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17 November 2017

Three's Response to Ofcom's Review of the General Conditions of Entitlement: Statement and Consultation of 19 September 2017 (the "Consultation")

We welcome the opportunity to comment on the "Further consultation" questions in the Consultation and set out Three's comments on Questions 2 and 3 below.

Question 2: Do you agree with the proposed extension of Ofcom's power to withdraw numbers where they are used inconsistently with the Numbering Plan or otherwise misused? If not, please explain why you do not agree giving reasons.

1. Three welcomes Ofcom's efforts to tackle harm and nuisance arising from the misuse of number ranges and we actively support initiatives to prevent such behaviour. However, while Three agrees that the scope of the current GC17.19 (condition B1.18, as re-numbered) should be expanded to address these issues, Three considers that the proposed wording at B1.18 (e) is not sufficiently clear to achieve this. Ofcom should make clear that it will only withdraw numbers where the relevant CP is complicit in the generation of nuisance calls and that Ofcom does not require CPs to police the behaviour of their customers as B1.18 (e) suggests.

Question 3: Do you have any comments on the proposed extension of Ofcom's Guidance under condition C1 to cover contract termination procedures? If you do not agree with the proposed extension, please explain why.

2. We welcome further guidance on termination procedures and Ofcom's acknowledgement that this is not legally binding. Three has the following observations on the guidance proposed:

Guidance on 'disincentives to switch' under General Condition C1.3

Ofcom's guidance on CPs' retention activities

3. The ability for customers to switch easily between CPs is a fundamental enabler of competition in communications markets, ensuring CPs are faced with strong incentives to provide good value and high quality services. Three therefore welcomes Ofcom's decision to extend its guidance around Condition C1 to cover Ofcom's likely approach to investigating conditions or procedures for contract termination that may act as disincentives to consumer changing their CP.

Consumers must be given a choice as to whether they receive reactive save offers

4. Three recognises that many consumers actively seek retention offers and value the opportunity to haggle with their existing provider. Equally, however, consumers wanting to terminate their contract should not have to endure retention activity (known within the industry as "reactive save") that is unwanted. We welcome Ofcom's explicit recognition of this point in its proposed guidance around condition C1.3¹.
5. Ofcom's guidance also sets out the procedures it expects CPs to have in place to ensure its customer service agents are appropriately trained and incentivised to engage in wanted reactive save activity only. While this provides helpful clarity on the need for CPs to ensure customers consent to receiving reactive save offers when they use phone routes to terminate their contract, it does not address whether and how CPs must ensure reactive save is wanted by customers that use other channels to terminate their contract.

A lack of clarity in Ofcom's guidance will open the floodgates to nuisance calls

6. This gap in Ofcom's guidance leaves open the potential for CPs to outbound call customers which use automated channels (such as text and online) to terminate their contract, and subject them to unwanted save activity.
7. In fact, this type of retention activity is an inevitable consequence of Ofcom's June 2017 Auto-switch proposals for the reform of mobile switching, whereby losing providers will re-direct their reactive save activity to outbound calling customers that have requested their PAC/N-PAC via online or text. While a customer, is of course, able to terminate such a call at the outset, the harm of being nuisance-called has by this stage already occurred.²

Ofcom's guidance should clarify the need for CPs to obtain consent for any reactive save activities

8. Ofcom should amend its guidance to ensure that customers who submit termination requests online and by text are no worse off than customers using phone channels, in respect of their ability to signal that retention activity is unwanted. In particular Ofcom's guidance should make clear that reactive save is only appropriate where a customer consents.

¹ See paragraph A11.14, [Review of General Conditions of Entitlement: Statement and Consultation](#), Ofcom, September 2017

² We note that Ofcom's own Nuisance Calls Research shows that sales calls relating to phone/broadband services are a source of annoyance and distress to customers, and are in fact as distressing as PPI/Personal Injury calls.

Ofcom's guidance on Communication options, accessibility, identification and verification procedures

9. Three welcomes Ofcom's ambition at para. A11.7 for all CPs to "offer alternative communication options, such as allowing end-users to terminate contracts by letter, email or via an online account (where they do not need to speak directly to the CP)" i.e., so-called "non-real time requests." Three also supports Ofcom's proposal to make "any verification procedure relating to contract termination" the "same as required to make any other substantive change to an end-user's account." It would however be helpful if Ofcom could provide further guidance on how CPs should strike a balance between enabling/responding to a customer's request immediately (so as to guard against conduct which could disincentive a customer to switch) and allowing CPs to verify that they are communicating with the genuine customer. Three is concerned about the potential risk of fraudulent behaviour if customer requests (e.g., to request a PAC immediately over the phone or by SMS, or to immediately action a contract termination request) are actioned at a pace which does not allow for adequate fraud / identification and verification checks to be carried out. Ofcom's proposal at para. A11.10(d) asks CPs to "ensure that any verification procedure for contract termination does not delay the start of an end-user's notice period." Whilst Three agrees with Ofcom's aim of processing an end-user's request as soon as possible, Three does have concerns about potential fraud risk and problematic real-life scenarios e.g., where customers simply do not respond to verification requests. In Three's view, protections to guard against this are critical and Three assumes CPs will be responsible for putting their own anti-fraud measures in place to protect customers. In relation to para. A.11.10 c) Three also assumes Ofcom's proposal to ask CPs to "adopt identification and verification procedures that are consistent with the communication option that the end-user has selected to make their termination request" does not preclude the right for operators to put in place double-authentication anti-fraud measures.
10. Three is seeking to both respect customers' requests to leave as well as protect customers from fraud risks. It would therefore be necessary to have protections in place to guard against this and Three would welcome Ofcom's guidance on this point.

Ofcom's guidance on Minimum notice periods

11. At para.A11.11 of the Consultation, Ofcom sets out its expectation for CPs to "allow end-users to give more than the minimum period of notice specified within the CP's contractual conditions to termination their services, should the end-user request it, subject to maximum technical limits" and asks at A11.13 that CPs clearly reference "any maximum notice period and/or the ability of end-users to be able to give more than the minimum notice period", with a requirement for any maximum notice period to be referenced in the end-user's contractual conditions. Each CP will of course need to individually assess its own maximum technical limits on this point. However, it would also be helpful if Ofcom could clarify for what duration a maximum notice period might ideally be.

Ofcom's guidance on Internal processes for customer service agents handling termination requests

12. Paragraph A11.15 of the Consultation mentions Ofcom's expectation for CPs, where the retention conversation occurs, to "have procedures in place to ensure thatc) end-users intentions are recorded and actioned correctly. For example, we expect CPs to: ... ii) give written confirmation to end-users once a termination request is processed." It would be helpful if Ofcom could clarify in this context what Ofcom mean by "written confirmation" with some guidance examples as to what this might include in practice. Three proposes

that this could include various formats, including SMS (with a microsite link, if needed) or email.

We would be happy to discuss the above-mentioned response, should Ofcom find this helpful.

Kind regards,

A handwritten signature in black ink, appearing to read "Victoria Harris". The signature is written in a cursive style with a large initial "V" and "H".

Victoria Harris
Senior Legal Counsel – Consumer Regulatory

OFCOM CONSULTATION COVER SHEET

BASIC DETAILS

Consultation Title: Ofcom Review of the General Conditions of Entitlement – Statement and Consultation of 19 September 2017

To (Ofcom Contact): Selene Rosso and Robert Wells

Name of respondent: Victoria Harris, Senior Legal Counsel – Consumer Regulatory

Representing (self or organisation/s): Three

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments. Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name Victoria Harris, Senior Legal Counsel

Signed (if hard copy)

