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14th March 2017

Dear Selene

### **Review of the General Conditions**

This response has been prepared on behalf of Nine Group. Nine provides a wide range of fixed and mobile communications services to business customers in the UK. Nine Group offers its services directly to end user customers through its Nine Telecom division and via resellers through the Nine Wholesale operation. Nine has approximately 500 reseller partners of various sizes located throughout the UK.

You can find out more about Nine Group at our website [www.ninegroup.co.uk](http://www.ninegroup.co.uk)

We welcome this opportunity to respond to Ofcom's consultation on the General Conditions. It is important that communications providers have a clear understanding of their regulatory obligations and the General Conditions provide the key reference point for understanding these. The new structure represents a significant advance in this respect by providing a more logical and intuitive structure and greater clarity for the industry's "rule book".

However, we are disappointed that, as part of this review, Ofcom has not proposed any changes to the rules on Number Porting. While we understand that Ofcom is looking to industry to develop a consensus on the strategic way forward for the longer term, the current drafting of the General Condition is very unhelpful, as the requirements are too vague to be meaningfully enforced. Evolution of an appropriate longer term solution to the current problems is likely to be an iterative process and some relatively small changes to the current regulation by Ofcom would make a good start in defining the direction of travel.

Re-drafting of the General Condition to provide more specific obligations in areas relating to the timeliness of establishing porting arrangements, responding to information requests, as well as completing the actual porting and activation of numbers would provide immediate improvements pending industry agreement of a longer term strategic way forward.

Please see further detailed comment on the individual proposals below:

**Question 1:** *Do you agree with our overall approach to this review of the general conditions as set out in sections 2 and 3 of this consultation? Please give reasons for your views.*

We agree with Ofcom's approach and the resulting proposals for restructuring of the General Conditions.

Specifically, the consolidated schedule of definitions has removed some long standing ambiguities and inconsistencies. Likewise, the introduction of recitals at the beginning of each General Condition makes it much easier and quicker to understand the scope and applicability of each individual condition. The three part structure also makes it easier for communication providers to navigate the document and determine which conditions are applicable to their business model.

In general, where substantial change to the actual requirements has been proposed, we support the suggested changes to the content and scope of the various conditions. We agree that these changes are necessary either to reflect industry change, remove redundant regulation or to strengthen the rules.

Likewise, we also support the proposed changes to drafting (where there is no change to the substance of the regulation) which makes it appreciably easier to understand the requirements

**Question 2:** *Do you agree with our proposed implementation period for the revised general conditions of 3 to 6 months following publication of our final statement? If you think a longer implementation period is necessary, please explain why, giving reasons for your views.*

Subject to publication of the final detail of the proposed requirements, we agree that 3-6 months is in general an appropriate implementation period.

**Question 3:** *Do you agree with our proposals in relation to contract requirements? If you consider that we should retain the regime applying to contracts concluded before 26 May 2011, please explain why, giving reasons for your views.*

The proposed re-drafting does not reflect any major change to the existing regulation (other than to extend the scope in some cases) and on this basis we are satisfied with the new version of this condition.

However, while we strongly support Ofcom's objective in incorporating its guidance on "material detriment" (specifically in relation to price rises) directly into the General Condition at C1.7, we do not believe that the current drafting provides sufficient clarity as to Ofcom's position on the issue. We suggest that this section is expanded to make clear that it is contractualisation of provider discretion which inevitably leads to material detriment when prices are increased. And that this can only be avoided by incorporating an unambiguous and specific ability to increase prices etc.

We do not believe that there is any value in retaining the legacy regulation applicable to contracts concluded before 26<sup>th</sup> May 2011 as there are unlikely to be any such agreements still in force to which this regulation would apply.

**Question 4:** *Are there any other modifications to the proposed revised condition in relation to contracts requirements that you consider would be appropriate?*

We have no further suggestions on modifications to this condition.

**Question 5:** *Do you agree with our proposals in relation to information publication and transparency requirements, including removing the separate condition relating to publication of quality of service information?*

We agree with the new approach set out by Ofcom. The proposed new structure setting out these requirements is less fragmented and more coherent, making it much easier for communications providers to understand their obligations in this area.

