



Number portability and technology neutrality

Modification to the Number Portability General
Condition and the National Telephone Numbering Plan

Statement

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Section 1

Summary

- 1.1 This statement sets out Ofcom's (the Office of Communications) decision in relation to the proposed modification of certain provisions associated with the current regulation of number portability. Ofcom considered whether these provisions were still appropriate given the evolving nature of communications networks and services in its consultation document *Number portability and technology neutrality* ("the November 2005 consultation document") published on 3 November 2005¹. Put briefly, number portability is the ability of a subscriber to change communications provider while retaining their telephone number.
- 1.2 In the November 2005 consultation document, Ofcom proposed modifications to General Condition of Entitlement 18 ("the Number Portability Condition") and the National Telephone Numbering Plan ("the Plan")² to encourage switching between providers and to facilitate inter-platform voice competition, developments that Ofcom considers desirable. As noted in the Phase 2 consultation document for its *Strategic Review of Telecommunications*³, Ofcom proposes to facilitate inter-platform competition wherever possible due to its potential to deliver a competitive market in voice services. Ofcom emphasised the particular importance of fixed-mobile convergence in this context, and also the importance of ensuring that Voice over Internet Protocol ("VoIP") services are not artificially impeded as they enter the market. In the *Final Statements on the Strategic Review of Telecommunications*⁴, Ofcom said that without the ability for consumers to switch easily, there can be no effective competition.
- 1.3 Ofcom's number allocation policy has evolved to promote inter-platform competition. For instance, geographic numbers have been allocated to certain geographic services which are delivered via wireless networks, while mobile numbers have been allocated to certain mobile services which are delivered via hybrid fixed-mobile networks.
- 1.4 Ofcom considers that its approach to number portability should also promote inter-platform competition in a manner consistent with its number allocation policy. This is in line with Ofcom's statutory duties 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 competition⁵ and to take account of the desirability of it carrying out its functions in a manner which, so far as is practicable, does not favour one form of communications network or service over another⁶.
- 1.5 Ofcom's specific proposal to facilitate inter-platform competition in the November 2005 consultation document was to modify the definition of "Number Portability" in the Number Portability Condition and the Plan so that the rights and obligations associated with geographic number portability are no longer restricted to situations where the Network Termination Point ("NTP") or the number is retained at a "specific location".

¹ <http://www.ofcom.org.uk/consult/condocs/numport/>

² <http://www.ofcom.org.uk/telecoms/loi/numbers/261701.pdf>

³ http://www.ofcom.org.uk/consult/condocs/telecoms_p2/tsrphase2/maincondoc.pdf

⁴ http://www.ofcom.org.uk/consult/condocs/statement_tsr/statement.pdf

⁵ Section 3 of the Communications Act 2003.

⁶ Section 4 of the Communications Act 2003 which is based on Article 8 of the Framework Directive 2002/21/EC.

- 1.6 Ofcom also consulted on the removal of the formal requirement to provide portability in accordance with the *Number Portability Functional Specification* published by Ofcom⁷ ("the Functional Specification"). The Functional Specification sets out certain technical characteristics of portability arrangements that were appropriate when portability only applied to Public Switched Telephone Network ("PSTN") fixed networks and Global System for Mobile ("GSM")-based mobile networks. Ofcom considered that the rules and processes contained in the Functional Specification may no longer be appropriate given the emergence of VoIP, hybrid fixed-wireless services and Next Generation Networks ("NGNs"), and may therefore represent a further potential barrier to inter-platform competition.
- 1.7 Additionally, the Functional Specification in its current form may impede the development of new and more effective portability arrangements between different communications providers using the same or similar platforms, such as alternative approaches to the current "onward routing" solution. Ofcom considers that industry should be free, where appropriate, to adopt such alternatives. This is consistent with Ofcom's policy objective to regulate in a manner that, as far as is practicable, is technology neutral. This policy objective and regulatory principle is supported by Article 8 of the Framework Directive⁸.
- 1.8 The responses to the November 2005 consultation document expressed broad support for the principle that regulation should be technologically neutral, and therefore for Ofcom's proposal to remove references to "specific location" from the definition of Number Portability. A number of respondents did, however, express concern regarding the broader implications of mandating portability between all fixed and mobile services, and the erosion of tariff transparency provided to end-users by the Plan that would result from such a change. Ofcom shares this concern, but emphasises that tariff transparency was preserved under its proposals.
- 1.9 Ofcom's modification of the Number Portability Condition permits portability of numbers between different types of network whilst retaining the existing provision that retention of telephone numbers must be in accordance with the Plan. This latter provision is designed to preserve the integrity of the Plan and by so doing, tariff transparency. For example, the modification to the Number Portability Condition will allow geographic numbers to be ported from a fixed to a wireless network where the geographic number continues to be used in accordance with the Plan. The definition of "Geographic Number" in the Plan allows for the number to be used in a way where the NTP does not relate to the geographic area code but only as long as the tariffing remains consistent with that area code. In other words, a geographic number cannot be ported to a mobile network where the charges are not consistent with geographic numbers. This will preserve tariff transparency for consumers.
- 1.10 The responses to the November 2005 consultation document also expressed broad support for the need to update the Functional Specification. There were, however, widely varying views as to Ofcom's role in this process, and the status of the resulting document. Most responses argued that Ofcom had a continuing role in ensuring that portability arrangements were fit-for-purpose, and several argued that an updated version of the document should continue to have a formal legal status.

⁷ Version 5 of the Number Portability Functional Specification published 22 July 2003 sets out technical and operational scope of number portability and the rules and processes for its provision. http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/2003/fun_final0703.htm#b

⁸ http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_108/l_10820020424en00330050.pdf

- 1.11 Ofcom acknowledges its role in ensuring that effective number portability arrangements are in place. However, it believes that the appropriate means of doing so is through a co-regulatory approach, on the basis that many providers will share Ofcom's desire to improve the effectiveness of portability arrangements, and that industry is better placed than Ofcom to design the detailed processes to deliver this.
- 1.12 Ofcom appreciates that some providers may not face the same incentive as others to improve the effectiveness of portability arrangements. If this creates a barrier to progress then Ofcom would consider whether it ought to intervene. This could include, subject to consultation, consideration of whether to include high level technical specifications for portability within the General Conditions of Entitlement ("General Conditions"). Ofcom will review this matter again as part of its review of the General Conditions, which it plans to carry out during the latter part of 2006.
- 1.13 Ofcom is of the view that the detailed technical processes for portability should be owned by industry rather than by Ofcom, and should not form part of the formal legal framework for number portability. Industry would be free to continue to maintain number portability functional specification(s) and associated process manuals, and is encouraged to develop updated versions of these documents, as long as they are consistent with the obligation to provide portability on reasonable terms in accordance with the Number Portability Condition. Ofcom would continue to use the Functional Specification (and associated process manuals) as a guide to what constitutes best practice in the context of number portability disputes or complaints, but would have the flexibility to take account of the facts of a specific case when considering whether the Functional Specification is relevant, rather than enforcing it as a blanket obligation.
- 1.14 Having taken the 21 responses to the November 2005 consultation document into account, Ofcom has decided to implement its proposals as set out in the consultation. These proposals were to:
- modify the definition of "Number Portability" in the Number Portability Condition and the Plan and delete redundant definitions;
 - remove the reference to the Functional Specification in the Number Portability Condition; and
 - make consequential modifications to the Plan.
- 1.15 The final notifications of modifications to the Number Portability Condition and the Plan are set out in this statement, the publication of which brings the modifications into effect.

Section 2

Introduction and Background

Introduction

- 2.1 Ofcom is responsible for the administration of the UK's numbering resource and has a duty under section 63 of the Communications Act 2003 ("the Act") to ensure the best use of these resources and to encourage efficiency and innovation for that purpose. In a broader context, Ofcom has duties to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets where appropriate by promoting competition.
- 2.2 Number portability enhances consumer choice and competition by allowing subscribers of Publicly Available Telephone Services ("PATS"), as defined in the Number Portability Condition, to change their communications provider while retaining their telephone number. Ofcom is responsible for ensuring that PATS subscribers, who so request, can obtain number portability⁹.
- 2.3 This statement concludes on the proposals set out in Ofcom's consultation *Number Portability and Technology Neutrality* published on 3 November 2005. In that consultation, Ofcom sought stakeholders' views on its proposals to:
 - a) modify the definition of "Number Portability" in the Number Portability Condition and the Plan, and to remove the definitions of "Geographic Number" and "Non-geographic Number" from the Number Portability Condition as they would then be redundant;
 - b) remove the reference to the Functional Specification in the Number Portability Condition; and
 - c) make consequential modifications to the Plan including deletion of references to the Functional Specification and modifications to the definitions of number portability codes.

