

22. SERVICE MIGRATIONS AND HOME-MOVES⁷⁴

Communications Provider Migrations

Scope and Effect

- 22.1 Communications Providers shall comply with paragraphs 22.3 to 22.15, as applicable, in relation to Communications Provider Migrations of:
- (a) fixed-line Telecommunications Services provided within Openreach's Access Network;
 - (b) fixed-line Telecommunications Services provided within KCOM's Access Network.
- 22.2 From the Harmonization Date, Communications Providers shall comply with paragraphs 22.3 to 22.15, as applicable, in relation to Communications Provider Migrations of Broadband Services provided within Openreach's Access Network .

Mis-selling Prohibition

- 22.3 When selling or marketing Communications Services, the Gaining Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
 - (b) engage in aggressive conduct;
 - (c) contact the Customer in an inappropriate manner; or
 - (d) engage in Slamming.

Information at point of sale

- 22.4 The Gaining Provider must take all reasonable steps to ensure that before entering into a contract for the provision of Communications Services, the Customer who is requesting a Communications Provider Migration:
- (a) is authorised to do so;
 - (b) intends to enter into the contract; and
 - (c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:
 - i. the identity of the legal entity the Customer is contracting with and its telephone, website and/or e-mail contact details;

⁷⁴ Consumer Switching: A statement on the GPL NoT+ elements, 20 December 2013.

- ii. a description of the Communications Service requested; the key charges, including minimum contract charges, any early termination charges, if applicable and, from (and including) the Effective Date and if the Customer is a Consumer, the Access Charge; payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost from the point of sale to the completion of the Transfer Period; the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service and any minimum period of contract.⁷⁵

Customer's termination rights

- 22.5 When the Customer enters into a contract for the provision of Communications Services, the Gaining Provider must allow the Customer to terminate the contract from the point of sale to the completion of the Transfer Period without charge or any other form of compensation being required to be given by the Customer to the Gaining Provider.
- 22.6 The Gaining Provider must have procedures in place to enable the Customer to exercise their right to terminate their contract pursuant to Condition 22.5 without unreasonable effort. These procedures must include the ability to contact the Gaining Provider to terminate the contract by any of the following contact methods:
- (a) telephone
 - (b) e-mail;
 - (c) post.

Records Retention

- 22.7 Without prejudice to paragraph 22.8, the Gaining Provider must use reasonable endeavours to create and keep all records regarding the sale of its Communications Services, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

Record of consent

- 22.8 For each contract entered into with a Customer for the provision of Communications Services within Openreach's Access Network, the Gaining Provider must create and keep individually retrievable records of the following, for a period of not less than twelve months:
- (a) a direct record of consent, as provided by the Customer, to:

⁷⁵ Simplifying Non-Geographic Numbers, Statement, 12 December 2013, amended paragraph 22.6(c)(ii) with effect from 26 December 2013.

- i. migrate from the Communications Services supplied by the Losing Provider to the Communications Services supplied by the Gaining Provider; or, as relevant,
 - ii. begin acquiring Communications Services over the Target Line;
- (b) an explanation from the Communications Provider that they are required to create a record of the Customer's consent;
- (c) the name and address of the Customer;
- (d) the time, date and means by which the consent in sub-section (a) above was given;
- (e) where appropriate, the place where the consent in sub-section (a) above was given and the salesperson(s) involved;
- (f) the Target Address; and
- (g) where appropriate, the Calling Line Identification of the Target Line.

22.9 The Gaining Provider shall keep the records required in paragraph 22.8 irrespective of whether the contract for the provision of the Communications Services is cancelled or terminated.

Notification Letters

22.10 When a Customer enters into a contract for the provision of Communications Services, the Gaining Provider must send that Customer a letter. The letter shall set out in clear and intelligible terms:

- (a) the date of the letter;
- (b) that the Customer is transferring their Communications Service;
- (c) all Communications Services that will be transferred;
- (d) where relevant, the Calling Line Identification of all Communications Services that will be transferred;
- (e) a reasonable estimate of the Migration Date;
- (f) the right of the Customer to terminate the contract as set out in Condition 22.5, the means by which the right to terminate can be exercised and the date by which the right to terminate must be exercised; and
- (g) relevant contact details.

22.11 The Losing Provider must, in accordance with the industry agreed process, send the End-User a letter. The letter shall set out in clear, intelligible and neutral terms:

- (a) the date of the letter;
- (b) that the End-User is transferring their Communications Service;
- (c) all Communications Services that will be transferred;
- (d) where relevant, the Calling Line Identification of all Communications Services that will be transferred;
- (e) all Communications Services or other types of services provided by the Losing Provider that the Losing Provider reasonably expects to be directly or indirectly affected by the transfer;
- (f) all Communications Services provided by the Losing Provider that the Losing Provider reasonably expects to remain unaffected by the transfer;
- (g) a reasonable estimate of the Migration Date;
- (h) relevant contact details.

