



FCS Response to Ofcom's Network Neutrality consultation - January 2023

Introduction

The Federation of Communication Services represents companies which provide professional communications solutions to business users. Our members deliver telecommunications services via mobile and fixed line telephony networks, broadband, satellite, wi-fi and business radio. Our members' customers range from SMEs, home-workers and micro-businesses up to the very largest private enterprises and public sector users. FCS is the largest trade organisation in the professional communications arena, representing the interests of circa 350 businesses which supply B2B services nationwide.

Federation of Communication Services

Phone:

Website: www.fcs.org.uk

The Grainger Suite, Dobson House, Regent Centre, Newcastle upon Tyne, NE3 3PF

The Federation of Communication Services Limited
Companies House Reg. no. 2749617
VAT No. 611 911 473

Your response

Zero-rating

Question	Your response
Question 1: Do you agree with our assessment of zero-rating offers and our proposed approach?	Confidential? – N FCS believes that each proposed zero-rating offer should be thoroughly assessed by Ofcom.
Question 2: Do you agree with the criteria we use to define Type One, Type Two and Type Three zero-rating offers and our proposed approach to such offers?	FCS strongly agrees with the proposed Ofcom case-by-case review of all Type Three offers.
Question 3: Do you agree with the approach in our guidance in Annex 5 in relation to zero-rating?	FCS understands that Ofcom are only likely to have concerns about zero-rating offers in limited circumstances and that Ofcom proposes to review of all Type Three instances on a case-by-case basis. FCS is particularly concerned with zero rating 'self-preferencing' offers that the large vertically integrated companies could put in place which would potentially disadvantage our smaller provider type members. FCS ask that Ofcom keep this as a high focus area of review. In annex 5, Ofcom state 'Ofcom may gather this (zero-rating) information periodically to monitor compliance with the rules'. FCS asks why this is 'may' and not 'will'? FCS feels that Ofcom updating its zero-rating guidance to make it clearer to providers where they are less likely to have concerns (medical, financial hardship support etc) is a positive initiative reducing the likelihood of misinterpretation (deliberate or accidental) of the regulation.
Question 4: What are your views on whether zero-rated content should be able to be accessed once a customer's data allowance has been used up?	FCS believes that there is a strong case to allow some zero-rated content to be accessed once a customer's data allowance has been used up. However, each example should be assessed on a case-by-case basis and where appropriate (e.g. medical support, government support guidance, debt advice, emergency video relay, data top-up), should not be viewed as a breach.

Traffic management

Question	Your response
<p>Question 5: Do you agree with our assessment of retail offers with different quality levels and our proposed approach?</p>	<p>Confidential? – N</p> <p>FCS accepts that ISP’s can offer internet access services with different levels of quality of service through different retail offers, and manage these services differently in order to deliver the respective contracted levels of performance. However, FCS believes that this must not have a significant (short or long term) impact on any other services that an ISP supplies.</p>
<p>Question 6: Do you agree with the approach in our guidance in Annex 5 in relation to differentiated retail offers, including transparency requirements, improved regulatory monitoring and reporting of retail offers with different quality levels as well as the general quality of the internet access services?</p>	<p>The proposed Ofcom case by case monitoring and assessment of each new retail offer will require adequate resource to ensure effective monitoring oversight. FCS asks if Ofcom will have the resource in place to review each new retail offer for compliance.</p> <p>There must be transparency of the performance measures that all customers can expect and where these QoS measures are not met, a simple method for end users to raise complaints must be in place, with agreed criteria for investigation in place (response times etc).</p> <p>In section A5.47 of the appendix, there is no mention of a provider considering launching a retail offer that provides a different level of quality of service, needing to confirm that the proposed offer does not ‘significantly’ impact other services that the provider supplies. FCS believe this should be a requirement.</p>
<p>Question 7: What are your views on a more permissive approach towards retail offers where different quality levels are content and service specific?</p>	<p>The proposed Ofcom approach of allowing reasonable traffic management in certain circumstances as long as the criteria for reasonable traffic management and transparency are documented, must be steered by clear and unambiguous Ofcom criteria guidance.</p>
<p>Question 8: Do you agree with our assessment of how traffic management can be used to address congestion and our proposed approach?</p>	<p>FCS believes that the Ofcom assessment and proposed approach allowing relevant proportionality and transparency should be guided by clear, unambiguous documented criteria. Where traffic management is implemented, ISPs must be able to demonstrate that there has been no differentiation across the network / network services.</p>

<p>Question 9: Do you agree with the approach in our guidance in Annex 5 in relation to the use of traffic management to address congestion, including transparency requirements, improved regulatory monitoring and reporting of general network performance metrics, the use of traffic management and the impact on service quality?</p>	<p>FCS understands the proposed Ofcom approach.</p>
<p>Question 10: What are your views on a more focused approach to traffic management to address congestion?</p>	<p>Providers should be able to supply evidence that all categories of traffic are/have been treated equally and should also be able to supply evidence of the information used to determine that the congestion was occurring and needed to be addressed in the first place.</p>

Specialised services

Question	Your response
<p>Question 11: Do you agree with our assessment of specialised services and our proposed approach?</p>	<p>Confidential? – N FCS believe that ‘specialised services’ when provided, should not impact on the QoS of any of the standard services that the Provider supplies.</p>
<p>Question 12: Do you agree with the approach in our guidance in Annex 5 in relation to specialised services, including transparency requirements, improved regulatory monitoring and reporting of the need for optimisation of a service, the general performance of internet access services and the impact of specialised services on the quality internet access?</p>	<p>FCS has no specific comment on this.</p>
<p>Please provide any further evidence you have to support your responses.</p>	

Scope of the net neutrality rules, terminal equipment and public interest exceptions

Question	Your response
<p>Question 13: Do you agree with our assessment of the terminal equipment rules and our proposed approach?</p>	<p>Confidential? – N</p> <p>FCS feels that Providers should not include commercial terms, including in fair usage policies, which restrict the terminal equipment chosen by users to access the internet via their internet access services, in their T&Cs</p>
<p>Question 14: Do you agree with our assessment of internet access services provided on aeroplanes, trains, buses and coaches and our proposed approach?</p>	<p>FCS believes that the Ofcom approach must be flexible enough to cater for the different scenarios and challenges of each type (trains, buses/coaches and planes) so that all passengers have an equal opportunity to gain reasonable access.</p>
<p>Question 15: Do you agree with our proposed approach to emergency 999 communications services and that we should consider amending the GCs to achieve this?</p>	<p>FCS believe that the Ofcom GCs should be updated to ensure that emergency communications that rely on internet access</p>
	<p>can be exempted from the traffic management rules.</p>
<p>Question 16: Do you agree that ISPs should be allowed to block scams and fraudulent content and provide in-network parental controls and content filters?</p>	<p>FCS believes it is important that ISPs should be allowed to block scams, fraudulent content and provide in-network parental controls and content filters, where appropriate. Clear, easy to follow guidance must be in place to ensure that where these activities are implemented, they are implemented compliantly.</p>
<p>Please provide any further evidence you have to support your responses.</p>	