In particular, we are pleased that the requirements relating to VoIP services which formed Annex 3 of General Condition 14 have now been moved to the new General Condition A3.

However, in our earlier response to the initial consultation on the General Conditions, which specifically covered this area, we noted our concern about the proposed requirement for provision of location information for providers of VoIP services which requires that, where the service is to be used at multiple locations, CPs should update the location information on a regular basis.

We suggested that, for a truly nomadic service which may be used in a similar way to a mobile service i.e. at multiple locations on the same day or even on the move in a vehicle, this is not a practical option for CPs and that this guidance is potentially dangerous for end users as it may provide misleading information when a call is made to the emergency services by a user of such a service.

We are aware that there is currently a provision to incorporate a marker on the emergency services database which indicates that the number is associated with a nomadic VoIP service. When an emergency call is made from such a number, there is a clear indication on the screen which prompts the call handler to ask for the current location of the caller.

We continue to believe that the requirements in the new GC A3 should mandate use of this facility for all nomadic VoIP services and we are highlighting this concern again as the issue was not referenced within Ofcom feedback on other responses to the earlier consultation.

With regard to the remaining obligations, the move to requiring simple publication of the required information rather than insistence on a prescribed code of practice is also helpful, offering communications providers a choice on the best way to provide the information.

In our view the updated requirements on provision of information about PRS and calls to other Unbundled Tariff numbers removes a number of inconsistencies and redundant requirements and we support the new drafting.

Finally, we agree with the removal of requirements on the publication of Quality of Service information. Experience has shown that publication of this type of data does not provide meaningful assistance to customers in choosing a provider.

**Question 6:** *Do you agree with our proposal to replace the existing detailed requirements in relation to small businesses with a general obligation to ensure price*

*transparency and to notify small business customers where the terms and conditions that apply to them differ from those that providers are required to comply with in relation to consumers?*

We note that many communications providers only serve business customers and that the requirement to highlight differences in terms offered to the different types of customers will not be applicable. However, we believe that the current wording of the new General Condition overall adequately covers the obligations arising in this case.

**Question 7:** *Are there any other modifications to the conditions relating to information publication and transparency requirements that you consider would be appropriate?*

We have no further suggestions in this area.

**Question 8:** *Do you agree with our proposals for updating the current conditions that relate to billing? In particular, do you agree with our proposals to extend the current protections for end-users in relation to billing so that they would apply, more generally, to fixed and mobile voice call and data services?*

In light of market and technology developments, we agree that the extension of requirements to include data and mobile services, as proposed, makes sense.

We welcome clarification of the requirement for retention of billing records and agree that 12 months is appropriate.

**Question 9:** *Do you agree with our provisional assessment that our proposals to extend the regulatory requirements for billing to fixed and mobile voice call and data services does not impose a disproportionate burden on industry? Do you have any further information on the likely costs of these proposals?*

We agree.

**Question 10:** *Are there any other modifications to the billing conditions that you consider would be appropriate?*

We think it would be helpful to provide some high level guidance on the minimum requirements for the content of itemised billing. (Date and time of call, duration, destination telephone numbers etc.)

**Question 11:** *Do you consider that our proposed revised condition for complaints handling and access to alternative dispute resolution, together with our proposed revised code of practice on complaints handling, will improve the transparency, accessibility and effectiveness of communications providers' complaints handling procedures, and improve access to alternative dispute resolution? If not, please give reasons, including alternative suggestions.*

We note and understand the concerns set out by Ofcom arising from its investigations in this important area and agree that the proposed changes should improve industry performance in this area.

Specifically, we agree that widening the scope to include customer service is appropriate. We also agree that the new requirements to keep records of complaints for 12 months and provide staff training in this area is proportionate.

**Question 12:** *Do you have any other comments on our proposals in relation to complaints handling and access to alternative dispute resolution?*

We note that the use of the term “Relevant Customer” in section 4 (26) of the Ofcom Approved Code of Practice for Customer Service and Complaints Handling (which in this context includes Domestic and Small Business Customers) effectively extends the requirement to include information about the right to take unresolved complaints to ADR on bills to small business customers.

