

12th February 2010**Draft Annual Plan 2010/11**

T-Mobile welcomes the opportunity to respond to Ofcom's consultation, Draft Annual Plan 2010/11.

Executive Summary

T-Mobile believes that Ofcom's major efforts in the mobile sector in the coming year should be addressed towards drawing up a policy to enable it to withdraw from regulation wherever possible and towards pursuing more efficient regulation where appropriate. This is the aim of the regulatory framework and we hope to see effective action taken in this direction in the next year. If Ofcom truly wants to act with a bias against intervention and wants to minimise the regulatory burden on communications operators, it should always ensure that either competition law or self regulation are not appropriate before introducing regulation.

In this draft annual plan which includes a 29 page table of simplification initiatives planned by Ofcom, it is particularly striking that there appear to be no deregulatory or simplification plans for the mobile sector. T-Mobile is very disappointed that Ofcom has not taken the opportunity offered through the Mobile Sector Assessment process, which presented the competitive nature of the mobile sector with a clean bill of health, to present any proposals for deregulation, or even attempt to address their own question on this issue. T-Mobile believes that in a mature mobile market like the UK, competition would deliver better results than those that can be achieved through regulation. We think that it is both incorrect and irrelevant to argue that there is been only limited regulation in the mobile sector in comparison to the fixed sector, and therefore there is less of a necessity to look for deregulatory opportunities. Instead it is befitting a regulator that has a 'bias against intervention' to look at the each mobile-specific regulation, as well as the cumulative level of regulation on the mobile sector, and consider whether it is truly proportionate and beneficial to consumers. This is particularly relevant given Ofcom's proposed new duty to give greater importance to investment, which in the mobile sector is evidently hindered by excessive and burdensome regulation.

This Draft Annual Plan, in the same way as the draft plans of previous years, contains very little detail concerning expected work programmes which makes it difficult for T-Mobile to evaluate exactly what resources it needs to allocate for specific regulatory work and when the work is intended to be done. We would request more information as stakeholders need to plan to the same extent as Ofcom. T-Mobile has noted this problem in its response to the Draft Annual Plan of previous years. In future, T-Mobile suggests that Ofcom publishes a draft form of its Programme of Work for the year in conjunction with the Draft Annual Plan. This will allow stakeholders to be better prepared for regulatory work. This might also enable Ofcom to plan better as well. For example after 2 years we are no closer to closing down questions on the donor conveyance charge, an area where Ofcom claims it has been unable to dedicate resource.

Responding to consultations and dealing with Ofcom's information requests requires a lot of work from both T-Mobile's regulatory department and also, where relevant, our wider business. It is essential that we have more guidance with regards to the expected dates when Ofcom will publish documents, and that Ofcom both do their utmost to stick to these deadlines or advise stakeholders

promptly of changes. There is an opportunity cost involved for stakeholders if they have to remain perpetually on standby waiting for delayed consultation documents and determinations to be published.

This lack of detail and repetition in this consultation are immediately apparent when reading through the consultation document. Most statements are repeated at least twice, if not more times, with limited detail given in any section. This means that at points the document gives rise to more questions than answers. The brevity is also misleading and if a reader does not know the detail surrounding a specific work area, they may easily jump to the wrong conclusions based on this document. Whilst we appreciate Ofcom's intention to not issue unwieldy and cumbersome documents, they still need to ensure that the essential elements are included in sufficient depth to make the document both useful and beneficial to stakeholders.

Response to Consultation Questions

- 1. What are your views on Ofcom's proposed work programme for 2010/11?**
- 2. What are your views on Ofcom's proposed priorities for 2010/11?**

T-Mobile has the following comments on specific priorities and the ongoing work areas that Ofcom has identified in the annual plan. However given that there is very little new information in this document, beyond that which has already been announced earlier by Ofcom, it is difficult to provide many detailed comments.

Digital Participation Consortium and Media Literacy

We fully support the work of the Digital Participation Consortium. It's still very early days and the group is currently developing a national plan and researching those segments of the population that remain unconnected and the reasons for this. T-Mobile is actively involved in a number of projects targeted at families on low incomes that cannot afford fixed broadband:

1. T-Mobile offers mobile connectivity to a number of the approved suppliers in the Government's Home Access Programme. The aim of the £300m programme is to provide every secondary school pupil with a computer, connectivity, support package and educational software to enable them to engage fully in their education. Grants are provided directly to families who qualify. Those eligible for the scheme can redeem their vouchers at any of T-Mobile's 255 retail stores and customers can have a demonstration of the Home Access Package in store. We also promote the scheme through leaflets and our window displays.

