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Ofcom Consultation on the Review of General Conditions of Entitlement

Response by TalkTalk Group

14 March 2017

Introduction

1. This document sets out TalkTalk's comments on Ofcom's consultation on the review of General Conditions of Entitlement published on 20 December 2016.

2. By way of overview, our comments are as follows:
   - We generally welcome Ofcom's review as timely and necessary. The general conditions have been amended on several occasions over the years which have made them difficult to interpret and understand in places. In addition some of the provisions have become outdated as technology has progressed. We therefore support the objective of making the general conditions clearer and more practical as this will make it easier for communications providers to comply with them.
   - We do not believe that Ofcom should withdraw its GC9.6 guidance on price increase notifications as it would reduce legal certainty for providers. The guidance document has proven useful to providers since it was published and has ensured a common understanding of the rules between providers.
   - We broadly support Ofcom's proposal to extend the metering and billing accreditation requirement to include data services (although the definition of data services needs to be clarified). However the implementation period for providers seeking compliance should be extended to 24 months in accordance with the logic of the current metering and billing direction.
   - We support the need to strengthen the complaints handling and access to alternative dispute resolution ("ADR") requirements but are concerned that some of Ofcom's proposals would harm the consumer experience of complaints handling rather than improve it. [redacted]
   - We are concerned about the proposed requirement to publish a wide-ranging code of practice for all vulnerable customers. This requirement would go far beyond the current GC15 requirements and indeed general disability legislation. It would seemingly require providers to identify a vast array of vulnerable customers and to treat them differently in accordance with their

specific needs. We do not believe this is necessary or proportionate from a public policy perspective.

- We welcome Ofcom's proposal to require providers to block calls displaying invalid calling line identification ("CLI") in their networks. [redacted] It is important, however, that the requirements are consistent with what is commercially and technically possible such that industry can provide the best possible solutions to protect their customers from scam and nuisance calls.
- We welcome Ofcom's proposal to remove the reactive save prohibition in GC22. It is important however that Ofcom ensures that excessive save activity does not make it unduly difficult for customers to cancel their contracts with their current provider.

3. More generally, we welcome Ofcom's approach to tidy up the layout of the general conditions including the approach of defining regulated provider at the beginning of each condition. This approach should make the conditions easier to read and understand and therefore aid providers in complying with relevant requirements.

4. Our detailed comments are set out in the following sections.

C1 Contract requirements

5. Ofcom proposes to remove the current guidance on "material detriment" under the current GC 9.6[1] and instead insert a new provision 9.7 under the new section C1. We are unclear about the rationale for this change and concerned that it would risk creating more confusion about what is expected from providers in order to comply with customer notifications of contractual changes that are to the customer's material detriment.[2]

6. We note Ofcom considers that the new clause 9.7 would reflect Ofcom's existing policy currently set out in guidance.[3] We have carefully reviewed the wording of the new clause, however, and we are not clear that this is the case. Our reading of the proposed clause suggests that any price increase of any charge would result in material detriment and therefore require 30-days' notice and right to leave for the customer. It is not obvious in our view that the new clause only applies to increases

[1] https://www.ofcom.org.uk/__data/assets/pdf_file/0027/29682/guidance.pdf

[2] Even if Ofcom withdrew the guidance, providers might still continue to comply with this text. Relying on a guidance that is officially withdrawn, however, is ultimately not satisfactory from a compliance perspective. We note that Ofcom is not saying that the guidance is somehow out-of-date but rather that the new clause 9.7 would be intended to reflect the requirements in the guidance. If that is indeed the case, we cannot see any reasonable argument for withdrawing the guidance and would urge Ofcom to keep it in place to support providers' efforts to comply.

[3] Paragraph 4.20 of consultation document.

to the agreed core subscription price (as set out paragraph A1.11 in Ofcom's current guidance) mainly because the new clause does not use this terminology. We would argue that the new clause would need to be reworded accordingly to meet Ofcom's objective of reflecting its current guidance (if withdrawn as proposed).

