UKCTA Response to Ofcom Review of the General Conditions of Entitlement

Submitted to Ofcom 28th March 2017

Introduction

1. UKCTA is a trade association promoting the interests of fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.org.uk.

2. UKCTA members supply a range of telecommunications products and services to a large volume of business customers of varying sizes. Several members supply mobile as well as fixed-line services, some members provide additional services such as e.g. pay TV.

3. UKCTA members are subject to Ofcom's General Conditions of Entitlement ('GCs') and UKCTA has for a number of years requested Ofcom to undertake a fundamental review. Given the significance of Ofcom's plans for updating the GCs, many members have submitted individual company responses to the consultation. The purpose of this response is to highlight common high level concerns with the proposals and consequential implementation plans.

4. Until now Ofcom has taken the approach of reviewing individual elements of the GCs which has resulted in a lack of consistency and clarity across definitions and obligations. Given that the GCs are the regulatory conditions that all communication providers must comply with, it is essential that the drafting is clear and unambiguous to enable straightforward compliance. UKCTA members are supportive of Ofcom's intention to update and make fit for purpose the GCs making them clearer and more practical to understand and implement.

Summary of Concerns

5. There is the potential for unintended consequences of unclear drafting. UKCTA supports any move to make the General Conditions clearer, easier to read, and easier to understand. Ofcom has, however, added some unclear provisions into the GCs that would benefit from greater clarity and/or guidance. This means it is far from clear how CPs can ensure compliance, and therefore the risk of being found in breach of the new GCs is far greater than under the current regime.

6. Ofcom's thinking appears confused as to the applicability of these consumer protection GCs to large businesses. For example, Ofcom says that the guidance related to price rises of "material detriment" should apply to large businesses, yet in the same paragraph, Ofcom says that large businesses are able to negotiate their contracts and can absorb any changes (see paragraph 4.19). Similarly, some proposals include additional requirements which are neither justified nor wanted by large business consumers. We believe that large B2B providers should not be covered by these consumer protection conditions, and that large businesses are not in need of contractual protection, unlike individual, residential consumers who take standard contracts from their CPs (which is clearly meant to be the focus of these consumer protection GCs as demonstrated by the reference to consumers and small businesses throughout the consultation).

7. Any changes to consumer protection regulations will require extensive systems and operational changes (including staff training etc.). We would suggest that a 24 months' implementation timescale is appropriate.

8. There are a number of areas where Ofcom has decided to move from guidance to obligations, and add direction powers for Ofcom. While arguably obligations add certainty for CPs, they could mean that the conditions are more onerous whilst not improving consumer protection.

9. We broadly support the objectives that Ofcom is seeking to achieve with the proposed amendments to the current complaints handling and dispute resolution requirements in the current GC 14.4 and associated code of practice. We do not believe, however, that some of the key proposals will actually improve the customer experience but may actually make the experience less consumer friendly and more cumbersome for consumers.

10. Our key concern is around the suggested process for managing complaints and particularly when a CP is able to close a complaint versus the customer's right to take the matter to ADR. In essence, we understand that Ofcom would look to impose the following requirements:

    a. When telling the customer of the outcome of the complaint investigation, the CP must give the customer until the end of the 56-day period (from when the complaint was opened) to say if they are not satisfied;

    b. CPs can close a complaint only if (i) the customer has expressly agreed or (ii) the customer has not come back by the end of the 56-day period or (iii) it is reasonable to consider the complaint to be frivolous or vexatious; and

    c. CPs must immediately issue an ADR letter if customer says they do not agree to proposed resolution of complaint (and the CP does not intend to take additional steps to resolve) or the complaint remains unresolved after 56 days (i.e. 8 weeks).

11. In contrast, under Ofcom's proposed process, the 28-day period recommended by Mott McDonald would effectively be extended to up to 56 days. As such we are concerned that Ofcom's proposals would actually (a) reduce customer awareness of ADR and (b) make the complaints handling process slower and more cumbersome for the customer.

12. CPs have already spent time and resources implementing the recommendations in the Mott McDonald report and it would therefore be more sensible in the circumstances to base the future changes to the ADR requirements on those recommendations. The Mott McDonald recommendations were based on clear evidence in the form of a detailed analysis of the impact of ADR processes on consumers. Ofcom's proposals, however, do not appear to be based on any specific new evidence, only on an implicit assumption that 56 days must be better than 28 days.

13. In relation to Ofcom's other proposals on complaint handling we have the following comments.

    a. We note Ofcom's proposal that CPs must be able to accept complaints via phone, letter and email/web-form. We believe that email or web-form is fairly rapidly becoming an outdated form of communications methods used by customers. In contrast, live-chat is becoming increasingly popular as it offers a superior customer experience as it provides an immediate feedback loop for the customer who, as a result, feels more empowered and, frankly, that their CP is listening to their complaint. We would therefore recommend that providers should be able to offer online messaging as an alternative to email or web-form.

b. We also note Ofcom's proposal that when receiving a complaint, the CP must inform the customer of the process and timeframe for resolving the complaint. It is tempting to believe that this would improve the customer experience and to an extent it may well do. We would emphasise however that no CP would deliberately set off on the journey of trying to resolve a customer complaint with the ultimate intention of sending the customer off to the Ombudsman. On the contrary, any serious CP would want to resolve a customer's complaint as quickly and efficiently as possible ultimately in order to ensure that the customer is happy to remain a customer. Put very simply, we do not believe that the first thing the customer wants to hear when they lodge a complaint is that it may take up to 8 weeks to resolve and in any event there is always the Ombudsman after that if they are not happy. This would send a poor signal to consumers from the CP and we would urge Ofcom to reconsider this proposal

14. For CPs not serving the 'mass market' for retail products like phone, broadband etc. but still potentially having 'small business' customers, they will have relatively few complaints and the record-keeping obligations seem onerous in that context. Ofcom's justification for its development of obligations in this area seems based on its experience of enforcement to date, which has focussed on the major CPs providing the products mentioned above. It would seem more proportionate if there was a way to exclude CPs providing other types of business product from the record-keeping requirements – perhaps by limiting these to CPs serving or complaints from 'Consumers'.