The pilot scheme showed that customers preferred mobile rather than fixed internet access. This is because of the need for mobility (the children involved require access from a number of different locations) and quick and easy deployment (there is no time lag between purchase and use).

2. In addition, there is a group of families – the ambers – who don't meet the criteria of Home Access and could not afford to buy the package. The e-learning foundation is a charitable body working with schools to promote digital inclusion and contributing towards procurement schemes where parents make similar financial commitment. T-Mobile is working with the e-learning foundation providing a connectivity proposition for them to offer to schools.
3. We are mobile broadband provider of choice for many Local Education Authorities in England. Over 30,000 school age children already rely on us for internet access to study outside the classroom through our delivery of the Government's Computers for Pupils initiative.
4. We are also involved in developing a spin off from Home Access for targeted groups such as children in Local Authority care including those in homes, fostered and in juvenile detention. T-Mobile was selected as the only network and direct provider of the connectivity framework.

Mobile broadband is already narrowing the digital divide. Indeed, one third of our mobile broadband dongles are being used by people who are often not in a position to take on a fixed line broadband contract as the sole means of accessing the internet from the home. There are many reasons why customers choose mobile broadband as a replacement for their fixed line ISP:

- lack of a credit rating required to obtain a fixed line contract – particularly in the case of immigrants or lower social classes
- ad hoc internet access is frequently cheaper using mobile broadband than via fixed line services
- those regularly changing address who wish to take their broadband with them rather than have the hassle of continuously cancelling contracts
- mobile can serve remote locations with a lack of cable coverage

Switching between communications providers

It is essential that Ofcom coordinates its apparently separate streams of work on switching and Mobile Number Portability. It would be bad practice for Ofcom to impose a regulatory requirement on us now and then change the regime again in a few years for a number of reasons

- (a) It would lead to a poor consumer experience;
- (b) It would impose additional costs; and
- (c) If the system is improved now through the MNP process, then Ofcom won't be able to make a cost benefit justification to align with any outcome of the switching work – given the consequent reduction in any potential overall benefit.

Further, the markets for each single product are different, despite the fact that there may be increasing levels of bundling in customer purchasing, and therefore switching decisions. As a result it is unlikely that one size will fit all, particularly when, for example, you have high levels of slamming etc in some markets and not others (therefore requiring a different level of precaution and consequently a different switching system). Given these concerns, T-Mobile thinks that a coordination of approaches across different markets, rather than a unification of different approaches, would appear to be the most appropriate regulatory response.

Broadband and mobile phone not-spots

Ofcom states that it plans to make progress on broadband and mobile phone not-spots:

“We want to improve our understanding of the extent of not-spots, and their causes, and support initiatives aimed at tackling the problem ... For mobile, we will focus on persistent not-spot areas and do what we can to facilitate better mobile coverage by investigating the causes of some persistent mobile not-spot areas with poor, or no, reception. Ofcom will also undertake research to explore the technical quality of services, such as the broadband speeds that consumers receive on mobile devices.”

T-Mobile is supporting the work that Ofcom and the Communications Consumer Panel are conducting to make progress on mobile phone not-spots, however, it is very important that this

work, which is being carried out under an assortment of separate workstreams – not all related to not-spots - is targeted at areas of consumer harm where networks are not already addressing them. To date we have seen the scope extended beyond the evaluation of not-spots. The workstreams need to be co-ordinated appropriately to ensure that each piece of work is relevant and not repetitive so as to minimise the impact on networks.

Adapt content regulation and implement Audio Visual Media Services (AVMS) Directive

Ofcom need to raise awareness of the AVMS Directive in the content provider community as they, rather than the operators, will have editorial responsibility for TV-Like services hosted on mobile. As the regulations do not introduce many new protections which go beyond the requirements of the Independent Mobile Classification Body (IMCB), content providers are not aware that they need to do anything under the regulations or that they may need to notify ATVOD or pay a fee.