22.12 Where a contract is entered into with a Customer for the provision of Communications Services within Openreach's Access Network, the letter sent by the Losing Provider in accordance with paragraph 22.11 shall, in addition to the information listed therein, set out in clear, intelligible and neutral terms:

- (a) an explanation that the transfer will automatically take effect on the Migration Date and that no contact is required with the Losing Provider to cancel their existing service;
- (b) an explanation that after the transfer, the Customer will receive a final bill including any Early Termination Charge that is due;
- (c) an explanation of the applicable Early Termination Charge as set out in the contract;
- (d) the means by which the Early Termination Charge must be paid;
- (e) the amount of the Early Termination Charge due at the estimated Migration Date;
- (f) where applicable, the impact of the transfer on the prices of all continuing Communications Services; and

22.13 The letters under paragraphs 22.10 to 22.12 must be sent in paper or another Durable Medium. The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.

Simultaneous transfers

- 22.14 Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested a transfer of Broadband and Fixed-line Telecommunications Services to be provided by it over the same line, it shall ensure that, where applicable, an order is submitted to Openreach, where available, for the simultaneous transfer with minimal loss of service of both Communications Services.

Reactive save

- 22.15 Where the Losing Provider communicates with the Customer in order to comply with this Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Provider and/or remain in a contract with the Losing Provider.

Communications Provider Migrations without change of location within Openreach's Access Network

- 22.16 In addition to paragraphs 22.1 to 22.15, as applicable, each Communications Provider shall comply with the provisions of Annex 1 to this Condition in each instance where it is a Gaining Provider which elects to co-ordinate a Communications Provider Migration on behalf of a Customer, involving:
- (a) fixed-line Telecommunications Services provided within Openreach's Access Network; or,
 - (b) fixed-line Telecommunications Services provided within KCOM's Access Network.
- 22.17 From the Harmonisation Date, and in addition to paragraphs 22.1 to 22.15, as applicable, each Communications Provider shall comply with the provisions of Annex 1 to this Condition in each instance where it is a Gaining Provider which elects to co-ordinate a Communications Provider Migration on behalf of a Customer, involving Broadband Services provided within Openreach's Access Network.
- 22.18 Where paragraphs 22.16 and 22.17 apply, each Communications Provider shall ensure that the End-User is not required to make contact with the Losing Provider in order for a Communications Provider Migration to be put into effect.
- 22.19 Where paragraphs 22.16 and 22.17 apply, and without prejudice to the generality of paragraph 22.18, a Losing Provider shall not require, in particular, the granting of consent by it, nor the provision of any information (such as a MAC) by it to the End-User, in order for a Communications Provider Migration to be put into effect.
- 22.20 Paragraphs 22.16 to 22.19 only apply where the Communications Provider Migration does not involve a change of the location where the Communications Services are supplied.

22.21 Prior to the Harmonisation Date, Communications Providers shall comply with the provisions of the MAC Broadband Migrations Process, at the request of an End-User to migrate (or where applicable, connect) a Broadband Service falling within paragraph A3.2 of Annex 3 to this Condition within Openreach's Access Network.

Home-moves within Openreach's Access Network

22.22 In addition to paragraphs 22.1 to 22.15, each Communications Provider shall comply with the provisions of Annex 2 to this Condition, in each instance where it is a Gaining Provider which elects to carry out a Working Line Takeover within Openreach's Access Network pursuant to a Home-Move Request.

Migrations of Broadband Services within KCOM's Access Network

22.23 Communications Providers shall, pursuant to a request by an End-User to migrate (or where applicable, connect) a Broadband Service provided over KCOM's Access Network, comply with the provisions of Annex 3 to this Condition.

Other Migrations of Broadband Services

22.24 Prior to the Harmonisation Date, Communications Providers shall comply with the requirements set out in Condition A3.23 of Annex 3 to this Condition in relation to Migrations of Broadband Services not falling within the scope of paragraph 22.21.

22.25 From the Harmonisation Date, Communications Providers shall in relation to Migrations of Broadband Services not falling within the scope of paragraph 22.17:

- (a) facilitate the migration (or where applicable, connection) of the Broadband Service in a manner that is fair and reasonable;
- (b) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out within a reasonable period; and
- (c) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out with minimal loss of the Broadband Service.

General requirements

Responsibility

22.26 Where Communications Providers engage representatives or agents, they shall procure that such representatives or agents comply with the requirements of this Condition.

Training

- 22.27 Communications Providers must ensure that their staff or any representatives of any agency engaged by them, are appropriately trained to comply with this Condition.

