain in a contract with the Losing Provider.</p>		
<p><b>Communications Provider Migrations without change of location</b></p> <p>22.15 In addition to Conditions 22.1 to 22.14, each Communications Provider shall comply with the provisions of Annex 1 to this Condition in each instance where it is a Gaining Provider which elects to co-ordinate a Communications Provider Migration on behalf of a Customer.</p>	<p>See paragraphs 4.5 to 4.16 of this document.</p> <p>SSE also noted that the wording of the provision only seems to refer to GPs, while the Annex contains obligations on both GPs and LPs.</p>	<p>For our response to stakeholder comments see paragraphs 4.17 to 4.24 and 4.26 to 4.29 of this document.</p> <p>We have amended this provision to clarify that Conditions at Annex 1 will apply, from the date on which our modifications come into effect, only in relation to Communications Provider Migrations of Fixed-line Telecommunications Services provided within KCOM's and Openreach's networks.</p> <p>The requirement has also been renumbered (now in paragraph 22.16 of the revised GC).</p> <p>We have inserted two new provisions to the effect that Conditions at Annex 1 will only apply in relation to Broadband Services, after the Harmonisation Date (see paragraph 22.17 of the revised GC) and that prior to that date, CPs shall comply with the provisions of the current MAC Broadband Migrations process which are now set out at paragraphs A3.1 to A3.22 of Annex 3 (see paragraph 22.21 of the revised GC).</p> <p>According to new paragraph 22.23 of the revised GC, Migrations of Broadband Services over KCOM's network will remain subject to the requirements set out in the existing GC 22 (now at Annex 3 of the revised GC).</p>

<p>22.16 Each Communications Provider shall ensure that the End-User is not required by the Losing Provider to make contact with it in order for a Communications Provider Migration falling within Condition 22.15 to be put into effect.</p>	<p>No comments.</p>	<p>We have made no changes of substance to this provision but we have revised references to numbers of other paragraphs.</p> <p>The provision has been renumbered (now in paragraph 22.18 of the revised GC).</p>
<p>22.17 Without prejudice to the generality of paragraph 22.16, a Losing Provider shall not require, in particular, the granting of consent by it, nor the provision of any information (such as a MAC) by it to the End-User, in order for a Communications Provider Migration falling within Condition 22.15 to be put into effect.</p>	<p>No comments.</p>	<p>We have made no changes of substance to this provision. We have made some drafting modifications and revised references to numbers of other paragraphs.</p> <p>The provision was renumbered (now in paragraph 22.19 of the revised GC).</p>
<p>22.18 Conditions 22.15 – 22.17 only apply where the Communications Provider Migration does not involve a change of the location where the Communications Services are supplied.</p>	<p>No comments.</p>	<p>We have made no changes of substance to this provision. We have made some drafting modifications and revised references to numbers of the paragraphs.</p> <p>The provision has been renumbered (now in paragraph 22.20 of the revised GC).</p>
<p><b>Home-moves</b></p> <p>22.19 In addition to Conditions 22.1 to 22.14, each Communications Provider shall comply with the provisions Annex 2 to this Condition, in each instance where it is a Gaining Provider which elects to carry out a Working Line Takeover pursuant to a Home-Move Request.</p>	<p>See paragraphs 3.224 and 3.243 of this document.</p>	<p>For our response to stakeholder comments see paragraphs 3.244 to 3.264 of this document.</p> <p>We have made no changes of substance but we have made reference to the revised numbering of the other paragraphs of this GC.</p> <p>The provision has been renumbered (now in paragraph 22.22 of the revised GC).</p>
<p><b>General requirements</b></p>	<p>No comments.</p>	<p>We have made no changes of substance to these</p>

<p><u>Responsibility</u></p> <p>22.20 Where Communications Providers engage representatives or agents, they shall procure that such representatives or agents comply with the requirements of this Condition.</p> <p><u>Training</u></p> <p>22.21 Communications Providers must ensure that their staff or any representatives of any agency engaged by them, are appropriately trained to comply with this Condition.</p> <p><u>Monitoring</u></p> <p>22.22 Communications Providers must monitor, including conducting regular audits, their compliance with this Condition, including compliance on their behalf by any representatives or agency engaged by them, and take appropriate steps to prevent the recurrence of any problem(s) identified.</p> <p><u>Publication of Information</u></p> <p>22.23 Communications Providers must:</p> <p>(a) publish a copy of this Condition, or a link to a copy of this Condition, published on Ofcom's website, in an easily accessible and reasonably prominent manner on their website or, where there is no such website, by making it available in their registered office during normal office hours for inspection free of charge by members of the general public; and</p> <p>(b) provide a copy of this</p>		<p>provisions.</p> <p>The provisions have now been re-numbered (now in paragraph 22.26 to 22.29 of the revised GC).</p>
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<p>Condition to the Customer free of charge upon reasonable request.</p>		
<p><b>Effect</b> 22.24 The obligations set out in this Condition shall apply from (and including) the Effective Date.</p>	<p>No comments.</p>	<p>Deleted (see changes to paragraphs 22.1, 22.2, 22.16, 22.17, 22.21, 22.24, 22.25 and 22.30 (x) of the revised GC).</p>
<p>Definitions 22.25 For the purposes of this Condition and Annexes 1 and 2 to this Condition: [...] (g) <b>“Cancel Other”</b> means the industry term for a functionality that enables the Losing Provider to cancel, during the Transfer Period, a Transfer Order placed by the Gaining Provider; [...] (q) <b>“Effective Date”</b> means [date to be inserted in the final condition; X months from date on which modifications are made]; (r) <b>“Failure to Cancel”</b> means failure by the Gaining Provider to cancel a Transfer Order, after a request from the Customer during the Transfer Period; [...] (y) <b>“Incumbent End-User”</b> means the End-User who is moving out of the Target Address; [...] (gg) <b>“Notification of Transfer”</b></p>	<p>SSE made some drafting suggestions.</p>	<p>We have added the definitions of “Access Charge”, “Consumer”, “Effective Date” and “Unbundled Tariff Number” in accordance with “Simplifying non-geographic numbers - Final statement on the unbundled tariff and making the 080 and 116 ranges free-to-caller”, published on 12 December 2013, modifications entering into effect on 26 December 2013 (see paragraphs 22.30(a), (l), (r), (ss) of GC).</p> <p>We have introduced a definition of “KCOM”, “MAC Broadband Migration Process” and “Harmonisation Date”.</p> <p>We have removed reference to Transfer Orders from the definitions of “Cancel Other” and “Failure to Cancel” and retained reference to “wholesale orders” as per the existing GCs.</p> <p>We removed our definitions of “Effective Date” and “Notification of Transfer Process”.</p> <p>We have changed the definition of “Incumbent End-User” to refer to the End-user who is resident at the Target Address, in order to ensure that the provision also covers situations where the End-User is not actually moving</p>