This is a significant change and we wonder if this was Ofcom’s intention as this change is not specifically referenced anywhere else in the consultation.

**Question 13:** *Do you agree with our proposals in relation to the codes of practice that communications providers are currently required to establish, maintain and comply with – including replacing these with direct obligations to make information available, where appropriate?*

See response to Q5

**Question 14:** *Do you agree with our proposals to introduce a new requirement for communications providers to take account of, and have procedures to meet, the needs of consumers whose circumstances may make them vulnerable?*

We support the principle but note that this requirement is restricted to consumers. We agree that this is an area that is not directly relevant to business customers

**Question 15:** *Do you agree with our proposals to update regulation by extending the current protections for end-users with disabilities, which currently apply only in relation to telephony services, to cover all public electronic communications services?*

We believe that the changes are fair and logical and agree.

**Question 16:** *Are there any other modifications to the proposed revised condition on measures to meet the needs of vulnerable consumers and end-users with disabilities that you consider would be appropriate?*

We have no further suggestions in this area.

**Question 17:** *Do you agree with our proposal to remove the condition relating to the provision of tone-dialling? Please give reasons for your views.*

We agree with Ofcom’s rationale for removing the requirements and note that Ofcom will continue to monitor provision of this facility by communications providers.

**Question 18:** *Do you agree with the changes we are proposing to make in relation to the provision of calling line identification facilities, including the new requirements we are proposing to add? Please give reasons for your views.*

We support Ofcom's efforts to reduce nuisance calls and recognise that the proposed changes could play a significant role in improving customer experience in this area. In principle, therefore, we agree with the proposed changes subject to the caveats on "technical feasibility" and "economic viability".

**Question 19:** *Do you have any comments on our proposals in relation to the proposed revised general condition on switching?*

No major changes are proposed to the rules on switching of fixed services (other than to remove redundant drafting). We are also awaiting Ofcom's decision on changes to switching of mobile services. We, therefore, have little comment in this area at this stage.

However, as noted in the introduction to our response, we would welcome some changes to the regulation of Number Porting. Re-drafting of the General Condition to provide more specific obligations in areas relating to the timeliness of establishing porting arrangements, responding to information requests, as well as the actual porting and activation of numbers would provide improvements pending industry agreement of a longer term strategic way forward.

**Question 20:** *Do you agree with our proposal to remove the current provision which expressly prohibits so-called 'reactive save' activity (in GC 22.15)?*

We are surprised by Ofcom's change of policy in this area and question how easy it will be to differentiate between "welcome" and "unwelcome" retention activity. We suggest that this is an area that Ofcom should specifically monitor following any change which is ultimately implemented to ensure that there is no negative impact on customers' willingness and ability to switch.

We suggest that enforcement of rules around, for example, Cancel Other is probably more effective in ensuring that customers' efforts to change supplier are not thwarted.

**Question 21:** *Do you agree with our proposal to replace the current mis-selling provisions with rules that focus on the information that communications providers give to customers when selling or marketing fixed-line or mobile communications services? Please give reasons for your views.*

We are sceptical about the proposal to remove the current prohibition on "dishonest, misleading or deceptive conduct". While we understand the value of specifying in more detail the information to be provided at the point of sale, we do believe that the current prohibition provides a useful complement in preventing misleading information being placed on websites and in promotional materials etc.



**Question 22:** *Do you have any comments on the consequential changes we are proposing to make to the national telephone numbering plan, the premium rate services condition or the metering and billing direction?*

The proposed changes appear to be logical and appropriate to reflect and support the changes to the relevant General Conditions.

**Question 23:** *Do you have any comments on our equality impact assessment?*

No comment.

**Question 24:** *Do you have any other comments on the matters raised by this consultation?*

We have no further comments

We trust that the above response is helpful and would be happy to discuss any of the issues raised with the Ofcom team in further detail.

Kind regards

Michael Eagle  
Industry Liaison and Regulatory Support