

8<sup>th</sup> May 2008

Sarah Evans  
Consumer Policy Manager  
Office of Communications  
Riverside House  
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London  
SE1 9HA

Dear Sarah

### **Ofcom review of additional charges**

This response has been prepared on behalf of the Fixed Service Providers Association (FSPA) a group within the Federation of Communications Services, which represents more than 120 service providers and resellers of fixed telephony services including Wholesale Line Rental (WLR), calls packages and broadband.

We welcome the opportunity to respond to this consultation, which sets out proposed guidance on potentially unfair contract terms. In general, we support Ofcom's aim of introducing increased transparency and fairness to the additional charges under consideration.

Clearly, however, flexibility in the pricing of some of these "non-core" items is the means by which communications providers are able to reduce the cost of provision of their core service with a corresponding reduction in price for customers. We, therefore, welcome Ofcom's approach which, within its proposed guidance, allows the flexibility which communications providers need in order to design packages which reflect varying customer needs and priorities. Nonetheless, we do appreciate that lack of visibility of the extent of such charges may have the effect of concealing the overall cost of use and agree with Ofcom's view that, since customers may not appreciate this at the point of purchase, a greater level of transparency is required in some cases.

As a general principle, we believe that the level of charges levied by communications providers should be proportionate and should normally reflect costs actually incurred by them. However, this must also allow for recognition of the upfront costs arising from acquisition of business and any special deals which may be provided to new customers.

A key concern has been that some of the charges under consideration, in particular early termination charges, may be used to create a barrier to switching. Ofcom's guidance in this respect is helpful as it sets out a duty on communications providers to mitigate its future costs and in no circumstances to levy an early termination charge which is greater than the remaining monthly payments.

In this area we have a specific concern about rolling contracts, which is not directly addressed in Ofcom's consultation. In such cases, contracts will automatically "roll over" into a new minimum period unless the customer takes action to cancel the agreement. Where the window of opportunity for serving notice is restricted (e.g. to the month prior to renewal) this can have the effect of locking customers into a contract on an almost permanent basis. Such practices are clearly damaging to competition.

We also note that the proposed guidance relates only to residential consumers. We do feel that small businesses as defined in, for example, General Condition<sup>14</sup> need similar protection and, while recognising that the relevant legislation applies only to residential customers, we would suggest that Ofcom considers ways to provide similar guidance for these customers. This could possibly be achieved via a change to the detailed requirements for Sales & Marketing Codes of Practice.

Our responses to the specific consultation questions are set out below:

**Question 1:** *Do you agree that it is helpful and appropriate for Ofcom to issue guidance on the application of the Regulations to consumer contracts for communications services?*

We agree that it is helpful to provide guidance, which will both assist companies to comply with their legal requirements and also serve as a benchmark for best practice where such legal obligations do not apply.

**Question 2:** *Do you agree with Ofcom's proposed guidance regarding core terms and transparency?*

We believe that Ofcom's definition of core terms is clear and that it is appropriate to put the main emphasis for fairness tests on non-core charges.

**Question 3:** *Do you agree with Ofcom's proposed guidance (including any administrative thresholds we have set) on non-core terms to which we apply the test of fairness?*

Subject to the comments above, we agree with the principles set out in Ofcom's guidance.

**Question 4:** *Are there any other issues that are covered by the Regulations which Ofcom should give guidance on?*

As noted above, we believe that rolling contracts which lead to customers automatically entering a subsequent minimum contract period unless proactively cancelled are not specifically addressed. Guidance on fairness as it applies to procedures for serving notice and on the application of early termination charges for these subsequent periods would be helpful.

**Question 5:** *Do you agree that three months is an appropriate period during which suppliers can adjust their terms and marketing practices to ensure they are in line with Ofcom guidance?*

We believe that three months is an appropriate period for implementation into new agreements

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I trust that these comments are helpful.

Yours sincerely

A handwritten signature in blue ink that reads "Michael Eagle". The signature is written in a cursive style with a large, stylized 'M' and 'E'.

Michael Eagle  
**General Manager**