7. In a similar vein, the guidance sets out a number of other policy positions by Ofcom which the wording of the new clause 9.7 does not clearly reflect. For instance, is it Ofcom's interpretation that pre-agreed %-increases to core subscription price would fall outside the application of clause 9.7? Also, the new clause offers no guidance at all on the content of price increase communications.

8. In conclusion, we do not believe that Ofcom has set out in sufficient detail as to why the new clause 9.7 would indeed be necessary and, even if the clause was introduced, why the current guidance would need to be withdrawn.

9. Separately, although Ofcom is not proposing any changes to this provision, we believe it would be useful if Ofcom would offer some guidance as to what is meant by "maintenance services" in clause 9.2(f). This wording tends to cause some confusion as to what is required in practice from providers.

10. Finally, we note Ofcom's comments about the application of GC 9.6 to pay-TV services that "*the proposed scope of the revised condition would be clear to CPs on the face of the revised condition itself*." [4] We do not believe this explanation is quite sufficient given that the application of GC9.6 to pay-TV services has historically been contested by some providers. We would therefore request that Ofcom makes it explicit that GC 9.6 applies to pay-TV services and, in general, expands on its view as to when and to what extent a pay-TV service would be considered to be an "electronic communication service."

C2 Information publication and transparency requirements

11. We have the following comments on Ofcom's proposals in this section:
    (a) In relation to clause 10.2, we welcome the clarification that providers do not have to publish bespoke tariffs and terms and conditions. Although this has been industry practice anyway, it is important that the regulatory framework is clear and consistent.
    (b) In relation to clause 10.8, we do not believe this provision is justified based on available evidence. When Ofcom introduced the new tariff arrangements for number translation services ("NTS") in 2015, business customers were

[4] Paragraph 4.28 of consultation document.

explicitly excluded on policy grounds following a lengthy public consultation. Ofcom concluded at the time that "*[t]he evidence […] of the consumer harm and the failures in the non-geographic calls market essentially relates to residential and domestic consumers. Our power to impose tariff principles in relation to the provision of an electronic communications service can only be exercised if it is for the purpose of protecting domestic consumers*."[5] In its present consultation, Ofcom does not present any evidence as to why business customers would need to be informed if their NTS retail rates differ from those offered to residential customers. It is poor policy-making to partially reverse a fully evidenced policy decision made only three years ago particularly since Ofcom is yet to carry out any impact analysis of the NTS changes in 2015.

C4 Billing requirements

12. We are broadly supportive of Ofcom's proposals in relation to billing requirements. The proposed extension of the metering and billing requirements to include data services appears sensible given market developments (although much more so in the consumer market as opposed to the business market).

13. Our main concern with Ofcom's proposals relate to the proposed implementation timescale. It is not entirely clear from the consultation document but it would be unrealistic to expect providers to achieve metering and billing accreditation for data services within 3-6 months. Expansions of conditions on billing accuracy to data services would likely be a complex and time consuming exercise and the transition period must therefore be realistic and achievable. We would expect the work to achieve such compliance would take up to 24 months which would be in line with the current metering and billing direction.[6] It should be noted that the requirement for a much longer implementation period is not just justified by the internal work that the provider needs to carry out but also by the availability of external accreditor availability (which has proven to be a potential bottleneck in the past).

14. In relation to mobile data, we believe it is important that Ofcom ensures that mobile virtual network operators are able to obtain the necessary data billing information from relevant mobile networks in a timely and complete manner in order to be able to comply with the metering and billing requirements.

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[5] Simplifying non-geographic numbers, Ofcom policy position on the introduction of the unbundled tariff and changes to 080 and 116 ranges, Part B, 18 April 2013, paragraph 10.65.

[6] Review of the Metering and Billing Direction, 31 July 2014, https://www.ofcom.org.uk/__data/assets/pdf_file/0032/58838/statement.pdf, paragraph 3.2 and 3.4.2.