<p>means a process by which an End-User or Customer transfers from the Communications Services provided by one Communications Provider over a WLR, MPF or SMPF line to Communications Services provided by another Communications Provider over that same line;</p> <p>[..]</p>		<p>out of the Target Address.</p> <p>The provision has been re-numbered (now in paragraphs 22.30 of the revised GC).</p> <p>We have made some minor typographical amendments.</p>
<p><b><u>Annex 1 to Condition 22<sup>81</sup></u></b></p> <p><b><u>Notification of Transfer</u></b></p> <p>A1.1 Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested to transfer to a Communications Service supplied by it, that Gaining Provider shall, within a reasonable time, ensure a Transfer Order is placed.</p> <p><b>Cancel Other</b></p> <p>A1.2 The Losing Provider shall only be permitted to use Cancel Other in the following circumstances:</p> <p>(a) where Slamming has occurred;</p> <p>(b) at the Customer’s request, where the Gaining Provider has failed to cancel the Transfer Order after being directed by the Customer to do so (“Failure to Cancel”);</p> <p>(c) where the telephone line is or will be, ceased during the Transfer Period (“Line Cease”);</p>	<p>No comments.</p>	<p>No changes.</p>

<sup>81</sup> We have only listed here the definitions that have been made subject to changes in relation to what we proposed in our August 2013 Document.

<p>(d) for other specified reasons not related to a Customer’s request to cancel a transfer, as agreed by the relevant industry forum and approved by Ofcom; and</p> <p>(e) in such other circumstances as defined by Ofcom.</p> <p>A1.3 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Provider shall take reasonable steps to establish that Slamming and/or Failure to Cancel has actually taken place.</p> <p>A1.4 After using Cancel Other, the Losing Provider shall confirm the cancellation of the order by Durable Medium to the Customer, unless this is not possible or appropriate, including where the Customer is deceased.</p> <p>A1.5 The Losing Provider shall record its reasons for using Cancel Other in each case, selecting the appropriate reason code from a list corresponding to permitted use of Cancel Other and consistent with Condition 22.25 (ii)(i) to (iv), as agreed by the industry and approved by Ofcom.</p>		
<p><b><u>Annex 2 to Condition 22</u></b></p> <p><b>Working Line Takeovers</b></p> <p>A2.1 Where a Gaining Provider elects to carry out a Working Line Takeover pursuant to a Home-Move Request that Gaining Provider shall ensure a Working Line Takeover Order is placed.</p> <p><b>Asset identification</b></p> <p>A2.2 Before a Working Line Takeover Order is placed, a</p>	<p>See paragraphs 3.224 and 3.243 of this document.</p> <p>SSE noted that A2.1 should contain the proviso “subject to paragraphs A2.2 and A2.3 below” as these contain circumstances limiting the requirement to place the WLT Order.</p>	<p>For our response to stakeholder comments see paragraphs 3.244 to 3.264 of this document.</p> <p>We have added the words “subject to paragraphs A2.2 and A2.3” to paragraph A2.1. We have also clarified references to the Incumbent and Inbound End-Users in paragraph A2.4.</p>

<p>Gaining Provider shall take reasonable steps, having regard to industry best practice, to identify the Target Line.</p> <p>A2.3 A Gaining Provider may only place a Working Line Takeover Order if it has identified an exact match for the Target Line.</p> <p><b>Notification Letter</b></p> <p>A2.4 After being notified of the Working Line Takeover Order, the Incumbent Communications Provider shall send the Incumbent End-User a letter, in accordance with the industry agreed process, in paper or another Durable Medium, which clearly sets out:</p> <ul style="list-style-type: none"> <li>i. the date of the letter;</li> <li>ii. a notification that a third person has indicated that they are moving to the Target Address and want to take over the Target Line;</li> <li>iii. all Communications Services directly affected by the Working Line Takeover;</li> <li>iv. where relevant, the Calling Line Identification of all Communications Services that are directly affected;</li> <li>v. the expected Migration Date;</li> <li>vi. that the End-User should notify the Incumbent Communications Provider if they are not moving out of the Target Address or if they expect to move at a later date than the expected Migration Date;</li> </ul>		
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<p>vii. the relevant contact details.</p> <p>A2.5 The letter must be sent by post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.</p>		
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### Annex 3

# Notification of modifications to the General Conditions under section 48(1) of the Act

## Modifications of General Conditions 22 and 24


### WHEREAS

- A. On 8 August 2013, Ofcom published a notification setting out their proposals for modifying General Condition 22 and revoking General Condition 24 of the General Conditions of Entitlement (“the First Notification”).
- B. Ofcom stated in the First Notification that they considered their proposals were not of EU significance pursuant to section 150A(2) of the Act.
- C. Ofcom invited representations about any of the proposals set out therein by 4 October 2013.
- D. By virtue of section 48A(6) and (7) of the Act, Ofcom may give effect to the proposal set out in the First Notification, with or without modification, only if—
  - (i) they have considered every representation about the proposal that is made to them within the period specified in the First Notification; and
  - (ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- E. Ofcom received twenty responses to the First Notification and have considered every representation made to them in respect of the proposed modifications.
- F. The Secretary of State did not notify to Ofcom any international obligation of the United Kingdom for the purpose of section 48A(6) of the Act.