Setting the context: background to the publication of the November 2005 consultation document

Number Portability: historical background

- 2.4 Geographic number portability was originally designed to enable numbers, used in the provision of fixed line services, to be transferred from a local exchange operated by one provider to another operated by a competing provider, where those two local exchanges served roughly the same geographic area. These arrangements were introduced in 1995/6 against a background of growing network competition and have not changed materially since.
- 2.5 The current regulation of geographic number portability still reflects the market environment and technology of the mid-1990's. Communications providers are required to provide number portability in accordance with the Functional Specification

⁹ See Article 30 of the Universal Service Directive,
http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_108/l_10820020424en00510077.pdf

published by Ofcom. This document sets out the technical mechanism by which portability must be achieved (i.e. how communications providers facilitate number portability).

- 2.6 Mobile number portability introduced in early 1999, was closely modelled on geographic number portability. A number of additions were made to the Functional Specification to reflect the different signalling mechanisms in use between mobile networks but the basic approach to portability remained the same.

Number portability: recent developments

- 2.7 The nature of competition in the communications market has evolved over the last decade. In particular, there has been increased convergence between services that have traditionally been regarded as “fixed” and “mobile” services and a rise in the number of services using VoIP technology.
- 2.8 Ofcom welcomes the emergence of innovative voice services that have the potential to provide additional competition in the provision of communications services. Key to this is a regulatory environment that can foster the successful deployment of new and converged technologies, which in turn allows consumers to benefit from a wide range of services and enhanced competition.
- 2.9 Ofcom has made it clear that it regards inter-platform competition as desirable. Its *Strategic Review of Telecommunications* Phase 2 consultation¹⁰ noted the potential for inter-platform competition to deliver a competitive market in voice services, and proposed to facilitate it wherever possible. In the *Final Statements on the Strategic Review of Telecommunications*¹¹, Ofcom said that without the ability for consumers to switch easily, there can be no effective competition.
- 2.10 Ofcom’s approach to inter-platform competition has been reflected in a number of measures related to number allocation policy, for example:
- Ofcom has agreed to allocate geographic numbers to VoIP services, despite the nomadic nature of those services;
 - Ofcom has agreed to allocate geographic numbers to certain geographic services that are delivered via wireless networks, such as Vodafone’s Wireless Office service¹²; and
 - Ofcom has agreed to allocate mobile numbers to certain mobile services that are delivered via hybrid fixed-mobile networks, such as BT Fusion¹³.
- 2.11 Ofcom considers that PATS, as defined in the Number Portability Condition and provided using geographic numbers, should be subject to geographic number portability rights and obligations. This includes those services (such as Vodafone Wireless Office) which are delivered via a wireless network. Similarly, it considers that all PATS provided using mobile telephone numbers should be subject to mobile

¹⁰ http://www.ofcom.org.uk/consult/condocs/telecoms_p2/

¹¹ http://www.ofcom.org.uk/consult/condocs/statement_tsr/

¹² Vodafone Wireless Office is a service aimed at corporate and business customers that enables the customer to manage calls to mobile handsets. Vodafone Wireless Office customers have a geographic and mobile number but all calls are routed to the same mobile handset.

¹³ BT Fusion is a mobile service that switches between the BT Wireless Broadband network when available, eg office and home, and the mobile network. BT Fusion customers have mobile numbers.

number portability, including those services (such as BT Fusion) which are delivered in part via a fixed network.

- 2.12 However, this position is not reflected in the current drafting of the Number Portability Condition, which does not mandate portability between fixed and mobile networks. This follows Article 30 of the Universal Service Directive, which does not require national regulatory authorities to mandate portability between fixed and mobile networks. However, Recital 40 of this directive states:

“Number portability is a key facilitator of consumer choice and effective competition in a competitive telecommunications environment such that end-users who so request should be able to retain their number(s) on the public telephone network independently of the organisation providing service. The provision of this facility between connections to the public telephone network at fixed and non-fixed locations is not covered by this directive. However, Member States may apply provisions for porting numbers between networks providing services at a fixed location and mobile networks.”

- 2.13 The issue of fixed-to-mobile portability was raised in a dispute last year between BT and Vodafone which followed BT’s refusal to provide geographic number portability in relation to Vodafone’s Wireless Office service. Ofcom found in BT’s favour, in a determination issued in June 2005, on the basis that the Number Portability Condition did not require fixed-to-mobile portability. However, Ofcom noted in this determination that it intended to consider the policy issues raised by the dispute and publish a consultation on these issues; hence the November 2005 consultation document.

- 2.14 The determination focused on the definition of number portability in the Number Portability Condition. “Number Portability” is defined as:

“a facility whereby Subscribers who so request can retain their Telephone Number on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber –

(i) in the case of Geographic Numbers, at a specific location; or

(ii) in the case of Non-geographic Numbers, at any location,

provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan.”

- 2.15 In its determination, Ofcom considered that the phrase “at a specific location” in (i) of the definition meant that for geographic numbers, the location of the NTP or the number retained, must be at a specific location. If the NTP is a mobile handset or somewhere in or on it, due to the mobile nature of the handset, neither the NTP nor the number retained would not be “at a specific location”. Ofcom said that on this basis there was no current obligation for a geographic number to be ported to a mobile network.

Functional Specification

- 2.16 The Functional Specification is defined in clause 18.5(d) of the Number Portability Condition as:

“a document, which specifies technical and other principles which are intended to enable the efficient implementation and utilisation of Portability, published by the Director from time to time in accordance with section 60 of the Act”.

- 2.17 It is also defined in the “Definitions and Interpretation” section of the Plan and features in the description of Number Portability Codes¹⁴ in Part B3.4 of the Plan.
- 2.18 Clauses 18.2 and 18.3 of the Number Portability Condition currently state that portability shall be provided “on reasonable terms and in accordance with the Functional Specification”.

Policy principles

- 2.19 Ofcom set out in the November 2005 consultation document a number of policy principles derived from its statutory duties in order to determine whether changes should be made to its number portability policy. These are described in the following sections.

Promoting inter-platform competition

- 2.20 Ofcom stated that it believed that number portability should be mandated in a manner that promotes inter-platform competition. Ofcom has previously noted the potential for inter-platform competition to deliver a competitive market in voice services. This is in line with its statutory duty 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.
- 2.21 A well-functioning market should therefore make switching supplier as straightforward as possible. The ability for subscribers to retain their telephone number regardless of service provider can significantly enhance the attractiveness of switching between providers. Number portability can therefore promote effective competition and consumer choice. Ofcom considered that this was as relevant to subscribers wishing to change between voice services provided on different platforms as it was for same platform voice competition.

Technology neutrality

- 2.22 Ofcom also considered that number portability should focus on the nature of the service being provided and, where appropriate, facilitate tariff transparency (as set out below). This is in line with its statutory duty to take account of the desirability of carrying out its functions in a manner which, so far as is practicable, does not favour one form of communications network or service over another.
- 2.23 Ofcom considered that eligibility for the rights and obligations of number portability should not be dependent on the nature of the network or the technology used to deliver the service. All subscribers of geographic PATS services who so request should be able to retain their geographic number when switching provider (i.e. have a right to geographic number portability), including subscribers of those services (such as Vodafone Wireless Office) which are delivered via a wireless network. Similarly, all mobile PATS services should be subject to mobile number portability, including

¹⁴ Number Portability Codes identify the recipient provider and are added by the donor provider before onward routing a ported call.

those services (such as BT Fusion) which are delivered in part via a fixed network. Ofcom proposed that the key to determining whether number portability was available between different platforms was that the service being offered was consistent with the definition of that service contained within the Plan and would remain in accordance with the Plan after the number was ported. This principle ensured that the level of tariff transparency currently in the Plan was not compromised by number portability – indeed Recital 41 of the Universal Service Directive says that national regulatory authorities should, where feasible, facilitate appropriate tariff transparency as part of the implementation of number portability.