Monitoring

- 22.28 Communications Providers must monitor, including conducting regular audits, their compliance with this Condition, including compliance on their behalf by any representatives or agency engaged by them, and take appropriate steps to prevent the recurrence of any problem(s) identified.

Publication of Information

- 22.29 Communications Providers must:
- (a) publish a copy of this Condition, or a link to a copy of this Condition, published on Ofcom's website, in an easily accessible and reasonably prominent manner on their website or, where there is no such website, by making it available in their registered office during normal office hours for inspection free of charge by members of the general public; and
 - (b) provide a copy of this Condition to the Customer free of charge upon reasonable request.

Definitions

- 22.30 For the purposes of this Condition and Annexes 1, 2 and 3 to this Condition:⁷⁶
- (a) “**Access Charge**” means the rate to be charged by the Gaining Provider to the Customer in respect of the retail and origination of a call to an Unbundled Tariff Number in accordance with General Condition 17;
 - (b) “**Access Network**” means the Electronic Communications Network which runs from a local access node to a network termination point on an End-User's premises and which supports the provision of copper-based access services and fibre-based access services to End-Users;
 - (c) “**Address**” means a UK postal address;
 - (d) “**BT**” means the BT Group plc;
 - (e) “**Broadband Service**” means all DSL (including FTTC) services which are capable of supporting always-on services that provide the End-User with high data transfer speeds, excluding services provided over a Cable Network;
 - (f) “**Cable Network**” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;

⁷⁶ Simplifying Non-Geographic Numbers, Statement, 12 December 2013, inserted definitions of “Access Charge”, “Consumer”, “Effective Date” and “Unbundled Tariff Number”.

- (g) **“Calling Line Identification”** means a facility that enables identification of the number from which a call is being made or to which a return call could be made;
- (h) **“Cancel Other”** means the industry term for a functionality that enables the Losing Provider to cancel, during the Transfer Period, wholesale orders placed by the Gaining Provider;
- (i) **“Communications Provider”** means a person who provides Communications Services;
- (j) **“Communications Provider Migration”** means a process by which an End-User or Customer transfers from Communications Services supplied by one Communications Provider to Communications Services provided by another Communications Provider;
- (k) **“Communications Service”** means a Broadband Service and/or a Fixed-line Telecommunications Service;
- (l) **“Consumer”** has the meaning given to that term in General Condition 17;
- (m) **“CPS” or “Carrier Pre-Selection”** means a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number;
- (n) **“Customer”** means a person who is an End-User of Communications Services provided by a different Communications Provider or a person who is seeking to become an End-User of a Communications Provider;
- (o) **“DSL” or “Digital Subscriber Line”** means a family of technologies generically referred to as DSL, or xDSL, capable of transforming ordinary phone lines (also known as ‘twisted copper pairs’) into high speed digital lines;
- (p) **“Durable Medium”** means any instrument, excluding SMS, which enables the Customer or End-User to store information addressed personally to him in a way accessible for future reference, for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored;
- (q) **“Early Termination Charge”** means the charge payable by the End-User for the termination of the contract before the end of the minimum contract period;
- (r) **“Effective Date”** has the meaning given to that term in General Condition 17;
- (s) **“End-User”** means a person, other than a Communications Provider, who:
 - (i) is party to a contract with the Communications Provider for the provision of Communications Services, and;

(ii) is not acquiring the Communications Services in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);

- (t) **“Failure to Cancel”** means failure by the Gaining Provider to cancel a transfer, after a request from the Customer during the Transfer Period;
- (u) **“Fixed-line Telecommunications Service”** means Narrowband calls and lines services provided to an End-User or Customer that allow for the transfer of speech communications, and other forms of communications such as facsimile and data;
- (v) **“FTTC” or “Fibre-To-The-Cabinet”** means an Access Network consisting of optical fibre extending from the local access node to the street cabinet;
- (w) **“Gaining Provider”** means:
 - i. the Communications Provider to whom the End-User or Customer is transferring; or
 - ii. the Communications Provider to whom the Inbound Customer or End-User makes a Home-Move Request;
- (x) **“Harmonisation Date”** means 20 June 2015.
- (y) **“Home-Move Request”** means a request by an Inbound Customer or End-User to begin acquiring one or several Communications Services over the Target Line;
- (z) **“Inbound Customer or End-User”** means the Customer or End-User who is moving into the Target Address;
- (aa) **“Incumbent Communications Provider”** means the Communications Provider who supplies Communications Services to the Incumbent End-User over the Target Line;
- (bb) **“Incumbent End-User”** means the End-User who is residing in the Target Address;
- (cc) **“KCOM”** means KCOM Group plc;
- (dd) **“Losing Provider”** means the Communications Provider from whom the End-User or Customer is transferring;
- (ee) **“MAC” or “Migration Authorisation Code”** means a unique code used to identify a Broadband Service that is intended to be transferred from one Communications Provider to another Communications Provider;
- (ff) **“MAC Broadband Migrations Process”** means the obligations and processes set out in paragraphs A3.1 to A3.22 of Annex 3 to this Condition;
- (gg) **“Migration”** means one or more of the following processes by which:

- i. the Communications Provider transfers from one Communications Service to another Communications Service;
 - ii. an End-User transfers from one Communications Service to another Communications Service;
 - iii. an End-User or Customer transfers from Communications Services supplied by one Communications Provider to Communications Services supplied by another Communications Provider (**“Communications Provider Migration”**);
 - iv. an End-User or Customer transfers from Communications Services supplied by a Communications Provider at one location to Communications Services supplied by the same Communications Provider at a different location;
- (hh) **“Migration Date”** means the date on which the transfer of the Communications Service or takeover of the Target Line will be effected, at which point the End-User’s Communications Service will commence being provided to the End-User by a different Communications Provider or at a different location;
- (ii) **“MPF” or “Metallic Path Facility”**, means a circuit comprising a pair of twisted metal wires between an End-User’s premises and a main distribution frame that employs electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an Electronic Communications Network;
- (jj) **“Narrowband”** means the services provided over a traditional Public Communications Network, excluding services provided over a Cable Network;
- (kk) **“Openreach”** means the BT group business offering Communications Providers’ products and services that are linked to BT’s nationwide Electronic Communications Network;
- (ll) **“Slamming”** means where a request for a CPS, WLR, SMPF and/or MPF has been made, or a Transfer Order or a Working Line Takeover Order has been placed on Openreach, without the Customer’s express knowledge and/or consent; that is in the following circumstances:
- i. where the Customer has never contacted, or has never been contacted by, the Gaining Provider;
 - ii. where the Customer has contacted, or has been contacted by, the Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of their Communications Services;
 - iii. where the Customer has agreed to purchase a product or service from the Gaining Provider and the Gaining Provider has submitted an order for a different product or service which the Customer has not agreed to purchase; or

- iv. where the Customer has agreed to transfer some or all of their Communications Services to the Gaining Provider having understood as a result of a deliberate attempt by the Gaining Provider to mislead, that they are making an agreement with a different Communications Provider;
- (mm) **“SMPF” or “Shared Metallic Path Facility)** means access to the non-voiceband frequencies of the MPF;
- (nn) **“SMS” or “Short Message Service** means a text message delivered to the handset of an End-User or Customer who acquires Publicly Available Telephone Services, or, if SMS is superseded or withdrawn, an equivalent text communication sent directly to the handset of an End-User or Customer who acquires Publicly Available Telephone Services;
- (oo) **“Target Address”** means the Address where the Target Line is situated;
- (pp) **“Target Line”** means the working WLR, MPF or SMPF line to which a Customer request for a Migration, or a Home-Move Request, refers;
- (qq) **“Transfer Order”** means an order submitted by, or on behalf of, the Gaining Provider to Openreach, or other applicable wholesaler, requesting for the Target Line to be transferred from the Losing Provider to the Gaining Provider;
- (rr) **“Transfer Period”** means a period of 10 Working Days before a Customer’s order can be activated;
- (ss) **“Unbundled Tariff Number”** has the meaning given to that term in General Condition 17;
- (tt) **“WLR” or “Wholesale Line Rental** means a regulated wholesale service sold by BT or KCOM, which is used by the Communications Provider to provide retail customers with exchange lines and in turn, access to other Narrowband telephone services (for example, telephone calls, facsimile and dial-up);
- (uu) **“Working Day”** means the hours between 09.00 – 17.00 on Monday to Friday, with the exception of Bank Holidays;
- (vv) **“Working Line Takeover”** means a process by which a Communications Provider takes over a WLR or MPF line in order to provide Communications Services to the Inbound Customer or End User, where that line is being used by that same or a different Communications Provider to supply Communications Services to the Incumbent End-User; and
- (ww) **“Working Line Takeover Order”** means an order submitted by, or on behalf of, a Gaining Provider to Openreach, requesting for the Working Line Takeover of the Target Line.

Annex 1 to Condition 22

Notification of Transfer

A1.1 Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested to transfer to a Communications Service supplied by it, that Gaining Provider shall, within a reasonable time, ensure a Transfer Order is placed.

Cancel Other

A1.2 The Losing Provider shall only be permitted to use Cancel Other in the following circumstances:

- (a) where Slamming has occurred;
- (b) at the Customer's request, where the Gaining Provider has failed to cancel the Transfer Order after being directed by the Customer to do so ("Failure to Cancel");
- (c) where the telephone line is or will be, ceased during the Transfer Period ("Line Cease");
- (d) for other specified reasons not related to a Customer's request to cancel a transfer, as agreed by the relevant industry forum and approved by Ofcom; and
- (e) in such other circumstances as defined by Ofcom.