15. Also we would request that Ofcom provides some further clarification as to what types of data products would be expected to fall within the proposed definition of "Publicly Available Internet Access Services." The definition appears to be too wide and would also seemingly include also more complex business data products such as, e.g., multi-site connectivity using uncontended circuits (provided Internet access is included). We do not believe large business data products require the same level of regulatory protection as the consumer market. Also we believe Ofcom should clarify whether and, if so, what wholesale data products would be covered by this definition.

C5 Complaints handling and dispute resolution

16. We broadly support the objectives that Ofcom is seeking to achieve with the proposed amendments to the current complaints handling and dispute resolution requirements in the current GC 14.4 and associated code of practice. We do not believe, however, that some of the key proposals will actually improve the customer experience but may actually make the experience less consumer friendly and more cumbersome for consumers.

17. Our key concern is around the suggested process for managing complaints and particularly when a CP is able to close a complaint versus the customer's right to take the matter to ADR. In essence, we understand that Ofcom would look to impose the following requirements:

- When telling the customer of the outcome of the complaint investigation, the CP must give the customer until the end of the 56-day period (from when the complaint was opened) to say if they are not satisfied;
- CPs can close a complaint only if (i) the customer has expressly agreed or (ii) the customer has not come back by the end of the 56-day period or (iii) it is reasonable to consider the complaint to be frivolous or vexatious; and
- CPs must immediately issue an ADR letter if customer says they do not agree to proposed resolution of complaint (and the CP does not intend to take additional steps to resolve) or the complaint remains unresolved after 56 days (i.e. 8 weeks).

18. [redacted]

19. [redacted]

20. In contrast, under Ofcom's proposed process, the 28-day period recommended by Mott McDonald would effectively be extended to up to 56 days. As such we are concerned that Ofcom's proposals would actually (a) reduce customer awareness of ADR and (b) make the complaints handling process slower and more cumbersome for the customer.

21. CPs have already spent time and resources implementing the recommendations in the Mott McDonald report and it would therefore be more sensible in the circumstances to base the future changes to the ADR requirements on those recommendations. The Mott McDonald recommendations were based on clear evidence in the form of a detailed analysis of the impact of ADR processes on consumers. Ofcom's proposals, however, do not appear to be based on any specific new evidence, only on an implicit assumption that 56 days must be better than 28 days.

22. In relation to Ofcom's other proposals we have the following comments.

23. We note Ofcom's proposal that CPs must be able to accept complaints via phone, letter and email/web-form. We believe that email or web-form is fairly rapidly becoming an outdated form of communications methods used by customers. In contrast, live-chat is becoming increasingly popular as it offers a superior customer experience as it provides an immediate feedback loop for the customer who, as a result, feels more empowered and, frankly, that their CP is listening to their complaint. We would therefore recommend that providers should be able to offer live-chat as an alternative to email or web-form.

24. We also note Ofcom's proposal that when receiving a complaint, the CP must inform the customer of the process and timeframe for resolving the complaint. It is tempting to believe that this would improve the customer experience and to an extent it may well do. We would emphasise however that no CP would deliberately set off on the journey of trying to resolve a customer complaint with the ultimate intention of sending the customer off to the Ombudsman. On the contrary, any serious CP would want to resolve a customer's complaint as quickly and efficiently as possible ultimately in order to ensure that the customer is happy to remain a customer. Put very simply, we do not believe that the first thing the customer wants to hear when they lodge a complaint is that it may take up to 8 weeks to resolve and in any event there is always the Ombudsman after that if they are not happy. This

would send a poor signal to consumers from the CP and we would urge Ofcom to reconsider this proposal.

C6 Measures to meet the needs of vulnerable and consumers and end-users with disabilities

25. Ofcom proposes the insertion of an entirely new requirement in the current GC15 which is that CPs would be required to establish, publish and implement clear and effective policies and procedures for the fair and appropriate treatment of all "vulnerable consumers". This proposal would extend the application of GC15 far beyond its current scope. We believe the costs of implementing such a requirement would be disproportionate to the consumer benefits that might be expected to be achieved.