- 2.24 Ofcom stated its belief that the legal status afforded to the Functional Specification could provide a barrier to efficiencies in the provision of number portability. The Functional Specification was created when number portability was being introduced into the telecommunications environment of the PSTN. Although the Functional Specification had been modified by Oftel¹⁵ on occasion, the rules it contains on the provision of number portability remain technology specific and essentially refer to provision of portability on PSTN or GSM-based mobile networks. As such, these rules are unlikely to provide a practicable or efficient portability solution for evolving or converged networks or services.
- 2.25 It is also likely that the rules in the Functional Specification would not apply to number portability over NGNs such as BT's 21st Century Network ("21CN"). Alternatives to the onward routing solution are currently under consideration, including an implementation of "all calls query" based on the use of ENUM databases. This was likely to deliver benefits to consumers in the form of increased resilience to operator or network failure, as well as improved routing efficiency. Ofcom considered that the Functional Specification could constrain the way number portability may be provided in the future, particularly with the advances that NGNs may offer.
- 2.26 Insofar as there is a use for the Functional Specification and associated process manuals that set out the detailed mechanisms by which portability is implemented, Ofcom said it believed that these should be owned by industry rather than Ofcom.

Recovery of reasonably incurred costs

- 2.27 The current Functional Specification contains a variety of rules which are intended to ensure that it is technically and commercially feasible to implement "portability" (the service provided by one communications provider to another to facilitate number portability to subscribers), including, for example, constraints on geographic mobility (the routing of calls to a new address). These rules prevent recipient operators acting in a manner that would result in donor operators incurring costs which they cannot recover.
- 2.28 If the regulatory status of the rules contained within the Functional Specification was to be withdrawn, it would be important to retain the principle that affected operators can recover any reasonably incurred costs forced on them by recipient operators. Ofcom stated its view that the current requirement for portability to be provided on the basis of "reasonable terms" should permit cost recovery in line with the technical solution employed as long as the other provisions of condition 18.2 of the Number Portability Condition regarding charges was also followed.

¹⁵ Ofcom's predecessor for the regulation of telecommunications matters

Furthering consumers' interests

- 2.29 One of Ofcom's principle duties is to further the interests of citizens in relation to communications matters and consumers in relevant markets. Ofcom said that this duty can be achieved, amongst other means, by number allocation and number portability policy in the following ways:
- by consistency and clarity of regulatory approach: as new services develop and the choices consumers face increase, so does the potential for consumer confusion. Consistency in number allocation and portability policy makes it easier for consumers to understand the choices available;
 - by making switching supplier straightforward: making it easy for consumers to switch between providers by removing the associated inconvenience of a number change would promote the benefits consumers can gain from competition; and
 - by ensuring that consumers are well informed, enabling them to make effective choices: although the Plan does not offer perfect transparency of call tariffs, it is important that consumers do not experience any detriment from assumptions made on the information it does provide.
- 2.30 Given the role of number portability in facilitating consumer choice, broadening the availability of number portability would be expected to be in the consumer interest, provided that there is no associated disbenefit. The primary form of disbenefit that might arise would be if broadening the scope of number portability also undermined the transparency, in terms of tariff and service information, which the leading digits of telephone numbers provides to consumers. The vehicle by which transparency is provided is the Plan, and it is therefore important that the integrity of the Plan is not affected by any changes to number portability arrangements. Ofcom said that it proposed to retain the principle, contained within the current Number Portability Condition, that ported numbers should continue to be used in accordance with the Plan.

Pricing or tariff transparency

- 2.31 Recital 41 of the Universal Service Directive requires Ofcom to facilitate appropriate tariff transparency as part of the implementation of number portability. In terms of geographic number portability, this objective is delivered by ensuring that when geographic numbers are ported, they continue to be used in a manner which is consistent with the Plan. The definition of geographic numbers in the Plan, which Ofcom proposes to retain, includes those numbers where the NTP does not relate to the geographic area code but where tariffing is consistent with that code. In this way, tariff transparency is not reduced when geographic numbers are used to reach end-users on, for example, mobile handsets, as the tariff would remain consistent with the geographic area code.
- 2.32 Ofcom acknowledges that there are areas where the Plan does not provide perfect transparency of call tariffs. One area that is particularly relevant to number portability policy is the different tariffs that some providers charge for calls to different mobile operators. Ofcom accepts that number portability inevitably undermines tariff transparency in relation to such calls, as the caller can no longer recognise the network provider by the number block. The Director General of Telecommunications considered tariff transparency when reaching his decision to implement mobile number portability. He concluded that the benefits of mobile number portability, e.g. consumer choice and increased competition, nevertheless outweighed the

disadvantages, such as reduced tariff transparency, for calls between different networks¹⁶.

Location or geographic transparency

- 2.33 Ofcom recognised that technological change and policy decisions already taken to promote inter-platform competition tend to erode location transparency but this is not new. BT has provided services (e.g. out-of-area lines, remote call forwarding) using geographic numbers “out of area” for many years. Oftel¹⁷, in its first edition of the *Numbering Conventions*¹⁸ published in June 1994, noted that “while most of the..(geographic)..numbers within...blocks..are likely to be used within the area covered by the area code, operators may also allocate numbers to those served by out-of-area lines”. The ability to provide such services was made more transparent in June 2003 when the definition of “Geographic Number” was modified in the Plan to explicitly allow for such use of geographic numbers while ensuring that tariff transparency was protected. This ensured that consumers did not experience a financial detriment in terms of tariff transparency as a result of reduced location transparency.
- 2.34 The principle not to use the Plan to protect location transparency except insofar as is necessary to provide tariff transparency, was further set out in the consultation and statement on *Numbering arrangements for new voice services*¹⁹, which endorsed the allocation of geographic numbers and the application of number portability to VoIP services. Ofcom maintains this approach in its decision on modifications to the Number Portability Condition and the Plan set out in this statement.

Comments received on the policy principles and Ofcom’s response

- 2.35 There was broad support from respondents for Ofcom’s policy principles described above. One respondent commented that the principles of furthering competition and technology neutrality had been emphasised in the consultation document but that the principles of technical and commercial feasibility and recovery of costs had been largely ignored. Ofcom however disagrees. It took costs for operators and practicalities arising out of its proposals into account in its impact assessment in order to assess the advantages and disadvantages of the options. Ofcom believes that its policy principles remain a valid basis on which to consider changes to number portability policy.

Links to other Ofcom work: the Numbering Policy Review

- 2.36 On 23 February 2006 Ofcom published a consultation document entitled *Telephone Numbering – Safeguarding the future of numbers*²⁰ (“the Numbering Policy Review consultation document”). This document set out a set of strategic principles which are intended to inform numbering policy, plus a number of policy initiatives which are intended to address certain current consumer concerns. The strategic principles which are set out in the Numbering Policy Review consultation document are consistent with those which were set out in the November 2005 consultation

¹⁶ http://www.ofcom.org.uk/static/archive/oftel/publications/1995_98/numbering/noport.htm

¹⁷ Ofcom’s predecessor for the regulation of telecommunications matters

¹⁸ A set of rules and principles relating to the use and management of telephone numbers, superseded in part by the Plan

¹⁹ http://www.ofcom.org.uk/consult/condocs/vob/nvs_statement.pdf

²⁰ <http://www.ofcom.org.uk/consult/condocs/numberingreview/>

document on number portability policy, for example in relation to the importance of tariff transparency, and the erosion of location transparency.

The legal framework

- 2.37 The common European regulatory framework for electronic communications is defined in the relevant European Union directives²¹. Particularly relevant to this statement is the Universal Service Directive. Article 30 of that directive sets out Member States duties with respect to number portability - the right of subscribers of PATS, including mobile services, who so request to retain their number(s) independently of the undertaking providing the service (a) in the case of geographic numbers, at a specific location; and (b) in the case of non geographic numbers, at any location.
- 2.38 While Article 30 is explicit in that it does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks, Recital 40 of the Universal Service Directive allows for Member States to apply provisions for porting numbers between networks providing services at a fixed location and mobile networks. Recital 41 adds that the impact of number portability is considerably strengthened when there is transparent tariff information. National Regulatory Authorities are required, where feasible, to facilitate appropriate tariff transparency as part of the implementation of number portability.
- 2.39 The Act implements the relevant articles of the European Union directives and Ofcom regulates the communications sector under this framework. The Act provides for Ofcom to administer the UK's telephone numbers by, amongst other things, publishing the Plan and setting General Conditions in respect of a number of matters relating to telephone numbers. These include General Conditions relating to number portability. The Act also sets out statutory procedures governing, for example, modifications to General Conditions and documents referred to in the conditions, including the Plan.
- 2.40 Sections 47 and 48 of the Act provide the tests and procedure for setting or modifying General Conditions and section 60 of the Act provides for modifications to the Plan. Both procedures require the publication of a notification setting out the intention to modify, together with the reasoning in proposing the modification and its effects. Consideration must also be given to how proposals are consistent with Ofcom's general duties in carrying out its functions as set out in section 3 of the Act and in meeting its Community obligations as set out in section 4 of the Act. A period of not less than one month must be provided for comments on the proposals and those comments must be taken into account when Ofcom makes any proposed modifications to the General Conditions and/or the Plan.
- 2.41 Ofcom published the relevant notifications setting out the intention to modify the Number Portability Condition and the Plan, together with the reasoning in proposing the modification and its effects, in the November 2005 consultation document.

