

## **Ofcom proposals for revision of GC 18- Number Portability:**

### **New compensation scheme**

### **FCS commentary- April 2011**

#### **Summary**

FCS members have severe concerns with Ofcom's proposals to introduce a compensation scheme for problems with number portability under GC18, when there are continuing problems with the porting process itself particularly for geo numbers. We urge Ofcom to set up an industry working group-ideally under proper governance that includes all parties within the industry, not just the larger players- to consider and develop a common compensation scheme process. But this must take place alongside a review of the fixed number porting process as well, which cannot be delayed ad infinitum.

#### **Introduction**

The FCS represents and supports 370 companies delivering communication products and services over fibre, copper and wireless. 50% of our members deliver lines and IP services to individual customers and businesses and they are subject to the General Conditions. FCS [responded](#) to Ofcom's consultation *Changes to the General Conditions and Universal Service Conditions* highlighting our concerns that a new obligation is being placed on CPs in GC18 to have in place a compensation scheme for delays or faults with porting by 25 May 2011.

#### **Concerns with Ofcom's proposals**

As we noted in our [response](#) the truncated timescale for response to Ofcom's consultation did not allow FCS adequate time to consult with all of our members on the new obligation for a compensation scheme. We have subsequently sought clarification from our members on their views and proposals for such a scheme.

FCS members vary in the services they offer; they deliver:

- WLR
- Mobile
- VoIP

To:

- Individual consumers
- Very small businesses
- SMES
- Large corporate customers

Some companies are vertically integrated businesses having network infrastructure and a direct retail arm.

However, the majority of our members are resellers of wholesale services and they are involved in complex porting situations. As Ofcom is aware there are over 400 companies with number ranges and hundreds of resellers; there is no common industry process that is available to all companies. There are separate mobile and fixed number portability processes dictated by the larger players in the industry developed in unincorporated industry groups. Moreover there are losing provider led processes, which Ofcom acknowledges, dampen competition.

An example of the impact of complex porting cited by a member is that BT IP Exchange cannot port an IP number back to WLR3. Which party is at fault? The VoIP provider, who is the customer of BTIP Exchange, has no muscle to force the port, neither is he obstructing. The WLR3 provider cannot help his customer because the "fault" lies up the distribution chain. However the VoIP provider and the WLR3 provider both have a customer interface and are subject to GC18. Neither is large enough to force a process change within the industry without the support of Ofcom. Ofcom has set up a Switching Working Group but has left number portability processes out of the work stream.

Members asked for clarification from Ofcom of the definition of a **Subscriber** in the context of GC18 as it is unclear whether the proposed compensation scheme applies to individual customers only [since the change arises from a change in the Universal Service Condition] or whether it applies to other customers as well.

## **FCS survey report**

We asked FCS members for their views and proposals on GC18 changes

### *1 Have you already got a number portability compensation scheme in place?*

The majority said no, although some referred to Openreach compensation for WLR and others said they treat each case of complaint individually. Members asked which party in the chain was required to have the scheme. If the gaining provider is obligated and the losing provider is at fault that members say is an unfair situation.

### *2 Are you planning to change your contracts with your supplier so they contribute to customer compensation when things go wrong?*

As recorded above the majority of FCS members are small companies and they cite the difficulty of securing back to back contracts with upstream, larger suppliers to protect themselves against errors.

Other larger CPs refer to the End to End Process manual for fixed number portability as a better route for developing an industry standard.

### *3 Should there be industry guidelines on how compensation schemes are set up?*

All respondents agreed that there should be common guidelines set out by industry but with Ofcom oversight. In the absence of Ofcom guidance now industry will need time to come together to develop a common scheme. It is important that the WHOLE industry is involved, rather than a select few of larger telcos. Currently CPs report that it takes much time and money chasing pending, stuck or cancelled porting orders when things go wrong; "it is a nightmare"

The advantages of a common approach are summarised by the response of one member:

We feel a standardised approach is important because the implementation of a compensation scheme for number porting raises a number of difficult questions. If parties have to individually negotiate the nuances of a compensation scheme between themselves, it would raise the administrative overhead, delays and regulatory burden of imposing this change considerably.

For example, such a compensation scheme would have to take into account:

- **Apportionment of blame** - in complex porting situations, this is not easy to identify [as cited above]. This is particularly the case where convoluted reseller chains are involved
- **Causation / Contributory fault** – should the level of compensation be reduced where the gaining CP or the subscriber directly are at fault as well - and if so, on what scale.
- **Burden of Proof** – what would constitute sufficient ‘proof’ that one party is at fault and on who does the burden fall?
- **When should the compensation be paid**, (in other words – what is “*as soon as is reasonably practicable*”?) Our previous discussions with Ofcom as to the meaning of “reasonably practicable” in the context of GC18 have shown that they are unwilling to provide any practical guidance as to what this means or what a CP is required to do to discharge their obligation.
- **What should happen if payment is not forthcoming?** Should customers follow the CP’s own complaint process or should there be an escalation path built into the compensation scheme itself?

#### *4 What is reasonable compensation?*

Members were uncertain as to what this might mean and made the following comments.

- Occasionally the ADR services might suggest a “goodwill payment”.
- Openreach offer a month’s line rental per day when they are at fault.
- If no loss of service is involved then what is the valid amount?
- Limited to the porting charges imposed by the gaining CPs?

#### *5 What other views do you have on a number portability compensation scheme?*

If there has to be a scheme then it should be standard across the industry, which must take into account the range of circumstances in the market. One example cited the situation when a geo number has been ported more than once. Occasionally when a fault occurs it is the fault of the original geo range holder, who has no incentive to help the either the customer’s gaining or losing provider. In other cases there are 4-5 parties within the distribution chain, one or several of whom may be at fault. The gaining provider cannot fairly be expected to bear the burden of the faults of others.

Members stated that a structured porting process is needed first before a compensation scheme can be devised and encourage Ofcom to accelerate a review of number portability now before such a scheme can be fairly put in place.