### THEREFORE

- 1. In accordance with sections 48(1) and 48A(7) of the Act, Ofcom are modifying General Condition 22 and revoking General Condition 24 of the General Conditions of Entitlement as set out in the Schedule to this Notification.
- 2. Ofcom’s reasons for making these modifications and this revocation, and their effect, are set out in the explanatory statement accompanying this Notification.
- 3. Ofcom consider that the modifications and revocation comply with the requirements of sections 45 to 49C of the Act, insofar as they are applicable.
- 4. In making these modifications to General Condition 22 and revoking General Condition 24, Ofcom have considered and acted in accordance with their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
- 5. The modifications to General Condition 22 shall enter into force on 20 September 2014.
- 6. General Condition 24 is revoked with effect from 20 September 2014.

7. A copy of this Notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 48C(1) of the Act.
8. In this Notification:
  - a. “the Act” means the Communications Act 2003;
  - b. “General Conditions of Entitlement” means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;
  - c. “Ofcom” means the Office of Communications.
9. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
10. For the purposes of interpreting this Notification: (a) headings and titles shall be disregarded; and (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
11. The Schedule to this Notification shall form part of this Notification.



**Chris Taylor**  
**Director Consumer Policy**

**20 December 2013**

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

## **SCHEDULE 1**

### **22. SERVICE MIGRATIONS AND HOME-MOVES**<sup>82</sup>

#### **Communications Provider Migrations**

##### **Scope and Effect**

- 22.1 Communications Providers shall comply with paragraphs 22.3 to 22.15, as applicable, in relation to Communications Provider Migrations of:
- (a) fixed-line Telecommunications Services provided within Openreach's Access Network;
  - (b) fixed-line Telecommunications Services provided within KCOM's Access Network.
- 22.2 From the Harmonization Date, Communications Providers shall comply with paragraphs 22.3 to 22.15, as applicable, in relation to Communications Provider Migrations of Broadband Services provided within Openreach's Access Network .

##### **Mis-selling Prohibition**

- 22.3 When selling or marketing Communications Services, the Gaining Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
  - (b) engage in aggressive conduct;
  - (c) contact the Customer in an inappropriate manner; or
  - (d) engage in Slamming.

##### **Information at point of sale**

- 22.4 The Gaining Provider must take all reasonable steps to ensure that before entering into a contract for the provision of Communications Services, the Customer who is requesting a Communications Provider Migration:
- (a) is authorised to do so;
  - (b) intends to enter into the contract; and
  - (c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:
    - i. the identity of the legal entity the Customer is contracting with and its telephone, website and/or e-mail contact details;
    - ii. a description of the Communications Service requested; the key charges, including minimum contract charges, any early termination charges, if applicable and, from (and including) the Effective Date and if

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<sup>82</sup> GC 22 revised by *Consumer Switching: A statement on the GPL NoT+ elements*, 20 December 2013.

the Customer is a Consumer, the Access Charge;<sup>83</sup> payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost from the point of sale to the completion of the Transfer Period; the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service and any minimum period of contract.

#### Customer's termination rights

- 22.5 When the Customer enters into a contract for the provision of Communications Services, the Gaining Provider must allow the Customer to terminate the contract from the point of sale to the completion of the Transfer Period without charge or any other form of compensation being required to be given by the Customer to the Gaining Provider.
- 22.6 The Gaining Provider must have procedures in place to enable the Customer to exercise their right to terminate their contract pursuant to Condition 22.5 without unreasonable effort. These procedures must include the ability to contact the Gaining Provider to terminate the contract by any of the following contact methods:
- (a) telephone
  - (b) e-mail;
  - (c) post.

#### Records Retention

- 22.7 Without prejudice to paragraph 22.8, the Gaining Provider must use reasonable endeavours to create and keep all records regarding the sale of its Communications Services, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

#### Record of consent

- 22.8 For each contract entered into with a Customer for the provision of Communications Services within Openreach's Access Network, the Gaining Provider must create and keep individually retrievable records of the following, for a period of not less than twelve months:
- (a) a direct record of consent, as provided by the Customer, to:
    - i. migrate from the Communications Services supplied by the Losing Provider to the Communications Services supplied by the Gaining Provider; or, as relevant,

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<sup>83</sup> As per notification of modifications to the General Conditions under section 48(1) of the Act, dated 12 December 2013 (modifications entering into force on 26 December 2013); see "Simplifying non-geographic numbers, Final Statement on the unbundled tariff and making the 080 and 116 ranges free-to-caller", Annex 8. See also definitions in General Condition 22.30 (a), (l), (s), (tt) below.



- ii. begin acquiring Communications Services over the Target Line;
- (b) an explanation from the Communications Provider that they are required to create a record of the Customer's consent;
- (c) the name and address of the Customer;
- (d) the time, date and means by which the consent in sub-section (a) above was given;
- (e) where appropriate, the place where the consent in sub-section (a) above was given and the salesperson(s) involved;
- (f) the Target Address; and
- (g) where appropriate, the Calling Line Identification of the Target Line.

22.9 The Gaining Provider shall keep the records required in paragraph 22.8 irrespective of whether the contract for the provision of the Communications Services is cancelled or terminated.

#### Notification Letters

22.10 When a Customer enters into a contract for the provision of Communications Services, the Gaining Provider must send that Customer a letter. The letter shall set out in clear and intelligible terms:

- (a) the date of the letter;
- (b) that the Customer is transferring their Communications Service;
- (c) all Communications Services that will be transferred;
- (d) where relevant, the Calling Line Identification of all Communications Services that will be transferred;
- (e) a reasonable estimate of the Migration Date;
- (f) the right of the Customer to terminate the contract as set out in Condition 22.5, the means by which the right to terminate can be exercised and the date by which the right to terminate must be exercised; and
- (g) relevant contact details.