²¹ <http://www.aporter.pair.com/EU-Framework/index.html#Measures>

Section 3

Responses to Ofcom's proposal

- 3.1 Ofcom received 19 submissions during the consultation period, two of which were confidential. A list of respondents is provided in Annex 3 and the non-confidential submissions are available on Ofcom's website at:
<http://www.ofcom.org.uk/consult/condocs/numport/responses/?a=87101>
- 3.2 In this section, Ofcom summarises the points raised in submissions in relation to the policy proposals made in the November 2005 consultation document and responds to those points.

Modification to the definition of "Number Portability"

- 3.3 Ofcom proposed to modify the definition of "Number Portability" in the Number Portability Condition and the Plan to ensure that the rights and obligations associated with geographic number portability would not depend on the form of network or service used to deliver the call, and to remove the definitions of "Geographic Number" and "Non-geographic Number" from the Number Portability Condition as they would become redundant.

Responses

- 3.4 BT stated in its response that it shared many of Ofcom's views regarding technology neutrality in regulation and inter-platform competition. It additionally argued that a single market for fixed and mobile voice services was close at hand in the UK, and that there was an apparent need to facilitate inter-platform number portability. Given this, BT stated that it would welcome a greater flexibility for customers to choose and move freely between fixed, nomadic and mobile services on any number in each direction, subject to end user support.
- 3.5 Several other providers operating fixed networks (e.g. Cable & Wireless, Easynet) were comfortable with the removal of the fixed location requirements for geographic number portability, but expressed concern regarding the more general ramifications of fixed-mobile portability.
- 3.6 Some of those providers felt that it was too early in the development of convergent technologies for consumers to want and/or understand fixed-mobile number portability or for the industry to support processes to make it available. In particular, Kingston Communications, whose comments were supported by Your Communications, questioned the demand for inter-platform competition at this time, expressing the opinion that consumers were happy with the distinction between different types of services, although they accepted that perceptions would change as convergence continues. Other respondents, however, expressed the opposite view on timing, arguing that consumers demanded inter-platform number portability now and their choice should not be hampered by any delays from the industry in changing its processes.
- 3.7 Some respondents considered it appropriate to remove references to "specific location" from the current definition, but were concerned that the impact of allowing numbers to be ported outside the range holder's service area had not been reviewed sufficiently. A further respondent questioned the timescales within which providers

would need to improve their processes if they were to be in line with the revised condition.

- 3.8 One provider thought that Ofcom's proposals may be premature as the markets were not yet converged and that this could have a disproportionate impact on fixed network providers. It suggested that the current definition should remain until the underlying principle of reciprocity in portability was reviewed in terms of returning customers and cost recovery. A further respondent stated that the success of the mobile market demonstrated that inter-platform competition already existed, and was not therefore inhibited by the current definition of number portability in the Plan. It was argued that the proposals assumed that inter-platform competition was a requirement of the market when in fact it skewed the market in favour of new entrants. The respondent concluded that such changes were not sustainable, would not lead to effective competition and were unjustified. Further comments were that the introduction of fixed-mobile portability would pre-empt the outcome of future market reviews, the Numbering Policy Review and would not take account of the position of emerging markets.
- 3.9 The VoIP service providers who responded to the consultation (Vonage, Wanadoo, ITSPA) agreed that it would be helpful to remove the reference to "specific location" from the definition of number portability in order to remove any doubt that PATS VoIP services are eligible for number portability, with one stating that this proposal should be adopted sooner rather than later.
- 3.10 The mobile operators who responded to the consultation (Vodafone, Orange, T-Mobile, H3G) were also supportive of the proposal to modify the definition of number portability in order to promote inter-platform competition. T-Mobile did, however, raise some detailed concerns as to the effect of mandating portability on all fixed-mobile converged networks.
- 3.11 Several independent respondents stressed the importance of tariff transparency and expressed concern that this would be eroded by the unconstrained availability of portability between fixed and mobile networks. They argued that it was necessary to ensure that a consumer calling a geographic number, ported to a mobile network provider, had a clear indication of the cost of the call. One added that geographic numbers gave a good approximation of the location of the called party, which should not be abused by allocation to out-of-area or mobile locations.

Ofcom's comments

- 3.12 There is broad support for the principle that regulation should be technology neutral, and therefore for Ofcom's proposal to remove references to "specific location" from the definition of Number Portability. However, the consultation responses also illustrate two concerns from respondents.
- 3.13 Firstly, a number of respondents expressed concern regarding the broader implications of mandating portability between all fixed and mobile services. There were particular concerns over the erosion of tariff transparency provided to end-users by the Plan that would result from such a change. Ofcom shares this concern, but wishes to emphasise that tariff transparency was preserved under its amendments.
- 3.14 Ofcom's modification of the Number Portability Condition permits portability of numbers between different types of network whilst retaining the existing provision that the retention of telephone numbers must be in accordance with the Plan. This latter provision is designed to preserve the integrity of the Plan and by so doing, tariff

transparency. For example, the modification to the Number Portability Condition will allow geographic numbers to be ported from a fixed to a wireless network where the geographic number continues to be used in accordance with the Plan. The definition of "Geographic Number" in the Plan allows for the number to be used in a way where the network termination point does not relate to the geographic area code but only as long as the tariffing remains consistent with that area code. In other words, a geographic number cannot be ported to a mobile network where the charges are not consistent with geographic numbers. This will preserve tariff transparency for consumers.

- 3.15 BT argued for a greater degree of flexibility, commenting that a single market for fixed and mobile voice services is close at hand, and supporting greater flexibility for customers. However, the question of whether there is a single market for fixed and mobile voice services is a matter for the appropriate market review, not for this review of number portability policy. Although, as noted above, Ofcom would be concerned at the loss of tariff transparency that would result from BT's proposal, and does not therefore believe that the degree of flexibility proposed by BT is appropriate.
- 3.16 Secondly, a number of the responses raised concerns as to the practical ramifications of portability between different network platforms. Ofcom acknowledges these concerns, but does not believe that the appropriate means of dealing with them is to restrict all portability rights between different network platforms. This would represent a disproportionate response to the practical issues associated with portability between different network platforms, and a response which did not give adequate weight to the consumer benefits associated with portability. Instead, any obligation to provide portability should be qualified by a test of what is reasonably practical, and this is the case for the current Number Portability Condition, which requires portability to be provided "as soon as it is reasonably practicable on reasonable terms". Ofcom is retaining this test, which is enshrined in the Number Portability Condition.

Revising the status of the Functional Specification

- 3.17 Ofcom proposed to:
- remove the reference to the Functional Specification in the Number Portability Condition; and
 - make consequential modifications to the Plan including deletion to references to the Functional Specification and modification to definitions of number portability codes.

Responses

- 3.18 Essentially all responses to the consultation agreed that there was a need to make changes to either the contents and/or the status of the Functional Specification. There was, however, substantial disagreement as to the most appropriate way to achieve this.
- 3.19 Several fixed-line communications providers (e.g. BT, C&W, Kingston) argued that while there is a need to modify the Functional Specification, it should retain its status as a legally binding document, whose contents are enforced by Ofcom. This status provides a degree of consistency and certainty which is valued by these providers. They argued that the practical implications of removing this status had not been fully researched by Ofcom and had been underestimated.

- 3.20 Several other communications providers (e.g. Wannadoo, Vonage, Vodafone) were content for the legal status of the Functional Specification to change and supported the proposal in theory. However, they argued for the continued involvement of Ofcom in negotiating revised portability arrangements with established communications providers, due to the concern that such providers had different incentives to agree new processes. Wannadoo, for example, suggested that Ofcom might define both the process and timescales it expects communications providers to follow and the circumstances in which Ofcom would use its existing dispute resolution powers to intervene. Concern was expressed that the lack of a single technical document would lead to fragmentation of portability arrangements. However one respondent (Vodafone) argued that there was no justification in delaying the implementation of procedures that would further voice competition.
- 3.21 One operator (H3G) went further than this, asserting that the current arrangements for mobile number portability were inadequate, both in relation to portability lead times, and the inefficient routing of calls (known as “tromboning”). It argued that this could not be solved by simply removing the legal status of the Functional Specification. Instead, a more robust intervention by Ofcom was required in order to tackle the inefficiencies in the current portability system.