26. More specifically, the term "vulnerable consumer" is extremely broadly defined as "*consumers who may be vulnerable due to circumstances, including but not limited to, age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement or divorce*."

27. In addition to this broad definition, the proposed requirement does not state what type of services or adjustments that a provider would be expected to make for "vulnerable customers." We are therefore very concerned this proposal would amount to an open-ended requirement to establish different customer service procedures for different types of perceived vulnerabilities. In addition it would require providers to be able to identify with a large degree of precision the type of vulnerability that an individual customer may have at a given point in time and to store this sensitive information on its customer management systems.

28. The current GC15 already strikes the right balance in that it clearly identifies the specific adjustments that should be made for specific disabilities (e.g., text relay for customer who are hard of hearing, bills in Braille for blind customers, etc.). Apart from these specific adjustments, we believe that providers should (and generally do) have in place robust, efficient and simple processes. This is the best way of ensuring strong protection for all customers, including all vulnerable customers.

C7 Calling line identification facilities

29. [redacted]

30. We therefore welcome Ofcom's main proposals to require:

(a) That where CLI facilities are provided, providers must ensure that any CLI data provided with or associated with a call includes a valid, diallable telephone number which uniquely identifies the caller; and

(b) Providers to identify calls with invalid or non-diallable CLI data with a view to blocking those calls in the network.

31. Although we believe there is now significant momentum in the industry to tackle scam and nuisance calls, it is important that the regulatory framework is adapted to provide support for the efforts made by network operators and also to ensure that similar measures are adopted throughout the industry. At the same time, however, it is essential that the proposed new provisions are clear, proportionate and not unduly difficult to comply with as they do represent a significant change to the current regulatory framework. With this in mind, we have the following specific remarks:

(a) Ofcom proposes to define CLI data as meaning "*the contents of all signalling messages used between CPs and/or between CPs and End-Users which can be used to signal the origin of the call and/or the identity of the calling party, including any associated privacy markings*". We believe the words "*and/or the identity of the calling party*" need to be removed from this definition. Whilst there are parameters within signalling (e.g. SIP display name) which could in theory be used to identify the calling party, they are actually not defined in the UK signalling specifications to be used for that purpose at the destination of the call. We believe it is essential that the regulatory requirement reflects the UK signalling specifications to ensure legal clarity and certainty for network operators.

(b) We believe Ofcom needs to provide a definition of an "*invalid or non-diallable*" CLI in the proposed C7.6 provision. Although the proposed wording of the provision specifies that providers only need to take "*reasonable steps*", we are concerned that the current wording may suggest an expectation that network providers would have to implement for secure key based CLI verification equipment (Secure Telephone Identity Revisited – STIR) which, as Ofcom will be aware, would be both expensive and time-consuming to implement.

(c) We note that Ofcom proposes an implementation period of three to six months. Generally speaking this period would seem sensible (although not if Ofcom expected providers to implement STIR functionality in their networks in which case a much longer period would be required).

C8 Switching

32. We welcome Ofcom's proposal to remove the reactive save prohibition in General Condition 22.15.

33. In parallel, we note Ofcom's position that it does not plan to make the enforcement of GC1.2 (which in essence prevents CPs from using wholesale information to gain a retail market benefit) an administrative priority in the absence of evidence of consumer harm. Although we appreciate the requirement to comply with current legal interpretation of this provision, it is somewhat unclear to us to what extent GC1.2 applies to reactive save. It would seem to us that the CAT's interpretation of GC1.2 in the context of CPS could equally be applied to other wholesale products where the order process relies on automated messages between the wholesale/network divisions of providers. Ofcom should clarify its position in the interest of legal certainty for all providers in the market.

34. [redacted]