Ensure availability, take-up and effective use of communications services

In light of the publication of the Amendments to Directive 2002/22/EC (Universal Service Directive) we welcome the review of the General Conditions, in particular General Condition 15. In respect of the review of text relay services, following the publication of the Plum Consulting's study in July 2009, we expect a robust Regulatory Impact Assessment to accompany any proposal put forward by Ofcom for enhanced or additional relay services so that technical and cost considerations can be fully analysed. Ofcom should also engage equipment manufacturers as mobile networks are reliant upon them to include the relevant functionality.

Protect customers and audiences from harm and unfair practices

Ofcom have made reference in this draft annual plan to the guidance it has given concerning “unfair contracts particularly in relation to unduly-high early termination charges”¹. T-Mobile notes that Ofcom issued its guidance on additional charges over a year ago and as yet it is unclear whether Ofcom is going to take any formal action in relation to such charges. This is particularly relevant given that the analytical approach underlying the guidance has been discredited in the decision of the Supreme Court in the bank charges case. The delay which has taken place is unreasonable, both for consumers and for operators who, as a result of Ofcom's inactivity, do not have any regulatory certainty. It is essential that Ofcom clarifies promptly whether it is planning to take action or whether it is planning to revise its guidance in light of the Supreme Court decision.

Review of the NTS numbering regime

We welcome Ofcom's announcement that it intends to review the NTS numbering regime. A market review of NTS is well overdue, having been started in 2004 and then put on hold while Ofcom considered a related competition complaint. As recent events have shown, the lack of effective regulation in the NTS market has allowed BT to take advantage of its position of

¹ Paragraph 2.19

economic strength, to the detriment of other operators and consumers. It is imperative that Ofcom conclude the NTS market review and impose effective regulation on BT in this market.

Understanding Business Customers

Ofcom have indicated in this draft annual plan that they plan to conduct regular research into the experiences of business customers. T-Mobile notes that the ERG is also undertaking work in relation to business consumers. Ofcom should indicate the extent to which its work is part of the ERG work or separate. In particular, given that the ERG is focusing specifically on fixed operators, it would be useful to know if Ofcom is planning to follow the same approach.

Start clearance of 800 MHz spectrum

We support the continued work that Ofcom is doing to expedite the release of 800 MHz spectrum. The earlier that this spectrum is available on a nationwide basis, the more valuable that it will be to its licence holders and reduce the period of time that 900 MHz holders have a distinct competitive advantage for. We would appreciate that Ofcom keeps the mobile industry informed of any changes to the timetable for the clearance of this spectrum as it has been doing in 2009.

Implement Proposed Government direction on Spectrum

It will be useful for Ofcom to set out what concrete plans it has in the event that the proposed government direction to release spectrum for mobile broadband is not made because of the election being called early. Ofcom have indicated in paragraph A1.56 that if there is no direction it would still expect to undertake the work required to bring about liberalisation and award of the spectrum but does not specify what additional work is required and how long it would take to deliver. It also does not deal with whether it would continue to implement the proposals of the Independent Spectrum Broker or whether it would go back to Ofcom's original proposals.

Digital Economy Bill – Peer-to-peer file sharing

The Draft Annual Plan simply sets out Ofcom's new powers and duties in this area.

Once the Bill receives Royal Assent Ofcom has a major role to play in ensuring the necessary mechanisms and processes are in place. This includes:

- agreeing the initial obligations code with copyright owners and ISPs (within 6 months);
- preparing quarterly progress reports on the success of the measures, the impact they have on the take up of electronic communications services and whether illegal file sharing is in decline;
- establishing a dispute mechanism for customer notifications;
- establishing a dispute mechanism for complaints between ISPs and copyright owners;

- setting the annual fixed fees payable by copyright owners to ISPs for processing notifications;
- Agreeing the payment mechanism for notifications, appeals and Ofcom's fees;
- Acting as the central repository for these payments and calculating and invoicing for any over/under payments;
- Responsible for verifying copyright owners and ensuring they meet all the criteria set out in the code;
- if required by the Secretary of State preparing a report into the most appropriate technical measures for ISPs to use against serious repeat infringers;
- Drafting a code on technical measures; and
- Establishing an appeal mechanism for customer complaints;

Much of this work will need to be in place this year. It is essential that Ofcom retains enough flexibility in its programme of work to ensure that it is able to carry out this work.