Ofcom's comments

- 3.22 Ofcom notes that there was general agreement on the need to update the Functional Specification, but that there were varying views as to Ofcom’s role in this process, and the status of the resulting document.
- 3.23 Ofcom acknowledges that it has a critical role in ensuring that effective number portability arrangements are in place. The nature of this role in relation to portability on NGNs was discussed in the statement *Next Generation Networks: Developing the Regulatory Framework*²², issued on 7 March 2006. Ofcom’s preference is to take a co-regulatory approach. This approach is based on a view that many providers will share Ofcom’s desire to improve the effectiveness of portability arrangements, and that industry is better placed than Ofcom to design the detailed processes which will deliver this.
- 3.24 Ofcom appreciates that some providers may not face the same incentive as others to improve the effectiveness of portability arrangements. If this creates a barrier to progress then Ofcom would consider whether to intervene. However, as discussed in the recent NGN statement, Ofcom would not propose to intervene by setting out the detailed technical specifications for a new implementation of portability. Instead, Ofcom might consider specifying some overall high level performance metrics within the General Conditions (which would be subject to statutory consultation). Ofcom believes that this approach is more transparent, and therefore preferable to the setting of detailed technical constraints in a legally binding functional specification. Ofcom will consider this matter again as part of its review of the General Conditions, which it plans to carry out during the latter part of 2006.
- 3.25 As regards the formal status of the Functional Specification, Ofcom remains of the view that the detailed technical processes for portability should be owned by industry rather than by Ofcom, and should not therefore form part of the formal legal framework for number portability. This does not however mean to say that an industry owned Functional Specification would cease to be relevant. Ofcom would

²² <http://www.ofcom.org.uk/consult/condocs/nxgnfc/statement/>

continue to use the Functional Specification (and associated process manuals) as a guide to what constitutes best practice in the context of number portability disputes or complaints. Ofcom would encourage industry to develop updated versions of these documents, for example via its participation in the Network Interoperability Consultative Committee (“NICC”) working groups, in order to ensure that they remain current. But Ofcom would have the flexibility to take account of the facts of a specific case when considering whether the Functional Specification is relevant, rather than enforcing it as a blanket obligation. Ofcom’s view is that this is a more proportionate approach to regulation, particularly at a point in time when the network technologies which underpin number portability are evolving.

Section 4

Ofcom's decision on number portability and technology neutrality

Impact Assessment

- 4.1 Section 3 of the November 2005 consultation document included an Impact Assessment ("IA") as defined by section 7 of the Act. The IA forms part of best practice policy-making and provided a valuable way of assessing the advantages and disadvantages of the policy options considered in the consultation.
- 4.2 Ofcom's preferred options were to implement new regulatory intervention in the form of revising number portability requirements as set out in the Number Portability Condition (Option 3) and to revise the status of the Functional Specification (Option 4). Two alternative options considered by Ofcom were no regulatory intervention, i.e. the "do nothing" option (Option 1) and to address the issue as part of the Numbering Policy Review (Option 2). Ofcom assessed these options against criteria established from its broad policy objectives for number portability which derive from its statutory duties. These criteria are that:
- number portability is regulated in a manner that promotes competition where appropriate, in particular inter-platform voice competition;
 - number portability is regulated in a manner that does not, so far as is practicable, favour one form of electronic communications network or service over another;
 - number portability is regulated in a manner that acknowledges technical and commercial feasibility, and which permits donor and other affected providers to recover efficiently incurred costs; and
 - number portability is regulated in a manner that promotes consumer interest, and protects the tariff transparency provided to consumers by the Plan.
- 4.3 Ofcom also took into account the likely impact of the options in terms of costs, benefits and risks.

Ofcom's IA evaluation

- 4.4 After conducting the IA in the November 2005 consultation document, it was Ofcom's view that it should propose a revision to the number portability requirements and the status of the Functional Specification. Therefore Ofcom proposed the implementation of Options 3 and 4.

Evaluation of Ofcom's proposed options – Options 3 and 4

- 4.5 Ofcom considered that Option 3, through its modification of the definition of "Number Portability" in the Number Portability Condition and the Plan, would deliver benefits to inter-platform competition at the earliest opportunity. It would promote a favourable climate for efficient and timely investment in a broad range of new and innovative services, such as services based on the use of VoIP, and services such as BT Fusion and Vodafone's Wireless Office, which are delivered via hybrid fixed-wireless

networks. Specifically, Option 3 would help provide platform neutrality by removing the distinction made between networks and services on the basis of the location of the NTP or the retained number.

- 4.6 Ofcom also considered that Option 3 would further the interests of consumers as it would ensure that numbers continued to be allocated and ported in accordance with the Plan and provided consistent and transparent regulation with a clear message of consumer rights. Consumers wishing to switch to a new provider who uses VoIP or a fixed-wireless network for call delivery would be able to retain their existing number when doing so (provided the service was PATS), and would be spared the inconvenience of changing their telephone number. Also, consumers calling customers with ported numbers would not need to be informed of new contact numbers. Crucially, tariff transparency would be protected by the requirement that ported numbers continue to be used in accordance with the Plan. Location information provided by geographic numbers under the Plan would not be compromised to a greater degree than is currently the case under allocation policy.
- 4.7 Option 4 would ensure that the benefits to voice service competition that would be delivered by Option 3 could be implemented, as the provision of number portability would not be constrained by the specific nature of the processes set out in the Functional Specification. Processes could then evolve as considered best by industry for different services and technologies. This option would also ensure that the promotion of consumer interests identified in Option 3 could be delivered by allowing for the evolution of new number portability processes.
- 4.8 It was recognised that Options 3 and 4, by providing for new porting procedures, may result in additional costs for communications providers, such as costs incurred in making network and system modifications, adapting software and testing functionality (known as “system set-up costs”) and other additional costs incurred by the donor provider associated with setting up and carrying each ported call (known as “additional conveyance costs”). In addition, there would be a cost to the industry in maintaining the Functional Specification and/or process manuals (if the industry chose to do so) and the resource required to negotiate new processes. There was also the risk that providers would have difficulty in agreeing arrangements for portability which were reasonably practical and on reasonable terms. The risk to consumers who value information on the location of the called party, and the platform used to terminate the call, may be the further erosion of the ability to determine this information from the dialled number. However, due to the linkage with the Plan which provides tariff transparency, consumers would not experience a financial loss through additional cost of telephone calls.
- 4.9 Overall, Ofcom judged that the benefits of Options 3 and 4 would outweigh the associated costs and risks. Communications providers would have the freedom to develop new and more efficient processes for portability. Consumers wishing to take advantage of competition and the choices it affords by switching provider could do so (depending on the service being PATS) without the inconvenience and cost of a number change, which for some services, may not currently be possible. It would also help consumers discipline providers into offering better choices, which would benefit all citizens in relation to communications matters.

Evaluation of other options considered in the November 2005 consultation document – Options 1 and 2

- 4.10 Ofcom considered that Option 1 would not promote competition in the provision of voice services to any greater extent than is promoted currently and this may hinder

inter-platform competition in voice services. The impact of non-intervention would increase over time as more innovative services are developed. Consumers wishing to switch to a service provider whose means of offering portability were not covered by the current portability rights and obligations would face a potential barrier to switching, even if the use of the number would remain in accordance with the Plan. This has the potential to generate consumer confusion regarding number portability rights. Such consumers would be forced to take a new telephone number or, if this was considered too inconvenient, not switch provider and in not doing so, may miss out on better services and/or deals.

- 4.11 Option 2 would have deferred addressing the issue until it could be considered as part of, or be informed by the conclusions of, the Numbering Policy Review. However, the policy aims and statutory duties that guided the proposals on number portability are consistent with the aims and duties set out in the Numbering Policy Review and the *Strategic Review of Telecommunications* before it. The Numbering Policy Review is not expected to result in any significant change to those principles.
- 4.12 Ofcom considered that the costs to communications providers of Option 1, and of Option 2 until completion of the Numbering Policy Review, would be that those providers using, for instance, VoIP or fixed-wireless networks may still face a barrier to providing portability and as such would continue to face a potential barrier to attracting consumers to switch to their services. The risk, therefore, is that communications providers would not be encouraged in the development of new and innovative services if the lack of number portability requirements impacted on the business case for such services in a negative way. The cost to consumers wishing to switch providers and take-up service with a provider where portability was not mandated (due to the nature of the network or service) would either be the cost and inconvenience of a number change or the lost opportunity to switch providers. There is also the risk that consumers may be confused regarding their portability rights, particularly if the same type of number may be allocated but not ported to a service.
- 4.13 Ofcom considered that Options 1 and 2 might have benefits for some communications providers, as they would be able to rely on the portability arrangements as they currently apply and would not need to agree, implement or take on the costs of the new portability processes. In particular, some donor providers might see barriers to switching as a benefit. Consumers who value the location and platform information conveyed by a telephone number may consider Option 1 beneficial as it would not diminish the accuracy of this information. However, Ofcom is of the view that this is not a major benefit as the incremental change generated by the number portability proposals is likely to be small.
- 4.14 On assessment, Ofcom was not of the opinion that Options 1 or 2 helped it to deliver its policy aims or meet its statutory duties.