A1.3 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Provider shall take reasonable steps to establish that Slamming and/or Failure to Cancel has actually taken place.

A1.4 After using Cancel Other, the Losing Provider shall confirm the cancellation of the order by Durable Medium to the Customer, unless this is not possible or appropriate, including where the Customer is deceased.

A1.5 The Losing Provider shall record its reasons for using Cancel Other in each case, selecting the appropriate reason code from a list corresponding to permitted use of Cancel Other and consistent with paragraphs 22.30 (II)(i) to (iv), as agreed by the industry and approved by Ofcom.

Annex 2 to Condition 22

Working Line Takeovers

A2.1 Subject to paragraphs A2.2 and A2.3, where a Gaining Provider elects to carry out a Working Line Takeover pursuant to a Home-Move Request that Gaining Provider shall ensure a Working Line Takeover Order is placed.

Asset identification

A2.2 Before a Working Line Takeover Order is placed, a Gaining Provider shall take reasonable steps, having regard to industry best practice, to identify the Target Line.

A2.3 A Gaining Provider may only place a Working Line Takeover Order if it has identified an exact match for the Target Line.

Notification Letter

A2.4 After being notified of the Working Line Takeover Order, the Incumbent Communications Provider shall send the Incumbent End-User a letter, in accordance with the industry agreed process, in paper or another Durable Medium, which clearly sets out:

- (a) the date of the letter;
- (b) a notification that an Inbound Customer or End-User wants to take over the Target Line;
- (c) all Communications Services directly affected by the Working Line Takeover;
- (d) where relevant, the Calling Line Identification of all Communications Services that are directly affected;
- (e) the expected Migration Date;
- (f) that the Incumbent End-User should notify the Incumbent Communications Provider if that Incumbent End-User is not moving out of the Target Address or expects to move at a later date than the expected Migration Date;
- (g) the relevant contact details.

A2.5 The letter must be sent by post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.

Annex 3 to Condition 22

MAC Broadband Migrations Process⁷⁷

A3.1 The Communications Provider shall, at the request of:

- (a) an End-User of the Communications Provider; or
- (b) another Communications Provider who acquires a Broadband Service from the Communications Provider,

issue a MAC for a Broadband Service where the Broadband Service is a service to which the MAC Broadband Migrations Process applies.

A3.2 The MAC Broadband Migrations Process applies to the supply by the Communications Provider of all DSL services, with the exception of those DSL services that are required to be migrated by means of a process that relates to the supply of a Fixed Line Telecommunications Service supplied in conjunction with the DSL service.

A3.3 The Communications Provider shall take reasonable steps to validate the identity of an End-User who has contacted the Communications Provider to request a MAC for a Broadband Service, before issuing a MAC to the End-User.

A3.4 The Communications Provider shall provide its End-Users with two or more of the following contact methods:

- (a) Telephone numbers;
- (b) Email address; and
- (c) Postal address,

for the purposes of an End-User contacting the Communications Provider to obtain a MAC,

Issuing MACs to End-Users

A3.5 The Communications Provider shall communicate the MAC to the End-User in writing by letter and/or by email within five working days of receipt of the End-User's request save for A3.6.

A3.6 Where the Communications Provider has issued the MAC to the End-User over the telephone (including details about the MAC validity period and expiry date and the Broadband Service to which the MAC relates), the Communications Provider is not required to communicate the MAC to the End-User in writing.

⁷⁷ Broadband migrations: enabling consumer choice, Statement and notification, 13 December 2006.

A3.7 The written response (email or letter) to the End-User containing the MAC shall clearly indicate:

- (a) The MAC (or MACs);
- (b) The MAC validity period and expiry date; and
- (c) The Broadband Service(s) to which the MAC(s) applies.

A3.8 At any time prior to the expiry of the MAC validity period, the Communications Provider shall remind the End-User of the MAC if requested by the End-User.

A3.9 Where a MAC has already been requested and provided, the Communications Provider shall not impose any limits on the number of additional times an End-User may request the provision of a new MAC in relation to the Broadband Service, following the expiry of any other MACs.

A3.10 The Communications Provider shall issue a MAC to the End-User free of charge.

Refusal to issue a MAC

A3.11 The Communications Provider shall only refuse to issue a MAC to their End-User if:

- (a) the Communications Provider has, by taking reasonable steps, been unable to validate the identity of the person requesting the MAC as the End-User;
- (b) the Broadband Service contract has already been terminated;
- (c) a MAC which is still within its MAC validity period has already been requested and issued by the Communications Provider in relation to the Broadband Service;
- (d) the Communications Provider has already submitted a Cease Request for the Broadband Service; and
- (e) the Communications Provider is unable to obtain a MAC from a Broadband Network Communications Provider.