22.11 The Losing Provider must, in accordance with the industry agreed process, send the End-User a letter. The letter shall set out in clear, intelligible and neutral terms:

- (a) the date of the letter;
- (b) that the End-User is transferring their Communications Service;
- (c) all Communications Services that will be transferred;

- (d) where relevant, the Calling Line Identification of all Communications Services that will be transferred;
- (e) all Communications Services or other types of services provided by the Losing Provider that the Losing Provider reasonably expects to be directly or indirectly affected by the transfer;
- (f) all Communications Services provided by the Losing Provider that the Losing Provider reasonably expects to remain unaffected by the transfer;
- (g) a reasonable estimate of the Migration Date;
- (h) relevant contact details.

22.12 Where a contract is entered into with a Customer for the provision of Communications Services within Openreach's Access Network, the letter sent by the Losing Provider in accordance with paragraph 22.11 shall, in addition to the information listed therein, set out in clear, intelligible and neutral terms:

- (a) 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;
- (b) an explanation that after the transfer, the Customer will receive a final bill including any Early Termination Charge that is due;
- (c) an explanation of the applicable Early Termination Charge as set out in the contract;
- (d) the means by which the Early Termination Charge must be paid;
- (e) the amount of the Early Termination Charge due at the estimated Migration Date;
- (f) where applicable, the impact of the transfer on the prices of all continuing Communications Services; and

22.13 The letters under paragraphs 22.10 to 22.12 must be sent in paper or another Durable Medium. The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.

#### Simultaneous transfers

22.14 Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested a transfer of Broadband and Fixed-line Telecommunications Services to be provided by it over the same line, it shall ensure that, where applicable, an order is submitted to Openreach, where available, for the simultaneous transfer with minimal loss of service of both Communications Services.

#### Reactive save

- 22.15 Where the Losing Provider communicates with the Customer in order to comply with this Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Provider and/or remain in a contract with the Losing Provider.

#### **Communications Provider Migrations without change of location within Openreach's Access Network**

- 22.16 In addition to paragraphs 22.1 to 22.15, as applicable, each Communications Provider shall comply with the provisions of Annex 1 to this Condition in each instance where it is a Gaining Provider which elects to co-ordinate a Communications Provider Migration on behalf of a Customer, involving:
- (a) fixed-line Telecommunications Services provided within Openreach's Access Network; or,
  - (b) fixed-line Telecommunications Services provided within KCOM's Access Network.
- 22.17 From the Harmonisation Date, and in addition to paragraphs 22.1 to 22.15, as applicable, each Communications Provider shall comply with the provisions of Annex 1 to this Condition in each instance where it is a Gaining Provider which elects to co-ordinate a Communications Provider Migration on behalf of a Customer, involving Broadband Services provided within Openreach's Access Network.
- 22.18 Where paragraphs 22.16 and 22.17 apply, each Communications Provider shall ensure that the End-User is not required to make contact with the Losing Provider in order for a Communications Provider Migration to be put into effect.
- 22.19 Where paragraphs 22.16 and 22.17 apply, and without prejudice to the generality of paragraph 22.18, a Losing Provider shall not require, in particular, the granting of consent by it, nor the provision of any information (such as a MAC) by it to the End-User, in order for a Communications Provider Migration to be put into effect.
- 22.20 Paragraphs 22.16 to 22.19 only apply where the Communications Provider Migration does not involve a change of the location where the Communications Services are supplied.
- 22.21 Prior to the Harmonisation Date, Communications Providers shall comply with the provisions of the MAC Broadband Migrations Process, at the request of an End-User to migrate (or where applicable, connect) a Broadband Service falling within paragraph A3.2 of Annex 3 to this Condition within Openreach's Access Network.

#### **Home-moves within Openreach's Access Network**

- 22.22 In addition to paragraphs 22.1 to 22.15, each Communications Provider shall comply with the provisions of Annex 2 to this Condition, in each instance where it is a Gaining Provider which elects to carry out a Working Line Takeover within Openreach's Access Network pursuant to a Home-Move Request.

#### **Migrations of Broadband Services within KCOM's Access Network**

- 22.23 Communications Providers shall, pursuant to a request by an End-User to migrate (or where applicable, connect) a Broadband Service provided over KCOM's Access Network, comply with the provisions of Annex 3 to this Condition.

#### **Other Migrations of Broadband Services**

- 22.24 Prior to the Harmonisation Date, Communications Providers shall comply with the requirements set out in Condition A3.23 of Annex 3 to this Condition in relation to Migrations of Broadband Services not falling with the scope of paragraph 22.21.
- 22.25 From the Harmonisation Date, Communications Providers shall in relation to Migrations of Broadband Services not falling within the scope of paragraph 22.17:
- (a) facilitate the migration (or where applicable, connection) of the Broadband Service in a manner that is fair and reasonable;
  - (b) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out within a reasonable period; and
  - (c) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out with minimal loss of the Broadband Service.

#### **General requirements**

##### Responsibility

- 22.26 Where Communications Providers engage representatives or agents, they shall procure that such representatives or agents comply with the requirements of this Condition.

##### Training

- 22.27 Communications Providers must ensure that their staff or any representatives of any agency engaged by them, are appropriately trained to comply with this Condition.

##### Monitoring

- 22.28 Communications Providers must monitor, including conducting regular audits, their compliance with this Condition, including compliance on their behalf by any representatives or agency engaged by them, and take appropriate steps to prevent the recurrence of any problem(s) identified.

##### Publication of Information

- 22.29 Communications Providers must:
- (a) publish a copy of this Condition, or a link to a copy of this Condition, published on Ofcom's website, in an easily accessible and reasonably prominent manner on their website or, where there is no such website, by making it available in their registered office during normal office hours for inspection free of charge by members of the general public; and
  - (b) provide a copy of this Condition to the Customer free of charge upon reasonable request.