Responses to the IA and Ofcom's response

- 4.15 A number of respondents' commented on the IA and the options identified. In general there was agreement on the assessment criteria which was derived from the policy principles set out in paragraphs 2.19 - 2.34. Respondents essentially agreed with Ofcom's evaluation of Options 1, 2 and 3, although some felt that Ofcom had not sufficiently emphasised the possible consumer benefit of Option 2. There was strong disagreement from some providers on Ofcom's assessment of Option 4, arguing that the risks had been underestimated.

- 4.16 A number of submissions also assessed the options against the set criteria, in some cases interpreting and applying the criteria in a broader manner than Ofcom's application. There was no support expressed for Option 1, with respondents agreeing with Ofcom's assessment that current arrangements did not promote voice service competition. A number of respondents supported Option 2, arguing that it was in the consumers' interest to consider policy on inter-platform number portability as part of the wider ranging numbering issues being consulted on in the Numbering Policy Review. However, other respondents agreed with Ofcom's assessment that there was no benefit in delaying action to address the issues that had been highlighted in the November 2005 consultation document. There was general agreement on the evaluation of Option 3. In response to Option 4, a number of responses highlighted the potential risks to delivering effective portability that could arise from the change in legal status of the Functional Specification. Some respondents commented that no one option could deliver the policy objectives identified.
- 4.17 A number of comments were made on the options. A couple of respondents felt that the link between Ofcom's policy aims and the measures proposed was not always demonstrated or was mismatched. For instance, it was noted by Wanadoo that objectives such as providing for fixed-mobile number portability were taken for granted by Ofcom and only the processes to bring about such objectives were open to consultation. Others felt that further detail on the impact on processes that would result from the implementation of Option 3 and 4 was required and that a feasibility study on technical issues should be conducted.
- 4.18 Some respondents proposed additional options for consideration. These options were:
- alternative modifications to the text of the Number Portability Condition;
 - interpreting the meaning of "specific location" to mean exchange or service area;
 - modifying the Functional Specification without changing its legal status and/or addressing specific process issues in implementation documents owned by the industry;
 - change the status of the Functional Specification but define both the process and timescales that Ofcom expects providers to follow and the circumstances under which Ofcom would use its existing dispute resolution powers to intervene;
 - the designation of a specific number range or part of number range for non-location specific services and/or for fixed-mobile convergent services;
 - strengthening the link between geographic numbers and location information in allocation policy; and
 - improving number portability processes.
- 4.19 Ofcom considers that it had taken the abovementioned options into account when formulating its proposals for the November 2005 consultation document.
- 4.20 As regards the meaning of "specific location", Ofcom had already determined the meaning of this phrase as part of the BT-Vodafone dispute (see paragraphs 2.13-2.15) and Ofcom saw no value in returning to that issue.

- 4.21 As set out in this statement, Ofcom is of the view that the documents setting out the processes and procedures for number portability should be owned by the industry rather than Ofcom. This allows for the documents to be more effectively updated and maintained. Ofcom has stated in this document that it will monitor how number portability arrangements will work without the Functional Specification being enshrined in the Number Portability Condition and will consider the issue again in its review of the General Conditions to be carried out in the latter part of 2006.
- 4.22 The issue of part of the 01/02 geographic number range being designated expressly for nomadic services was consulted on as part of the consultation on numbering arrangements for new voice services and was not supported by consultation responses. However, it was made clear that geographic numbers were suitable for new voice services and, in addition, the 056 number range was designated for Location Independent Electronic Communications Services. As set out in the Numbering Policy Review consultation, as technology evolves to offer nomadic services, it is acknowledged that there will be an impact on location information gained from the geographic telephone number. This is not, however, a reason to restrict the development of such technology or the numbers available to be used for such services if the use is in accordance with the Plan.
- 4.23 Improvements to the number portability processes in terms of, for example, porting lead times are outside the scope of the consultation apart from the point that the industry would be free to develop improved processes outside of the rules currently laid down in the Functional Specification.

Ofcom's decision

- 4.24 Ofcom has considered all of the responses to the November 2005 consultation document and its relevant duties and has decided to implement its proposals to:
- modify the definition of "Number Portability" in the Number Portability Condition and the Plan, and to remove the definitions of "Geographic Number" and "Non-geographic Number" from the Number Portability Condition as they would be redundant;
 - remove the reference to the Functional Specification in the Number Portability Condition; and
 - make consequential modifications to the Plan including deletion of references to the Functional Specification and modification to definitions of number portability codes.

Modification to the definition of Number Portability

- 4.25 The current definition of "Number Portability" as contained in the Number Portability Condition and the Plan makes a distinction between the location of the NTP or number for geographic and non-geographic numbers. The linking of portability of geographic numbers to the specific location of the NTP or the number means that the rights and obligations associated with geographic number portability may depend on the form of networks and service used to deliver the call.
- 4.26 In light of responses to the November 2005 consultation document, Ofcom has decided to modify the definition of "Number Portability" to remove the section highlighted below:

“Number Portability” means a facility whereby Subscribers who so request can retain their Telephone Number on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber –

(i) in the case of Geographic Numbers, at a specific location; or

(ii) in the case of Non-geographic Numbers, at any location,

provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan.”

- 4.27 The new definition of “Number Portability” means that the definition of “Geographic Number” in Part 1 of the General Conditions and the definition of “Non-geographic Number” in clause 18.5(g) of the Number Portability Condition are redundant as the terms are not used elsewhere in the current version of the General Conditions in the case of “Geographic Number” nor in the modified version of the Number Portability Condition in the case of “Non-geographic Number”. Ofcom has therefore removed these definitions.

Modification to the status of the Functional Specification

- 4.28 The Functional Specification is defined in clause 18.5(d) of the Number Portability Condition (see paragraph 2.16) and the “Definitions and Interpretation” section of the Plan. It also features in the description of number portability codes in the Plan. It is given its legal status through the references to the Functional Specification in clauses 18.2 and 18.3 of the Number Portability Condition which state that portability shall be provided “on reasonable terms and in accordance with the Functional Specification”.
- 4.29 After having considered the consultation responses, Ofcom has brought about the change in status of the Functional Specification by removing references to it from clauses 18.2 and 18.3 of the Number Portability Condition.

Modification to the Plan

- 4.30 In light of consultation responses and Ofcom’s decision to modify the definition of “Number Portability” in the Number Portability Condition and to revise the status of the Function Specification, consequential amendments to the Plan were required. The modified definition of “Number Portability” in the Number Portability Condition has been reflected in the Plan. Also, the definitions of number portability codes have been revised so that they are consistent with the revisions to the Number Portability Condition. Finally, references to the Functional Specification have been removed from the Plan.

Legal tests

- 4.31 Ofcom must not modify the General Conditions or the Plan unless the modification meets the tests set out in sections 47(2) and 60(2) of the Act.
- 4.32 The tests in section 47(2) are that the modification must be:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;

- b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - c) proportionate to what the condition or modification is intended to achieve; and
 - d) in relation to what it is intended to achieve, transparent.
- 4.33 The tests in section 60(2) of the Act are that the modification must be:
 - a) objectively justifiable in relation to the matters to which it relates;
 - b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - c) proportionate to what the modification is intended to achieve; and
 - d) in relation to what it is intended to achieve, transparent.
- 4.34 Taking the tests in section 47(2) and 60(2) together, Ofcom considers that the modifications to the Number Portability Condition and to the Plan respectively are:
 - a) objectively justifiable because they make switching supplier more straightforward for consumers and promote inter-platform voice competition. This promotes consumer choice in accordance with Ofcom's policy aims and statutory duties;
 - b) not such as to discriminate unduly against particular persons or against a particular description of persons in that in that all communications providers offering PATS would be subject to, and be affected by, the modifications to the Number Portability Condition and the Plan;
 - c) proportionate to what the modifications are intended to achieve in that they are the revisions to the Number Portability Condition and the Plan regarded by Ofcom as necessary to ensure that number portability policy continues to meet Ofcom's policy aims and statutory duties given the evolving nature of networks and services; and
 - d) in relation to what it is intended to achieve, transparent as the reasoning for the modifications and effect were set out in the November 2005 consultation document and in this statement.
- 4.35 In modifying the Plan, Ofcom also has a duty under section 63 of the Act to secure what appears to it to be the best use is made of the numbers that are appropriate for use as telephone numbers and to encourage efficiency and innovation for that purpose.
- 4.36 Ofcom considers that it is fulfilling its duty in section 63 of the Act by making the modifications as consulted on in the November 2005 consultation document in the following way. It secures what appears to be the best use of appropriate numbers by removing existing barriers to number portability, thus extending the opportunity for subscribers to retain their telephone number when switching providers. As numbers may only be ported in accordance with the Plan, appropriateness of number use is assured. The modifications also encourage efficiency and innovation as the ability to retain telephone numbers when switching providers removes a barrier to the take up of innovative services offered by alternative providers and encourages providers to increase choice and competitiveness.

