

# Discontinuation of the Charge Control for Number Portability Standard Services

A statement published by Ofcom

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# Explanation

## The consultation

1. On 8 April 2004, the Office of Communications (“Ofcom”) published a consultation [“Proposed discontinuation of the Charge Control for Number Portability Standard Services”](#) (the “April Consultation”). The consultation period ended on 6 May 2004.
2. No responses to the April Consultation were received. In the light of this, Ofcom has decided to implement the proposal contained in the April Consultation.

## Number portability

3. Customers’ ability to retain a phone number(s), when transferring service to an alternative provider, is a key facilitator of competition between providers of communications services.
4. This statement concerns services relating to the provision of portability, namely the technical services which enable end users to retain a phone number after transferring service from one provider to another, which are purchased from the former provider by the new provider, not by the end user. The services include initial per line set-up of the facility which enables an end user to retain his number and subsequent conveyance of each call from the former provider to the new provider.

## Continuation of licence conditions and Condition 69A

5. Although individual licences granted under section 7 of the Telecommunications Act 1984 have now been replaced in part by General Conditions made under the Communications Act 2003 (the “Act”), there were a number of specific conditions included in some individual licences which cannot be replaced by new conditions under the powers contained in the Act until the relevant market reviews have been completed and implemented. Paragraph 9 of Schedule 18 to the Act allows Ofcom to issue Notices to continue provisions formerly contained in licence conditions until such time as it has reviewed the relevant market (these powers were previously exercised by the Director-General of Telecommunications (the “Director”) until Ofcom assumed its powers on 29 December 2003). BT’s Condition 69A (hereinafter referred to as “continued provision Condition 69A”) was made to continue in force by such a continuation notice (the “Continuation Notice”) issued to BT by the Director on 23 July 2003.
6. Continued provision Condition 69A concerns Portability Standard Services, which are services referred to in paragraph 4 above provided by BT pursuant to an agreement under continued provision Condition 45. Condition 69A requires BT to limit any price increases for Non-conveyance Portability Standard Services to RPI – 5 each year until 31 July 2006 (Non-conveyance Portability Standard Services are Portability Standard Services which are initial per line set-up services, as described in paragraph 4 above). It also requires BT to ensure that charges for all Portability Standard Services are cost oriented and non discriminatory and to notify changes in these charges to Ofcom and other providers, in advance, and to publish all charges.

## **Market Reviews**

7. The European Commission ("the Commission") has adopted a Recommendation on Relevant Products and Services Markets (the "Recommendation") which lists a set of markets in which ex ante regulation may be warranted. However, National Regulatory Authorities ("NRAs") are able to regulate markets that differ from those identified in the Recommendation where this is justified by national circumstances. Ofcom is obliged to take the utmost account of this Recommendation when defining markets appropriate to national circumstances. In some instances Ofcom has exercised its discretion to define markets other than those included in the Recommendation, and it has notified these draft decisions to the Commission and other NRAs.

8. The services referred to in paragraph 4 are not included in the markets listed in the Recommendation and are not included in markets which the Director or Ofcom has exercised its discretion to define as markets appropriate to national circumstances.

## **Removal of continued regulatory obligations**

9. Paragraph 9(11) of Schedule 18 to the Act requires Ofcom as soon as reasonably practicable after giving a continuation notice, to take all steps necessary to enable it to decide whether or not to set a Condition for the purpose of replacing the continued provision. It requires that Ofcom must then decide as soon as reasonably practicable whether or not to exercise its power to set a condition within the categories set out in the Act. Paragraph 9(12) of Schedule 18 to the Act then requires that Ofcom must give a discontinuation notice with respect to the continuation notice as soon as reasonably practicable after making the decision required by paragraph 9(11). Ofcom considers therefore that while it is appropriate to keep such notices in place pending completion of planned market reviews, Ofcom does not believe it is appropriate to maintain continuation notices for services in a market where there are no plans to review that market under the Act. In this case, it is also relevant that there is already regulation in place in relation to the services concerned.

## **General Conditions imposed under the Communications Act 2003**

10. General Conditions made under the Act may either apply to all providers of Electronic Communication Networks ("ECN") and Electronic Communications Services ("ECS"), including BT, or such ECN and ECS providers of a specified description. General Condition 18 (Number Portability) ("The Number Portability General Condition") requires all providers to offer number portability on reasonable terms to any of its subscribers who request this. It also requires it to provide portability at the request of another provider on reasonable terms; any charges levied must, subject to the requirement of reasonableness, be cost oriented and based on the incremental cost of provision, unless otherwise agreed or as directed by Ofcom.

## **BT's non binding undertaking**

11. BT has given Ofcom a non binding undertaking to continue to comply with continued provision Condition 69A, including the RPI-5 charge control for non conveyance portability services, as though the provision was still operative until 31 August 2006.

## **Ofcom's decision**

12. Ofcom considers that the Number Portability General Condition is sufficient to ensure that BT provides Portability Standard Services to other providers on reasonable terms. Ofcom does not presently intend to carry out a review of the market in which these services fall. Ofcom has decided therefore that BT's continued provision Condition 69A should now cease to have effect. Full reasons for this decision are as set out in the April Consultation. A notice is attached at Annex 1 to this statement notifying BT that continued provision Condition 69A will no longer apply. As the discontinuation notice is served by post, it will be deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Act.

## **Annex 1**

# **Notice to British Telecommunications plc under paragraph 9 of schedule 18 to the Communications Act 2003**

**Notice that certain continued provisions set out in the continuation notices given to British Telecommunications plc on 23 July 2003 will cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003**

1. Ofcom, in accordance with Paragraph 9(9) of Schedule 18 to the Communications Act 2003 ('the Act') hereby gives notice to British Telecommunications plc ('BT') that Condition 69A contained in Schedule 1 of the continuation notice given to BT on 23 July 2003, which took effect from 25 July 2003, ('the Continuation Notice'), will cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003 (the 'Discontinued Provision').
2. In giving this notice, Ofcom has, in accordance with Paragraph 9 (11) of Schedule 18 to the Act, taken all steps necessary for enabling it to decide whether or not to set a condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the Discontinued Provision and whether or not to exercise its power to set a condition under that Chapter for that purpose.
3. All directions, determinations, consents and other provisions which were continued under the Continuation Notice by virtue of Paragraph 9(8) of Schedule 18 to the Act will also cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003 to the extent that they were given or made for the purposes of the Discontinued Provision.
4. To the extent that the Continuation Notice does not cease to have effect under Paragraph 1 of this notice, the Continuation Notice shall continue to have effect until Ofcom has given a further notice to BT in accordance with Paragraph 9(9) of Schedule 18 to the Act that it shall cease to have effect.
5. Ofcom issued a consultation as to its proposals to discontinue the Discontinued Provision on 8th April 2004 and requested comments by 6<sup>th</sup> May 2004. Ofcom has taken into account the comments it received during that consultation.
6. In this notice, except as otherwise provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act. For the purposes of interpreting this notice, headings and titles shall be disregarded.

Signed

Philip Rutnam

Date

A person authorised under paragraph 18 of the Schedule to the Office of  
Telecommunications Act 2002