#### **Definitions**

22.30 For the purposes of this Condition and Annexes 1, 2 and 3 to this Condition:

- (a) “**Access Charge**” means the rate to be charged by the Gaining Provider to the Customer in respect of the retail and origination of a call to an Unbundled Tariff Number in accordance with General Condition 17;
- (b) “**Access Network**” means the Electronic Communications Network which runs from a local access node to a network termination point on an End-User’s premises and which supports the provision of copper-based access services and fibre-based access services to End-Users;
- (c) “**Address**” means a UK postal address;
- (d) “**BT**” means the BT Group plc;
- (e) “**Broadband Service**” means all DSL (including FTTC) services which are capable of supporting always-on services that provide the End-User with high data transfer speeds, excluding services provided over a Cable Network;
- (f) “**Cable Network**” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;
- (g) “**Calling Line Identification**” means a facility that enables identification of the number from which a call is being made or to which a return call could be made;
- (h) “**Cancel Other**” means the industry term for a functionality that enables the Losing Provider to cancel, during the Transfer Period, wholesale orders placed by the Gaining Provider;
- (i) “**Communications Provider**” means a person who provides Communications Services;
- (j) “**Communications Provider Migration**” means a process by which an End-User or Customer transfers from Communications Services supplied by one Communications Provider to Communications Services provided by another Communications Provider;
- (k) “**Communications Service**” means a Broadband Service and/or a Fixed-line Telecommunications Service;
- (l) “**Consumer**” has the meaning given to that term in General Condition 17;
- (m) “**CPS**” or “**Carrier Pre-Selection**” means a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number;
- (n) “**Customer**” means a person who is an End-User of Communications Services provided by a different Communications Provider or a person who is seeking to become an End-User of a Communications Provider;

- (o) **“DSL” or “Digital Subscriber Line”** means a family of technologies generically referred to as DSL, or xDSL, capable of transforming ordinary phone lines (also known as ‘twisted copper pairs’) into high speed digital lines;
- (p) **“Durable Medium”** means any instrument, excluding SMS, which enables the Customer or End-User to store information addressed personally to him in a way accessible for future reference, for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored;
- (q) **“Early Termination Charge”** means the charge payable by the End-User for the termination of the contract before the end of the minimum contract period;
- (r) **“Effective Date”** has the meaning given to that term in General Condition 17;
- (s) **“End-User”** means a person, other than a Communications Provider, who:
- (i) is party to a contract with the Communications Provider for the provision of Communications Services, and;
  - (ii) is not acquiring the Communications Services in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);
- (t) **“Failure to Cancel”** means failure by the Gaining Provider to cancel a transfer, after a request from the Customer during the Transfer Period;
- (u) **“Fixed-line Telecommunications Service”** means Narrowband calls and lines services provided to an End-User or Customer that allow for the transfer of speech communications, and other forms of communications such as facsimile and data;
- (v) **“FTTC” or “Fibre-To-The-Cabinet”** means an Access Network consisting of optical fibre extending from the local access node to the street cabinet;
- (w) **“Gaining Provider”** means:
- i. the Communications Provider to whom the End-User or Customer is transferring; or
  - ii. the Communications Provider to whom the Inbound Customer or End-User makes a Home-Move Request;
- (x) **“Harmonisation Date”** means 20 June 2015.
- (y) **“Home-Move Request”** means a request by an Inbound Customer or End-User to begin acquiring one or several Communications Services over the Target Line;
- (z) **“Inbound Customer or End-User”** means the Customer or End-User who is moving into the Target Address;
- (aa) **“Incumbent Communications Provider”** means the Communications Provider who supplies Communications Services to the Incumbent End-User over the Target Line;
- (bb) **“Incumbent End-User”** means the End-User who is residing in the Target Address;

- (cc) “**KCOM**” means KCOM Group plc;
- (dd) “**Losing Provider**” means the Communications Provider from whom the End-User or Customer is transferring;
- (ee) “**MAC**” or “**Migration Authorisation Code**” means a unique code used to identify a Broadband Service that is intended to be transferred from one Communications Provider to another Communications Provider;
- (ff) “**MAC Broadband Migrations Process**” means the obligations and processes set out in paragraphs A3.1 to A3.22 of Annex 3 to this Condition;
- (gg) “**Migration**” means one or more of the following processes by which:
- i. the Communications Provider transfers from one Communications Service to another Communications Service;
  - ii. an End-User transfers from one Communications Service to another Communications Service;
  - iii. an End-User or Customer transfers from Communications Services supplied by one Communications Provider to Communications Services supplied by another Communications Provider (“**Communications Provider Migration**”);
  - iv. an End-User or Customer transfers from Communications Services supplied by a Communications Provider at one location to Communications Services supplied by the same Communications Provider at a different location;
- (hh) “**Migration Date**” means the date on which the transfer of the Communications Service or takeover of the Target Line will be effected, at which point the End-User’s Communications Service will commence being provided to the End-User by a different Communications Provider or at a different location;
- (ii) “**MPF**” or “**Metallic Path Facility**” means a circuit comprising a pair of twisted metal wires between an End-User’s premises and a main distribution frame that employs electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an Electronic Communications Network;
- (jj) “**Narrowband**” means the services provided over a traditional Public Communications Network, excluding services provided over a Cable Network;
- (kk) “**Openreach**” means the BT group business offering Communications Providers’ products and services that are linked to BT’s nationwide Electronic Communications Network;
- (ll) “**Slamming**” means where a request for a CPS, WLR, SMPF and/or MPF has been made, or a Transfer Order or a Working Line Takeover Order has been placed on Openreach, without the Customer’s express knowledge and/or consent; that is in the following circumstances:

- i. where the Customer has never contacted, or has never been contacted by, the Gaining Provider;
  - ii. where the Customer has contacted, or has been contacted by, the Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of their Communications Services;
  - iii. where the Customer has agreed to purchase a product or service from the Gaining Provider and the Gaining Provider has submitted an order 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 Communications Services to the Gaining Provider having understood as a result of a deliberate attempt by the Gaining Provider to mislead, that they are making an agreement with a different Communications Provider;
- (mm) **“SMPF” or “Shared Metallic Path Facility)** means access to the non-voiceband frequencies of the MPF;
- (nn) **“SMS” or “Short Message Service** means a text message delivered to the handset of an End-User or Customer who acquires Publicly Available Telephone Services, or, if SMS is superseded or withdrawn, an equivalent text communication sent directly to the handset of an End-User or Customer who acquires Publicly Available Telephone Services;
- (oo) **“Target Address”** means the Address where the Target Line is situated;
- (pp) **“Target Line”** means the working WLR, MPF or SMPF line to which a Customer request for a Migration, or a Home-Move Request, refers;
- (qq) **“Transfer Order”** means an order submitted by, or on behalf of, the Gaining Provider to Openreach, or other applicable wholesaler, requesting for the Target Line to be transferred from the Losing Provider to the Gaining Provider;
- (rr) **“Transfer Period”** means a period of 10 Working Days before a Customer’s order can be activated;
- (ss) **“Unbundled Tariff Number”** has the meaning given to that term in General Condition 17;
- (tt) **“WLR” or “Wholesale Line Rental** means a regulated wholesale service sold by BT or KCOM, which is used by the Communications Provider to provide retail customers with exchange lines and in turn, access to other Narrowband telephone services (for example, telephone calls, facsimile and dial-up);
- (uu) **“Working Day”** means the hours between 09.00 – 17.00 on Monday to Friday, with the exception of Bank Holidays;
- (vv) **“Working Line Takeover”** means a process by which a Communications Provider takes over a WLR or MPF line in order to provide Communications Services to the Inbound Customer or End User, where that line is being used by that same or a



different Communications Provider to supply Communications Services to the Incumbent End-User; and

- (ww) **“Working Line Takeover Order”** means an order submitted by, or on behalf of, a Gaining Provider to Openreach, requesting for the Working Line Takeover of the Target Line.

## **Annex 1 to Condition 22**

### **Notification of Transfer**

A1.1 Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested to transfer to a Communications Service supplied by it, that Gaining Provider shall, within a reasonable time, ensure a Transfer Order is placed.

### **Cancel Other**

A1.2 The Losing Provider shall only be permitted to use Cancel Other in the following circumstances:

- (a) where Slamming has occurred;
- (b) at the Customer's request, where the Gaining Provider has failed to cancel the Transfer Order after being directed by the Customer to do so ("Failure to Cancel");
- (c) where the telephone line is or will be, ceased during the Transfer Period ("Line Cease");
- (d) for other specified reasons not related to a Customer's request to cancel a transfer, as agreed by the relevant industry forum and approved by Ofcom; and
- (e) in such other circumstances as defined by Ofcom.

A1.3 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Provider shall take reasonable steps to establish that Slamming and/or Failure to Cancel has actually taken place.

A1.4 After using Cancel Other, the Losing Provider shall confirm the cancellation of the order by Durable Medium to the Customer, unless this is not possible or appropriate, including where the Customer is deceased.

A1.5 The Losing Provider shall record its reasons for using Cancel Other in each case, selecting the appropriate reason code from a list corresponding to permitted use of Cancel Other and consistent with paragraphs 22.25 (II)(i) to (iv), as agreed by the industry and approved by Ofcom.

## **Annex 2 to Condition 22**

### **Working Line Takeovers**

A2.1 Subject to paragraphs A2.2 and A2.3, where a Gaining Provider elects to carry out a Working Line Takeover pursuant to a Home-Move Request that Gaining Provider shall ensure a Working Line Takeover Order is placed.

### **Asset identification**

A2.2 Before a Working Line Takeover Order is placed, a Gaining Provider shall take reasonable steps, having regard to industry best practice, to identify the Target Line.

A2.3 A Gaining Provider may only place a Working Line Takeover Order if it has identified an exact match for the Target Line.

### **Notification Letter**

A2.4 After being notified of the Working Line Takeover Order, the Incumbent Communications Provider shall send the Incumbent End-User a letter, in accordance with the industry agreed process, in paper or another Durable Medium, which clearly sets out:

- (a) the date of the letter;
- (b) a notification that an Inbound Customer or End-User wants to take over the Target Line;
- (c) all Communications Services directly affected by the Working Line Takeover;
- (d) where relevant, the Calling Line Identification of all Communications Services that are directly affected;
- (e) the expected Migration Date;
- (f) that the Incumbent End-User should notify the Incumbent Communications Provider if that Incumbent End-User is not moving out of the Target Address or expects to move at a later date than the expected Migration Date;
- (g) the relevant contact details.

A2.5 The letter must be sent by post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.

### **Annex 3 to Condition 22**

#### **MAC Broadband Migrations Process**

A3.1 The Communications Provider shall, at the request of:

- (a) an End-User of the Communications Provider; or
- (b) another Communications Provider who acquires a Broadband Service from the Communications Provider,

issue a MAC for a Broadband Service where the Broadband Service is a service to which the MAC Broadband Migrations Process applies.

A3.2 The MAC Broadband Migrations Process applies to the supply by the Communications Provider of all DSL services, with the exception of those DSL services that are required to be migrated by means of a process that relates to the supply of a Fixed Line Telecommunications Service supplied in conjunction with the DSL service.

A3.3 The Communications Provider shall take reasonable steps to validate the identity of an End-User who has contacted the Communications Provider to request a MAC for a Broadband Service, before issuing a MAC to the End-User.

A3.4 The Communications Provider shall provide its End-Users with two or more of the following contact methods:

- (a) Telephone numbers;
- (b) Email address; and
- (c) Postal address,

for the purposes of an End-User contacting the Communications Provider to obtain a MAC,

#### **Issuing MACs to End-Users**

A3.5 The Communications Provider shall communicate the MAC to the End-User in writing by letter and/or by email within five working days of receipt of the End-User's request save for A3.6.

A3.6 Where the Communications Provider has issued the MAC to the End-User over the telephone (including details about the MAC validity period and expiry date and the Broadband Service to which the MAC relates), the Communications Provider is not required to communicate the MAC to the End-User in writing.

A3.7 The written response (email or letter) to the End-User containing the MAC shall clearly indicate:

- (a) The MAC (or MACs);
- (b) The MAC validity period and expiry date; and
- (c) The Broadband Service(s) to which the MAC(s) applies.

A3.8 At any time prior to the expiry of the MAC validity period, the Communications Provider shall remind the End-User of the MAC if requested by the End-User.