- 4.37 Ofcom considers that the modifications are consistent with its general duties in carrying out its functions as set out in section 3 of the Act. It considers that the modifications further the interests of citizens in relation to communications matters and consumers in relevant markets where appropriate by promoting competition. By reducing barriers to switching between providers, competition and consumer choice are promoted.
- 4.38 In making the modifications to the Number Portability Condition and the Plan, Ofcom has also considered the Community obligations set out in section 4 of the Act, particularly the first requirement to promote competition in the provision of electronic communications networks and services and in relation to the provision and making available of services and facilities that are provided or made available in association with the provision of those networks and services. The modifications ensure that number portability requirements provide for the ability to port telephone numbers between platforms, thus promoting competition in the provision of voice services. The fourth requirement in section 4 is a requirement for Ofcom to take account of the desirability of it carrying out its functions in a manner which, so far as is practicable, does not favour one form of electronic communications network, service or facility, or means of providing or making available such a network, service or facility, over another. Ofcom considers that it is desirable to ensure that number portability requirements do not depend on the type of platform used to provide a service.

Notifications of modifications to the Number Portability Condition and the Plan

- 4.39 The final notifications of modifications to the Number Portability Condition and the Plan are set out in Annex 1 and 2 of this statement, the publication of which brings the modifications into effect.

Annex 1

Notification of a modification to General Condition 18 of the General Conditions of Entitlement

Notification of a modification under section 48(1) of the Communications Act 2003

Modification of Part 1 and General Condition 18 of Part 2 of the General Conditions regarding number portability which is set out in the Schedule to the Notification under section 48(1) of the Communications Act 2003 published by the Director General of Telecommunications on 22 July 2003

WHEREAS:

- A. The Director General of Telecommunications issued on 22 July 2003 a notification setting general conditions under section 45 of the Act which took effect on 25 July 2003 by way of publication of a notification pursuant to section 48 (1) of the Act;
- B. OFCOM issued a notification pursuant to section 48 (2) of the Act setting out their proposals for the modification of General Condition 18 (the 'First Notification');
- C. A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6) of the Act;
- D. In the First Notification and accompanying explanatory statement, OFCOM invited representations about any of the proposals set out therein by 22 December 2005;
- E. By virtue of section 48(5) of the Act, OFCOM may give effect to any proposal with respect to which they have published a notification under section 48(2), with or without modifications, where:
 - (i) they have considered every representation about the proposals made to them within the period specified in 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;
- F. OFCOM received responses to the First Notification and have considered every such representation made to them in respect of the proposals set out in the First Notification and the accompanying explanatory statement; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;

THEREFORE Ofcom gives the following modification

1. OFCOM in accordance with section 48(1) of the Act hereby makes the following modification of Part 1 and General Condition 18 of Part 2 of the General Conditions regarding number portability.
2. The modification is set out in the Schedule to this Notification.
3. The effect, and OFCOM's reasons for making the modification referred to in paragraph 1 above, is set out at in the accompanying explanatory statement.

4. OFCOM consider that the modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the proposals.

5. In making the modification set out in this Notification, OFCOM has considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.

7. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.

8. In this Notification:

- (i) "the Act" means the Communications Act 2003;
- (ii) "General Conditions" means as set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General on 22 July 2003; and
- (ii) "OFCOM" means the Office of Communications.

9. Except insofar as the context otherwise requires, 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 purpose of interpreting this Notification:

- (i) headings and titles shall be disregarded; and
- (ii) 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

Signed by Dr Stephen Unger

Director of Telecoms Technology

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

30 March 2006

Schedule

Modification of Part 1 and General Condition 18 of Part 2 of the General Conditions regarding number portability which is set out in the Schedule to the Notification under section 48(1) of the Communications Act 2003 published by the Director General of Telecommunications on 22 July 2003

1. Part 1 of the General Conditions shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference):

~~“Geographic Number” means a Telephone Number from a range of numbers in the National Telephone Numbering Plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the Network Termination Point of the Subscriber to whom the Telephone Number has been assigned;~~

2. General Condition 18 of Part 2 of the General Conditions shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference):

18. NUMBER PORTABILITY

18.1 The Communications Provider shall provide Number Portability as soon as it is reasonably practicable on reasonable terms, including charges, to any of its Subscribers who so requests.

18.2 The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability (other than Paging Portability) as soon as is reasonably practicable in relation to that request on reasonable terms and in accordance with the Functional Specification. Any charges for the provision of such Portability shall be made in accordance with the following principles:

(a) subject always to the requirement of reasonableness, charges shall be cost oriented and based on the incremental costs of providing Portability unless:

(i) the Donor Provider and the Recipient Provider have agreed another basis for the charges, or

(ii) the Director has directed that another basis for charges should be used;

(b) the Donor Provider shall make no charge in relation to System Set-Up Costs or Additional Conveyance Costs;

(c) in respect of Mobile Portability, the Donor Provider shall make no charge or annual fee for ongoing costs relating to registration of a ported Telephone Number or a Subscriber;

(d) charges levied by the Donor Provider shall be based on the reasonable costs incurred by it in providing Portability with respect to each Telephone Number.

18.3 Where the Communications Provider provides Portability in accordance with paragraph 18.2:

the Recipient Provider;

and the Transit Provider,

shall, as appropriate, provide Portability (other than Paging Portability) on reasonable terms ~~and in accordance with the Functional Specification.~~

18.4 The Communications Provider shall, on the written request of the Director, provide the Director with a record of each Telephone Number in relation to which it is providing Portability, specifying the relevant Recipient Provider in each case.

18.5 For the purposes of this Condition:

(a) “Additional Conveyance Costs” mean any costs incurred by the

Donor Provider associated with resources used in:

(i) effecting the switch-processing required to set up each ported call; and

(ii) providing the switch and transmission capacity for any part of the duration of each ported call, additional to the costs of conveyance of non-ported calls from the Donor Provider’s network to the Recipient Provider’s network;

(b) “Communications Provider” means a person who provides an Electronic Communications Network or an Electronic Communications Service;

(c) “Donor Provider” means a Communications Provider whose Subscriber Numbers are in the process of being, or have been passed or ported to a Recipient Provider;

~~(d) “Functional Specification” means a document, which specifies technical and other principles which are intended to enable the efficient implementation and utilisation of Portability, published by the Director from time to time in accordance with section 57 of the Act;~~

~~(e)~~(d) “Mobile Communications Service” means any Publicly Available Telephone Service consisting in the conveyance of Signals by means of a Public Telephone Network where every Signal that has been conveyed thereby has been, or is to be, conveyed through the agency of Wireless Telegraphy to or from a Public Telephone Network which is designed or adapted to be capable of being used in motion;

~~(f)~~(e) “Mobile Portability” means Portability relating to Telephone Numbers Allocated for use with Mobile Communications Services;

~~(g) “Non-geographic Number” means a Non-geographic Number but does not include a Telephone Number from the National Telephone Numbering Plan Allocated for Radiopaging Services;~~

~~(h)~~(f) “Number Portability” means a facility whereby Subscribers who so request can retain their Telephone Number on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber —,

~~(i) in the case of Geographic Numbers, at a specific location; or~~

~~(ii) in the case of Non-geographic Numbers, at any location;~~

provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan;

~~(i)~~(g) “Paging Portability” means Portability relating to Telephone Numbers Allocated for use with Radiopaging Services;

~~(j)~~(h) “Point of Connection” means a point at which one Public Telephone Network is connected to another;

~~(k)~~(i) “Portability” means any facility which may be provided by a Communications Provider to another enabling any Subscriber who requests Number Portability to continue to be provided with any Publicly Available Telephone Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service;

~~(l)~~(j) “Publicly Available Telephone Service” means a service made available to the public for originating and receiving, or only receiving, national and international telephone calls through a number or numbers in a national or international telephone numbering plan;