A3.12 Where the Communications Provider is unable to, or refuses to, provide a MAC to the End-User, the Communications Provider shall provide the End-User with a clear explanation of why the MAC has not been provided.

Cease requests and notice to terminate a Broadband Service

A3.13 The Communications Provider shall not issue a Cease Request for the Broadband Service unless the Communications Provider has established that the End-User does not wish to transfer the Broadband Service to another Communications Provider.

A3.14 The Communications Provider shall, when issuing a MAC, confirm to the End-User that any previous termination by the End-User has been revoked, and shall ensure that any current or pending termination actions are cancelled.

MAC validity and migration dates

A3.15 The Communications Provider shall not terminate the Broadband Service on account of the MAC validity period expiring unless the Communications Provider has received notification that the End-User's Broadband Service has been migrated to another Communications Provider.

A3.16 Where a Customer provides a MAC within its validity period, together with a request to effect a transfer of the Broadband Service to the Communications Provider, the Communications Provider shall proceed with the migration and inform the Customer of the Default Migration Date.

A3.17 The Communications Provider shall, at the request of a Customer up until one Working Day prior to the Default Migration Date:

- (a) accept a request to extend the Default Migration Date to a later Migration Date ("Requested Migration Date"), provided the MAC validity period has not expired within five days of the Requested Migration Date; or
- (b) cancel the Default Migration Date or Requested Migration Date.

Erroneous MAC migrations

A3.18 The Communications Provider shall provide a recovery process so that in the event of an erroneous migration effected by way of a MAC, the End-User's Broadband Service can be restored to the original Communications Provider with minimum disruption.

Information about the MAC Broadband Migration Process

A3.19 The Communications Provider shall publicise the availability of the MAC Broadband Migrations Process to End-Users, including providing the following information:

- (a) an explanation of how the MAC is used to facilitate the transfer of a Broadband Service to another Communications Provider;
- (b) details of how an End-User may request a MAC from the Communications Provider, such as telephone, email and postal contact details;
- (c) reasons why the Communications Provider may not be able to issue a MAC;
- (d) details of the complaints handling process for complaints about a failure by the Communications Provider to issue a MAC;

- (e) alternative migration options for an End-User if the Communications Provider cannot issue a MAC for the Broadband Service;
- (f) the default Migration Date that applies when a MAC is provided to the Communications Provider by a Customer for the purposes of transferring the Broadband Service to the Communications Provider; and
- (g) any options available to the End-User to request a Migration Date later than the Default Migration Date.

A3.20 Publication of the information set out in A3.19 above shall be effected by publishing the information on the Communications Provider's website, and by sending a copy of the information if so requested by an End-User.

Complaints about the MAC Broadband Migrations Process

A3.21 The Communications Provider shall handle complaints from End-Users in relation to a decision to refuse, or a failure by, the Communications Provider to issue a MAC, as part of its existing complaints handling processes.

Broadband Network Services

A3.22 Where the Communications Provider provides Broadband Network Services, the Communications Provider shall also ensure that it:

- (a) effects the transfer of a Broadband Service on the Default Migration Date, unless a later Migration Date has been requested by the Communications Provider for the transfer to be effected;
- (b) notifies the Communications Provider who formerly provided the Broadband Service of the date that the transfer has been effected to another Communications Provider; and
- (c) has a process that enables an erroneous service migration effected using a MAC to be reversed, so that the Broadband Service can be restored to the original Communications Provider who requested the MAC.

Broadband Migrations

A3.23 All Communications Providers pursuant to a request by an End-User, a Customer or another Communications Provider to migrate (or where applicable, connect) a Broadband Service shall, where the provisions of the MAC Broadband Migrations Process do not apply to the Communications Provider in relation to this Broadband Service:

- (a) facilitate the migration (or where applicable, connection) of the Broadband Service in a manner that is fair and reasonable;

- (b) ensure the migration (or where applicable, connection) of the Broadband Service is carried out within a reasonable period;
- (c) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out with minimal loss of the Broadband Service
- (d) assist with, and facilitate requests for, the migration (or where applicable, connection) of a Broadband Service provided by another Communications Provider, in instances where the other Communications Provider has failed to, or refused to, comply with the MAC Broadband Migrations Process, in a manner that is fair and reasonable.