A3.9 Where a MAC has already been requested and provided, the Communications Provider shall not impose any limits on the number of additional times an End-User may request the provision of a new MAC in relation to the Broadband Service, following the expiry of any other MACs.

A3.10 The Communications Provider shall issue a MAC to the End-User free of charge.

#### **Refusal to issue a MAC**

A3.11 The Communications Provider shall only refuse to issue a MAC to their End-User if:

- (a) the Communications Provider has, by taking reasonable steps, been unable to validate the identity of the person requesting the MAC as the End-User;
- (b) the Broadband Service contract has already been terminated;
- (c) a MAC which is still within its MAC validity period has already been requested and issued by the Communications Provider in relation to the Broadband Service;
- (d) the Communications Provider has already submitted a Cease Request for the Broadband Service; and
- (e) the Communications Provider is unable to obtain a MAC from a Broadband Network Communications Provider.

A3.12 Where the Communications Provider is unable to, or refuses to, provide a MAC to the End-User, the Communications Provider shall provide the End-User with a clear explanation of why the MAC has not been provided.

#### **Cease requests and notice to terminate a Broadband Service**

A3.13 The Communications Provider shall not issue a Cease Request for the Broadband Service unless the Communications Provider has established that the End-User does not wish to transfer the Broadband Service to another Communications Provider.

A3.14 The Communications Provider shall, when issuing a MAC, confirm to the End-User that any previous termination by the End-User has been revoked, and shall ensure that any current or pending termination actions are cancelled.

#### **MAC validity and migration dates**

A3.15 The Communications Provider shall not terminate the Broadband Service on account of the MAC validity period expiring unless the Communications Provider has received notification that the End-User's Broadband Service has been migrated to another Communications Provider.

A3.16 Where a Customer provides a MAC within its validity period, together with a request to effect a transfer of the Broadband Service to the Communications Provider, the Communications Provider shall proceed with the migration and inform the Customer of the Default Migration Date.

A3.17 The Communications Provider shall, at the request of a Customer up until one Working Day prior to the Default Migration Date:

- (a) accept a request to extend the Default Migration Date to a later Migration Date (“Requested Migration Date”), provided the MAC validity period has not expired within five days of the Requested Migration Date; or
- (b) cancel the Default Migration Date or Requested Migration Date.

### **Erroneous MAC migrations**

A3.18 The Communications Provider shall provide a recovery process so that in the event of an erroneous migration effected by way of a MAC, the End-User’s Broadband Service can be restored to the original Communications Provider with minimum disruption.

### **Information about the MAC Broadband Migration Process**

A3.19 The Communications Provider shall publicise the availability of the MAC Broadband Migrations Process to End-Users, including providing the following information:

- (a) an explanation of how the MAC is used to facilitate the transfer of a Broadband Service to another Communications Provider;
- (b) details of how an End-User may request a MAC from the Communications Provider, such as telephone, email and postal contact details;
- (c) reasons why the Communications Provider may not be able to issue a MAC;
- (d) details of the complaints handling process for complaints about a failure by the Communications Provider to issue a MAC;
- (e) alternative migration options for an End-User if the Communications Provider cannot issue a MAC for the Broadband Service;
- (f) the default Migration Date that applies when a MAC is provided to the Communications Provider by a Customer for the purposes of transferring the Broadband Service to the Communications Provider; and
- (g) any options available to the End-User to request a Migration Date later than the Default Migration Date.

A3.20 Publication of the information set out in A3.19 above shall be effected by publishing the information on the Communications Provider’s website, and by sending a copy of the information if so requested by an End-User.

### **Complaints about the MAC Broadband Migrations Process**

A3.21 The Communications Provider shall handle complaints from End-Users in relation to a decision to refuse, or a failure by, the Communications Provider to issue a MAC, as part of its existing complaints handling processes.

### **Broadband Network Services**

A3.22 Where the Communications Provider provides Broadband Network Services, the Communications Provider shall also ensure that it:

- (a) effects the transfer of a Broadband Service on the Default Migration Date, unless a later Migration Date has been requested by the Communications Provider for the transfer to be effected;
- (b) notifies the Communications Provider who formerly provided the Broadband Service of the date that the transfer has been effected to another Communications Provider; and
- (c) has a process that enables an erroneous service migration effected using a MAC to be reversed, so that the Broadband Service can be restored to the original Communications Provider who requested the MAC.

### **Broadband Migrations**

A3.23 All Communications Providers pursuant to a request by an End-User, a Customer or another Communications Provider to migrate (or where applicable, connect) a Broadband Service shall, where the provisions of the MAC Broadband Migrations Process do not apply to the Communications Provider in relation to this Broadband Service:

- (a) facilitate the migration (or where applicable, connection) of the Broadband Service in a manner that is fair and reasonable;
- (b) ensure the migration (or where applicable, connection) of the Broadband Service is carried out within a reasonable period;
- (c) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out with minimal loss of the Broadband Service
- (d) assist with, and facilitate requests for, the migration (or where applicable, connection) of a Broadband Service provided by another Communications Provider, in instances where the other Communications Provider has failed to, or refused to, comply with the MAC Broadband Migrations Process, in a manner that is fair and reasonable.

### **Definitions**

A3.24 For the purposes of this Annex:

- (a) **“Broadband Network Communications Provider”** means a Communications Provider that provides Broadband Network Services;
- (b) **“Broadband Network Services”** means services that:
  - i. generate a MAC in relation to a Broadband Service provided by the Communications Provider to an End-User or to another Communications Provider;
  - ii. effect a transfer of a Broadband Service from one Communications Provider to another Communications Provider using the MAC issued in relation to that Broadband Service; and
  - iii. effect the cease of a Broadband Service from the Communications Provider at the request of the Communications Provider;
- (c) **“Cease Request”** means a direction given by a Communications Provider to a Broadband Network Communications Provider in relation to a Broadband

Service, with the intention being to terminate the provision of that Broadband Service;

- (d) **“Default Migration Date”** means five Working Days after the MAC is provided by a Communications Provider to a Broadband Network Communications Provider;
- (e) **MAC validity period”** means the period extending up to 17.00 on the thirtieth calendar day from issue (either verbally or in writing, whatever comes first) by the Communications Provider.