~~(m)~~(k) “Radiopaging Service” means Electronic Communications Services consisting in the conveyance of Signals by means of Wireless Telegraphy where every Signal, apart from simple acknowledgement, is ultimately transmitted from a station for Wireless Telegraphy comprised in the Communications Provider’s Electronic Communications Network to a station for Wireless Telegraphy or Wireless Telegraphy Apparatus that is not comprised in that network;

~~(n)~~(l) “Recipient Provider” means a Communications Provider to whom Subscriber Number(s) are in the process of being, or have been passed or ported from a Donor Provider;

~~(o)~~(m) “Subscriber” means any person who is party to a contract with the provider of Publicly Available Telephone Services for the supply of such services in the United Kingdom;

~~(p)~~(n) “Subscriber Number” means the Telephone Number (or Telephone Numbers) which any Communications Provider’s Public Telephone Network recognises as relating to a particular Subscriber of that Communications Provider;

~~(q)~~(o) “System Set-Up Costs” mean costs of the Donor Provider incurred—

(i) in the course of making network and system modifications, configuration and reconfiguration, including adapting or replacing software;

(ii) in the course of testing functionality within that provider’s network and in conjunction with any Recipient Provider’s network,

(iii) thereby establishing the technical and administrative capability to provide Portability;

~~(r)~~(p) “Transit Provider” means a Communications Provider providing, by agreement, Interconnection between a Donor Provider and Recipient Provider via Points of Connection with both Communications Providers.

Annex 2

Notification of a modification to the National Telephone Numbering Plan

Modification under section 56(2) of the Act relating to the Plan

WHEREAS:

A. section 56(2) of the Act provides that it shall be OFCOM's duty from time to time to review the Plan and make such revisions that they think fit, provided such revisions are made in accordance with section 60 of the Act;

B. section 60 of the Act applies whereby General Condition 17 is a numbering condition for the time being having effect by reference to provisions of the Plan;

C. by virtue of the Transitional Provisions, references to the Director in General Condition 17 should be read as references to OFCOM;

D. Part A1 of the Plan states, amongst other things,:

Number Portability Code' means a Telephone Number that is Adopted or otherwise used for routing ported calls in accordance with the Functional Specification. There are six types of Number Portability Code, which facilitate Number Portability for:

- (i) Non-Geographic Numbers;
- (ii) Personal Numbers;
- (iii) Geographic Numbers;
- (iv) Mobile Numbers;
- (v) Non-Geographic Number transit; and
- (vi) Personal Number transit;

E. OFCOM proposed to make a Modification to the sections of the Plan in connection with the matter identified in recital D above in a Notification under section 60(3) of the Act on 3 November 2005 ('the Notification');

F. for the reasons set out in the Statement accompanying this Modification OFCOM are satisfied that, in accordance with section 60(2) of the Act, this Modification is:

- (i) objectively justifiable in relation to the matters to which it relates;

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(ii) not such as to discriminate unduly against particular persons or against a particular description of persons;

(iii) proportionate to what the Modification is intended to achieve; and

(iv) in relation to what it is intended to achieve, transparent;

G. for the reasons set out in the document accompanying this Modification OFCOM are satisfied that they acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;

H. a copy of the Notification was sent to the Secretary of State;

I. in the Notification and accompanying consultation document OFCOM invited representations about any of the proposals therein by 22 December 2005;

J. by virtue of section 60(5) of the Act, OFCOM may give effect to the proposal set out in the 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 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;

K. OFCOM received responses to the Notification and have considered every such representation made to them within the period specified in the Notification and accompanying consultation document and these representations are discussed in the Statement accompanying this Modification; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;

THEREFORE, Ofcom give the following modification:

1. Paragraph 1 of the Definitions and Interpretation section of the Plan shall be modified as set out below (the deleted text has been struck through and the added text underlined, both highlighted yellow for ease of reference):

‘Geographic Number Portability Code’ means a ~~number portability code used in~~
~~conjunction with~~ Network Code used for the Portability of Geographic Numbers;

‘Functional Specification’ means the document with that title referred to in
General Condition 18 of the General Conditions of Entitlement (Number
Portability);

‘Mobile Number Portability Code’ means a ~~Number Portability Code that is Adopted or otherwise used in conjunction with Network Code used for the Portability of~~ Mobile Numbers;

‘Non-Geographic Number Portability Code’ means a ~~Telephone Number that is Adopted or otherwise used for routing non-geographic ported calls in accordance with the Functional Specification Network Code used for the Portability of Non-Geographic Numbers;~~

‘Non-Geographic Number Portability Transit Code’ means a ~~Telephone Number that is Adopted or otherwise used for Network Code used for the Portability and~~ transit routing of ~~non-geographic ported calls in accordance with the Functional Specification Non-Geographic Numbers;~~

‘Number Portability’ means a facility whereby Subscribers who so request can retain their Telephone Number on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber –,

~~(i) in the case of Geographic Numbers, at a specific location; or~~

~~(ii) in the case of Non-geographic Numbers, at any location,~~

provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan;

'Number Portability Code' means a Telephone Number that is Adopted or otherwise used for routing ported calls in accordance with the Functional Specification. There are six types of Number Portability Code, which facilitate Number Portability for:

- (i) Non-Geographic Numbers;
- (ii) Personal Numbers;
- (iii) Geographic Numbers;
- (iv) Mobile Numbers;
- (v) Non-Geographic Number transit; and
- (vi) Personal Number transit;

any of the following: a Geographic Number Portability Code; a Mobile Number Portability Code; a Non-Geographic Number Portability Code; a Non-Geographic Number Portability Transit Code; a Personal Number Portability Code; a Personal Number Portability Transit Code;

'Personal Number Portability Code' means a Telephone Number that is Adopted or otherwise used for routing Network Code used for the Portability of Personal Numbers ported calls in accordance with the Functional Specification;

'Personal Number Portability Transit Code' means a Telephone Number that is Adopted or otherwise used Network Code used for the Portability and transit routing of Personal Numbers ported calls in accordance with the Functional Specification;

'Portability' means any facility which may be provided by a Communications Provider to another enabling any Subscriber who requests Number Portability to continue to be provided with any Publicly Available Telephone Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service. "Communications Provider", "Subscriber" and "Publicly Available Telephone Service" used in this context are defined in General Condition 18;

2. "Part B: Restrictions for the Adoption of Telephone Numbers" of the Plan shall be modified as set out below (the deleted text has been struck through and the added text underlined, both highlighted yellow for ease of reference):

B3.4 Number Portability Codes

B3.4.1 In addition to the general restriction at B1, Number Portability Codes shall ~~not be~~ only be Adopted or otherwise used ~~except~~ in accordance with the applicable designation given for that number range ~~and the Functional Specification~~. For the avoidance of doubt, the Portability of Telephone Numbers need not be enabled by the use of Number Portability Codes.

3. In this Modification:

- (a) 'Act' means the Communications Act 2003;
- (b) 'Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
- (c) 'General Condition 18' means General Condition 18 of the General Conditions of Entitlement set by the Director on 22 July 2003 pursuant to section 45 of the Act by way of publication of a Notification pursuant to section 48(1) of the Act;
- (d) 'OFCOM' means the Office of Communications;
- (e) 'Plan' means the National Telephone Numbering Plan published by OFCOM from time to time pursuant to section 56 of the Act;
- (f) 'Transitional Provisions' means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.

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4. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them otherwise any word or expression shall have the meaning it has in the Act, or if it has no meaning there, in the Plan.

5. The Interpretation Act 1978 shall apply as if this Modification were an Act of Parliament.

6. Headings and titles shall be disregarded.

Signed by Dr Stephen Unger

Director of Telecoms Technology

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

30 March 2006

Annex 3

List of respondents to the November 2005 consultation document

A3.1 Ofcom received 21 submissions to the November 2005 consultation document. Two responses were confidential. The non-confidential responses are available on Ofcom's website at: <http://www.ofcom.org.uk/consult/condocs/numport/responses/>

A3.2 The respondents to the November 2005 consultation document are listed below:

- BT plc
- Cable and Wireless plc
- Trevor Dayneswood
- Easynet
- Foskett Powell Associates Ltd
- Hutchinson 3G UK Ltd (H3G)
- Internet Telephony Services Providers' Association (ITSPA)
- Kingston Communications (Hull) plc
- Lexgreen Services Ltd
- Richard Miller
- Network for Online Commerce
- Orange
- Cllr J Shersby
- Thus plc
- T-Mobile
- Vodafone Ltd
- Vonage Ltd
- Wanadoo UK plc
- Your Communications Ltd