Vonage Limited (“Vonage”), having reviewed Ofcom’s consultation “Price rises in fixed term contracts - options to address consumer harm” has the following comments:

1. Giving customers an unfettered right to terminate in the case of any price increase under all circumstances during the period of a fixed term contract is disproportionate – there is no concept of materiality and no allowance is made for matters outside a CP’s control.

2. We believe that in the case of a fixed term contract in excess of 12 months, CPs should be allowed to make an annual one off price increase that is less than or equal to RPI. It therefore follows that if an annual price increase is made during the period of a fixed term contract that is below or equal to the RPI rate, customers should not have the unfettered right to terminate without penalty.

3. Ofcom’s proposals assume that retail CPs always have control over price increases and that increases are foreseeable. This, however, is not the case. Retail CPs are regularly forced to pass on to their customers increases imposed by third parties over which the retail CP has absolutely no control. For example, directory enquiry service providers frequently change the cost of dialling 118 and the cost for putting customers straight through to the number they want. Another example would be changes to international termination rates (e.g. the recent increase in Pakistan termination rates where prices rose circa 600% in 30 days). Such price changes are not foreseeable and should not give rise to an automatic right of termination without penalty. If a customer chooses to call a particular 118 number or international destination outside of that customer’s fixed priced call package of inclusive calls then it is the customer’s responsibility to check the cost of making the call. We would describe such calling patterns outside of a fixed price bundle of call charges as discretionary or optional purchases.

4. When looking at price increases during a fixed term contract and a customer’s right of termination a distinction needs to be made between fixed priced inclusive calling plans (Fixed Price Inclusive Bundles) and calls that are made by customers on a discretionary / optional basis outside of the Fixed Price Inclusive Bundle. Whilst we would agree that price increases during the fixed term of a Fixed Price Inclusive Bundle could trigger a right of termination without penalty, this rule should not apply to calls that are made on a discretionary / optional basis outside the bundle. The primary reason for customers choosing a Fixed Price Inclusive Bundle is because of the certainty of the cost of making calls within the bundle (Fixed Price Inclusive Bundles are characterised by a regular flat rate charge for calls to all destinations within the bundle). Customers choose the bundle appropriate to the countries they wish to call regularly. When customers choose to subscribe to a Fixed Price Inclusive Bundle, discretionary / optional calls made outside the bundle are not a material factor in determining their choice of provider. The driving factor of choice is the cost of the Fixed Price Inclusive Bundle not the cost of calls outside the bundle. Therefore, when looking at regulation aimed at preventing consumer harm, it is those prices within the Fixed Price Inclusive Bundle that should fall within Ofcom’s current proposals, not pricing outside Fixed Price Inclusive Bundles. Call increases outside Fixed Price Inclusive Bundles should be excluded from Ofcom’s

proposals. There is no logical consumer protection reason for giving a customer the right to terminate in the case of a price increase to a number that a customer does not call at all or only calls on an irregular basis (i.e., discretionary / optional calls).

5. Under Ofcom's proposed changes to GC 9.6, CPs would have to give customers not less than one month's notice in relation to any price modification and allow customers to withdraw from the contract without penalty if they did not agree to the price increase. For the reasons stated above this should only apply to fixed term Fixed Price Inclusive Bundles. However, amending GC 9.6 with regard to the notice period to be given by CPs to end user customers ignores the implications of price increases imposed by wholesale providers on retail CPs. If a wholesale provider increases its prices and an end user customer exercises rights of termination then the retail CP would be forced to terminate its arrangements with the wholesale CP relating to the provision of service to that end user customer, the effect of which could be early termination charges (particularly in the case of WLR arrangements) levied by the wholesale provider on the retail CP. In order to protect the retail CP from wholesale early termination charges, if the end user customer wishes to terminate the retail service then this should only become effective upon the retail customer giving not less than 30 days' notice of termination to their retail CP. During this period, the retail CP would continue to provide services to the end user customer at the lower price but those services would terminate at the end of the end user's 30 day notice period. By providing that end user customers should give not less than 30 days' notice of termination this will allow retail CPs time to serve notice on their wholesale service providers and thus avoid or at least help mitigate any early termination charges.

6. We would also add that any price increase as a direct result of a regulatory or statutory decision should be excluded from Ofcom's proposals and that any proposals must apply to the ex VAT price (i.e., to the retail price net of any applicable taxes).

Vonage Limited
14th March 2013