## Annex 4

# CSMG Report

- A4.1 Please see the PDF document published alongside this document entitled: Switching Models: Comments on Stakeholder Responses. This is available on the landing page of the Statement via the following link:

<http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching-review/statement/annex 4.pdf>

## Annex 5

# Glossary

**Act** – The Communications Act 2003.

**ADR** – Alternative dispute resolution.

**ALID** – Access line ID. A unique reference number that identifies each copper pair on the Openreach network.

**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.

**CAT** – Competition Appeal Tribunal.

**C&R** – Cease and re-provide. The consumer terminates their contract with the Losing Provider and requests a new service from the Gaining Provider, not necessarily in this order (i.e. the consumer may request a new service first before terminating their contract).

**Cable Network** – A hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable.

**Cancel Other** – The industry term for a functionality that enables the Losing Provider to cancel wholesale orders (during the switchover period) placed by an alternative Provider, either where slamming has been alleged by the customer or where the GP has failed to cancel the order on the customer’s request.

**Cancel Own** – During the GPL NoT process, if the consumer changes their mind about switching, the GP initiates this process.

**CCP** – The Communications Consumer Panel.

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

**Considerers** - Consumers that have considered switching in the last year but subsequently decided not to.

**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>84</sup> A person who provides an Electronic Communications Network or provides an Electronic Communications Service, as defined in the Communications Act 2003.

**CSMG** – Cambridge Strategic Management Group.

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<sup>84</sup> Terms ‘communications provider’ and ‘provider’ are used interchangeably throughout this document.

**DS** – Dialogue service. Operated between Openreach and Communications Providers regarding services are available to them.

**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.

**EMP** – Equivalence Management Platform.

**ET** – Erroneous Transfer.

**ETC** – Early Termination Charge. Charge that may be payable by a consumer for termination of a 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.

**FTTC** – Fibre to the cabinet. A form of fibre optic communication delivery in which the fibre network reaches the street-side cabinet. The street cabinet is usually located only a few hundred metres from the user’s premises. The remaining segment of the access network from the cabinet to the customer is the existing copper pair.

**FTTP** – Fibre to the premises. Form of fibre optic communication delivery in which the fibre network is installed up to the user’s premises.

**Full LLU** – Services where the provision of access to the copper wires from the customer premises to a BT exchange allows a competing Provider to provide the customer with both voice and data services over such copper wires.

**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 contacts 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.

**GPL NoT +** – a set of enhancements to the GPL NoT process, as proposed by Ofcom in the August 2013 Document.

**GCs** – General Conditions of Entitlement.

**GEA - FTTC** – Generic Ethernet access – fibre to the cabinet. This is the FTTC variant of the wholesale service used provided to CPs to supply superfast broadband services

**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.

**GPL TxC** – Gaining provider led transfer code option. For a more detailed explanation of the GPL TxC option, including a process flow diagram, see Annex 7.

**Hub/ database** – Designed to capture the name, address, post code, CLI, current CP, service type, technology type and account reference for each customer.

**LO** – Linked orders process. May also be referred to as a 'simultaneous provide' or 'SIM Provide'.

**Local loop** – The access network connection between the customer's premises and the local serving exchange, usually comprised of two copper wires twisted together.

**LLU** – Local loop unbundling. The regulatory process of allowing multiple telecommunications operators to use connections from the telephone exchange's central office to the customer's premises. The physical wire connection between customer and company is known as a 'local loop', and is usually owned by the incumbent local exchange carrier.

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

**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.

**LPL TxC** – Losing provider led transfer code option. For a more detailed explanation of the LPL TxC option, including a process flow diagram, see Annex 7.

**LPL ALT** – Losing provider led alternative option. For a more detailed explanation of the LPL ALT option, including a process flow diagram, see Annex 7.

**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.

**MCP** – Minimum contract period. A minimum (fixed term) contractual period set at the start of a contract (often for 12 to 24 months).

**MM** – The Mott MacDonald.

**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.

**MPF** – Metallic path facility. 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.

**Narrowband** – Services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network.

**NGA** – Next generation access.

**NoT** – Notification of Transfer

**Number portability** – The ability of consumers' to retain their telephone number when they switch providers

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

**Openreach (OR)** – 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.

**PO** - Parallel order process. A process in which two or more separate orders can be managed together.

**PSTN** – Public switched telephone network. BT's fixed voice service.

**SFBB** – Superfast broadband.

**SIM** – Simultaneous (as in simultaneous provision).

**Slamming** – Where a CP has requested to takeover CPS, WLRR and/or LLU services without the customer's express knowledge and/or consent; that is in the following circumstances:

- ii) Where the customer has never been contacted by the Gaining Communications Provider;
- iii) 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;
- iv) 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
- v) 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.

**SMPF** – Shared metallic path facility. A wholesale unbundling product provided by Openreach, giving the CP partial control of the line, usually for broadband services. A way for Providers to gain partial control of the local loop to connect to end users.

**SME** – Small and medium-sized enterprise. Business with up to 10 employees.

**SLU** - Sub-loop unbundling is similar to LLU, except that communications providers interconnect at a point between the exchange and the end user, usually at the cabinet.

**Switchers** – Consumers that have switched their Provider in the last year.

**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.

**SWG** - Switching working group. Was a joint industry, Office of the Telecommunications Adjudicator and Ofcom body, formed in 2010. Considered the problems with the existing NoT and MAC processes in more detail and developed detailed specifications and costs for different switching process options for fixed voice and broadband services on the Openreach copper network.

**TPI** – A third party integrator.

**Triple play bundles** – Fixed voice, broadband and digital TV services

**TxC** – Transfer code. Code that identifies the assets and services to be switched at each level in the supply chain.

**VoIP** - Voice over Internet Protocol

**WLR** – Wholesale line rental. 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. It enables other Communications Providers to offer both line rental and calls to end-users over BT's local network.

**WLR3** – Wholesale line rental 3. Offers a range of features that give greater flexibility and control over the service CP offers to end customers.

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