Definitions

A3.24 For the purposes of this Annex:

- (a) **“Broadband Network Communications Provider”** means a Communications Provider that provides Broadband Network Services;
- (b) **“Broadband Network Services”** means services that:
 - i. generate a MAC in relation to a Broadband Service provided by the Communications Provider to an End-User or to another Communications Provider;
 - ii. effect a transfer of a Broadband Service from one Communications Provider to another Communications Provider using the MAC issued in relation to that Broadband Service; and
 - iii. effect the cease of a Broadband Service from the Communications Provider at the request of the Communications Provider;
- (c) **“Cease Request”** means a direction given by a Communications Provider to a Broadband Network Communications Provider in relation to a Broadband Service, with the intention being to terminate the provision of that Broadband Service;
- (d) **“Default Migration Date”** means five Working Days after the MAC is provided by a Communications Provider to a Broadband Network Communications Provider;
- (e) **MAC validity period”** means the period extending up to 17.00 on the thirtieth calendar day from issue (either verbally or in writing, whatever comes first) by the Communications Provider.

23. SALES AND MARKETING OF MOBILE TELEPHONY SERVICES⁷⁸

Scope

- 23.1 A Mobile Service Provider must comply with this General Condition with respect to a Customer of its Mobile Telephony Services, except that clauses 23.4(b)(iv) and 23.5 – 23.10 do not apply to Prepaid Mobile Telephony Services and SIM Only Contracts.

Mis-selling prohibition

- 23.2 When selling or marketing Mobile Telephony Services, the Mobile Service Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
 - (b) engage in aggressive conduct; or
 - (c) contact the Customer in an inappropriate manner.

Publication of relevant obligations

- 23.3 The Mobile Service Provider must:
- (a) publish a comprehensive summary of its obligations under this General Condition 23 in an easily accessible and reasonably prominent manner on its website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and
 - (b) provide a copy of this General Condition to a Customer free of charge upon reasonable request.

Obligation with regards to Mobile Service Retailers

- 23.4 Where the Mobile Service Provider contracts with or appoints a Mobile Service Retailer directly in order to sell or market the Mobile Service Provider's Mobile Telephony Services it must ensure, and where a third party acting on behalf of the Mobile Service Provider contracts with or appoints a Mobile Service Retailer in order to sell or market the Mobile Service Provider's Mobile Telephony Services the Mobile Service Provider must use reasonable endeavours to ensure, that:
- (a) the Mobile Service Retailer is aware of this General Condition;
 - (b) provisions are in place which require the Mobile Service Retailer:
 - (i) not to engage in dishonest, misleading or deceptive conduct;
 - (ii) not to engage in aggressive conduct;

⁷⁸ Protecting consumers from mis-selling of mobile telecommunications services, Statement and notification, 16 March 2009.

- (iii) not to contact a Customer in an inappropriate manner; and
 - (iv) to create and keep records about the sale of the Mobile Service Provider's Mobile Telephony Services for a period of not less than six months and, where applicable, about a related sales incentive as referred to in General Condition 23.10, for a period of not less than ninety days after the date by which this sales incentive has to be fully redeemed, but not less than six months.
- (c) the Mobile Service Provider monitors the Mobile Service Retailer's compliance with the provisions referred to in General Condition 23.4 (b); and
 - (d) non-compliance by the Mobile Service Retailer with the provisions referred to in General Condition 23.4 (b) is appropriately sanctioned by the Mobile Service Provider.

Mobile Service – Information at Point of Sale

23.5 The Mobile Service Provider must use reasonable endeavours to ensure that before entering into or amending a contract for a Mobile Telephony Service the customer:

- (a) is authorised to do so;
- (b) intends to enter into this contract; and
- (c) is provided with the information set out below in a clear, comprehensible and accurate manner in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into or amends the contract during a sales call, by telephone:
 - (i) the identity of the legal entity the Customer is contracting with; its address and telephone, fax and/or e-mail contact details;
 - (ii) a description of the Mobile Telephony Service; the key charges (including minimum contract charges, any early termination charges, if applicable and, from (and including) the Effective Date and if the Customer is a Consumer, the Access Charge); payment terms; the existence of any termination right, including termination procedures; the likely date the Mobile Telephony Service will be provided, in case the provision of the Mobile Telephony Service is not immediate; and any minimum period of contract.⁷⁹

Where the Customer enters into a contract during a sales call, in addition to the oral provision of this information the Mobile Service Provider must use reasonable endeavours to ensure that this information is sent to the Customer in good time following the call in paper or another Durable Medium.

⁷⁹ Simplifying Non-Geographic Numbers, Statement, 12 December 2013, amended paragraph 23.5(c)(ii) with effect from 26 December 2013.

Records retention

- 23.6 Where the Mobile Service Provider acts as a Mobile Service Retailer, it must create and keep records about the sale of its Mobile Telephony Services for a period of not less than six months and, where applicable, about a related sales incentive as referred to in General Condition 23.10, for a period of not less than ninety days after the date by which this sales incentive has to be fully redeemed, but not less than six months. Such records must include the date of the sale, the means through which the contract was entered into and the place where the contract was entered into, where applicable.