15. There is general concern about the proposals on material detriment. There is a radically different threshold of material detriment when compared to the current guidance. We are unclear about the rationale for this change and concerned that it will risk creating more confusion about what is expected from providers in order to comply with customer notifications of contractual changes that are to the customer's material detriment.

16. The scope of the proposal to retain the general publication requirements under GC10 and combine them with the price transparency requirements is extended to all providers of ECS. UKCTA believes that it would be better to seek to exclude those not providing consumers/ businesses with internet and phone services in the scope given some of the detail required e.g. on Access Charges, Number Portability etc. The move to bring together requirements from more than one of the current GCs has the potential to enable regulatory creep and cause confusion both for CPs and consumers.

17. Ofcom proposes the insertion of an entirely new requirement in the current GC15 which is that CPs would be required to establish, publish and implement clear and effective policies and procedures for the fair and appropriate treatment of all "vulnerable consumers". This proposal would extend the application of GC15 far beyond its current scope. We believe the costs of implementing such a requirement would be disproportionate to the consumer benefits that might be expected to be achieved.

18. More specifically, the term "vulnerable consumer" is extremely broadly defined as "consumers who may be vulnerable due to circumstances, including but not limited to, age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement or divorce."

19. Proposals to add a new element to the condition requiring CPs to inform their subscribers if CLI facilities are not available are confusing. It is unclear who Ofcom wants these requirements to

apply to as there is mention a number of different CPs (originating, transiting, terminating, etc.) and it's unclear who is subject to what requirements (see for example paragraphs 10.28 to 10.30).

20. UKCTA members are supportive of efforts to reduce the number of nuisance calls. Although we believe there is now significant momentum in the industry to tackle scam and nuisance calls, it is important that the regulatory framework is adapted to provide support for the efforts made by network operators and also to ensure that similar measures are adopted throughout the industry. At the same time, however, it is essential that the proposed new provisions are clear, proportionate and not unduly difficult to comply with as they do represent a significant change to the current regulatory framework., to reduce the number of nuisance calls being made It is important, however, that the requirements are consistent with what is commercially and technically possible such that industry can provide the best possible solutions to protect their customers from scam and nuisance calls, for example the proposal to require that all CPs should take reasonable steps to identify and block calls on which invalid or non-diallable CLI is provided.

21. GC16 used to apply to CPs who provided a PCN – but the scope of new GC C7 has been extended to those providing PATS as well. Retail-only CPs are not going to be able to fulfil these requirements directly. As in some other GCs, there needs to be an identification of obligations on the right type of CP, for passing down the wholesale chain as necessary i.e. it would be ok for retail CPs to be required to make the facilities available provided that there are appropriate obligations for these to be provided to them wholesale.

22. There are a number of examples where it appears that Ofcom's proposals will result in duplication of regulation. This would appear to be in contradiction to the Authorisation Directive (Article 6(3)) which limits national general authorisations to contain conditions that shall not duplicate conditions in place under other general legislation.

23. Ofcom has suggested changes in the light of proposals in the Digital Economy Bill. UKCTA considers it too soon to make any substantive conclusions on for example GC21 and Quality of Service.

24. In relation to the extension of metering and billing requirements to "data" services, there are a number of differing views among members as to the appropriateness and proportionality of the proposals for metering and billing, particularly in regard to the extension to data services.

25. What is evident however is that Ofcom has not provided a cost benefit analysis, rather they rely on a short sentence included as footnote 48 in the consultation as evidence for the need to change the metering and billing proposals. In moving forward, it is therefore crucial that Ofcom takes proportionate steps, in accordance with its obligations laid out in Section 47 (a) through to (d) of the Communications Act 2003.

26. We note that Ofcom has not defined "data" services in the condition but says in the consultation that it should apply to fixed broadband services (paragraphs 6.3 and 6.16). We would like to ask for further clarification of "data" and which services are included. For example, it would not be appropriate to include more complex business data products such as, for example, multi-site connectivity using uncontended circuits. We do not believe large business data products require the same level of regulatory protection as the consumer market. Also, we believe Ofcom should clarify whether and, if so, what wholesale data products would be covered by this definition.

27. At its most obvious, changes to metering and billing systems (which in the past have had an implementation period of 24 months) would not be possible within 3 to 6 months. An implementation of period of 24 months would be more appropriate.

28. Ofcom should also consider the cost implications of such a scope extension, which will require costly system changes/updates. In addition to the system changes/updates, consideration should be given to the practical impacts on providers of increasing the scope. For example, Approval Bodies should work together to set out clear guidelines on how to achieve dovetailing of the data inspection visits with voice inspection visits, to minimise disruption and overhead costs for providers (where this is feasible given the scale of the operations and the level of errors that are being reported by the relevant provider).

Conclusion

29. The rewriting of the GCs is a major task and will have far ranging compliance obligations for CPs. We believe that Ofcom should undertake a further formal consultation on the final set of new GC wording. This consultation is better focussed on policy matters. Once the policy matters have been decided upon there should be a further consultation on the drafting. Final scrutiny of the actual drafting is in the view of our members absolutely vital.

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