Training

- 23.7 The Mobile Service Provider must use reasonable endeavours to ensure that processes are in place which assure that a Mobile Service Retailer is appropriately trained to comply with this General Condition.

Due diligence

- 23.8 Where the Mobile Service Provider contracts with or appoints a Mobile Service Retailer directly in order to sell or market the Mobile Service Provider's Mobile Telephony Services it must ensure that, and where a third party acting on behalf of the Mobile Service Provider contracts with or appoints a Mobile Service Retailer in order to sell or market the Mobile Service Provider's Mobile Telephony Services the Mobile Service Provider must use reasonable endeavours to ensure that, it, or a person acting on its behalf, carries out and retains a record of the following minimum procedures with regards to any Mobile Service Retailer, contracted or appointed to sell or market the Mobile Service Provider's Mobile Telephony Services:
- (a) a credit reference search and check that the Mobile Service Retailer does not have a history of failing to meet its financial undertakings to creditors;
 - (b) a check that any director of a Mobile Service Retailer concerned has not been a director of a third party that has filed for bankruptcy or gone into administration; and
 - (c) appropriate checks to ensure that any due diligence information referred to in this General Condition 23.8 remains up-to-date and relevant.

These procedures must be carried out before contracting with or appointing the Mobile Service Retailer.

Use of information for the purpose of monitoring compliance

- 23.9 Where a Mobile Service Provider acquires information from a Mobile Service Retailer for the purpose of monitoring compliance with this General Condition, the Mobile Service Provider shall use that information solely for the purpose for which it was supplied and keep the information confidential. For the avoidance of doubt, the Mobile Service Provider shall not pass the information on to any other party (including its subsidiaries or partners) for whom such information could provide a competitive advantage.

Sales Incentives – Information at Point of Sale

- 23.10 The Mobile Service Provider must use reasonable endeavours to ensure that where a Mobile Service Retailer offers to a Customer a sales incentive, from which the Customer does not benefit immediately and which the Customer is entitled to receive after entering into the contract for the Mobile Telephony Service, the terms and conditions of such an offer are not unduly restrictive and that a Customer is provided with the following information in a clear, comprehensible and accurate manner in paper or another Durable Medium, or, where the sales incentive offer is made during a sales call, by telephone:
- (a) the identity of the legal entity which makes the sales incentive offer and undertakes to meet the obligation(s) tied to this offer; its address; and telephone, fax and/or e-mail contact details;
 - (b) a description of the sales incentive itself; and
 - (c) the terms and conditions of the sales incentive, including a detailed and clear explanation as to the process the Customer has to follow to obtain the sales incentive.

Where the sales incentive offer is made during a sales call, in addition to the oral provision of this information, the Mobile Service Provider must use reasonable endeavours to ensure that this information is sent to the Customer in good time following the call in paper or another Durable Medium.

Definitions

23.11 For the purpose of this Condition:⁸⁰

- (a) “Access Charge” means the rate to be charged by the Mobile Service Provider to the Customer in respect of the retail and origination of a call to an Unbundled Tariff Number in accordance with General Condition 17;
- (b) “Consumer” has the meaning given to that term in General Condition 17;
- (c) “Customer” means Domestic and Small Business Customer as defined in section 52 (6) of the Act;
- (d) “Durable Medium” means a medium on which a Customer can store and retrieve unaltered information for a period of time adequate for the purposes of the information;
- (e) “Effective Date” has the meaning given to that term in General Condition 17;
- (f) “Mobile Service” means a service consisting in the conveyance of signals, by means of a mobile Public Electronic Communications

⁸⁰ Simplifying Non-Geographic Numbers, Statement, 12 December 2013, inserted definitions of “Access Charge”, “Consumer”, “Effective Date” and “Unbundled Tariff Number” with effect from 26 December 2013.

Network, through the agency of Wireless Telegraphy to or from Apparatus designed or adapted to be capable of being used while in motion;

- (g) “Mobile Telephony Service” means a Publicly Available Telephone Service that is a Mobile Service (and includes any SMS service sold as part of the package);
- (h) “Prepaid Mobile Telephony Service” means a Mobile Telephony Service for which the Customer pays charges in advance of the service being provided;
- (i) “Mobile Service Provider” means the provider of a Mobile Telephony Service;
- (j) “Mobile Service Retailer” means any person who sells or markets a Mobile Telephony Service directly to a Domestic or Small Business Customer;
- (k) “SIM Only Contract” means a contract for a Mobile Telephony Service where the Customer only obtains a Subscriber Identity Module (‘SIM’) card from the Mobile Service Provider and the notice period for cancelling this contract does not exceed one calendar month; and
- (l) “Unbundled Tariff Number” has the meaning given to that term in General Condition 17.