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Dear Joanna

Automatic Compensation

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

We welcome this opportunity to respond to Ofcom's latest consultation on automatic compensation which will impact directly on Nine and its partner resellers.

We agree that current UK customer experience with regard to fault repair and provisioning - and, therefore, associated CP service performance in these areas - needs to be improved. However, our strong view is that the main underlying problem lies at wholesale level. As Ofcom itself has indicated in this consultation document, most CPs ultimately rely on Openreach to repair faults and to provision new lines on their behalf.

For this reason, we welcome Ofcom's recognition in its parallel consultation on Quality of Service for WLR, MPF and GEA of the importance of improving Openreach service performance and we welcome the remedies proposed by Ofcom to address the current shortcomings. The envisaged improvements in Openreach performance will help to some extent to reduce the necessity for CPs to pay compensation to their customers. However, this will not in itself protect customer facing CPs from liability for incidents which are not their fault.

We accept that the most practical option is probably that compensation should be paid to end users by the customer facing CP. However, this approach will inevitably expose those CPs to making payments for poor performance over which they have no control. We must, therefore, stress the critical importance of negotiating new SLAs and SLGs for all the Openreach products in the scope of this regulation (WLR, MPF and LLU) which mirror the obligations on customer facing CPs (in order to cover the increased liabilities and risks associated with this approach). A successful outcome to these negotiations is probably the most important aspect of the proposed changes from a CP perspective. Failure to achieve an appropriate agreement will cause financial difficulties for many CPs.

We do not agree with Ofcom's proposals to mandate payment of compensation in MBORC and other Force Majeure incidents - unless Openreach is also obliged to pay equivalent compensation in these circumstances. We are also concerned about Ofcom's proposal not to provide for a cap CP compensation payments. We note the intention to remove the current 60 day cap on Openreach SLGs as part of the Wholesale Local Access market review. However, if for whatever reason the cap is not removed by the end of the implementation period for automatic compensation, a limit must also be placed on customer facing CPs' liability.

The timeliness and accuracy of SLG payments made by Openreach is also very important and should be part of the industry negotiations in this area.

It is also important that the scope of the regulation, in terms of the services to which it applies i.e. "Relevant Voice Services or Relevant Broadband Services intended primarily for use by Consumers" is clearly understood. In our view the type of service described above is not defined by the Openreach product itself (e.g. a Basic WLR line) but rather by the service wrap and the terms and conditions offered by the customer facing CP, which for business services will provide for appropriate (or bespoke) service levels and associated compensation arrangements.

For the same reason it is important that the service levels offered by Openreach align unambiguously (in terms of both trigger point and value) with the regulatory obligations on CPs to pay compensation.

Finally, we would welcome greater clarity from Ofcom with regard to the requirements on reporting of compensation paid by CPs.

Our responses to the specific consultation questions are as follows:

Question 1: *Do you agree with our framework for assessment?*

Broadly, yes. Quality of service around provision and repair is obviously important for both residential and business customers. However, we believe, in line with Ofcom's own view, that compensation for business customers is best addressed via contract terms and conditions rather than regulation. The focus of the new regulation should, therefore, be on consumers.

Question 2: *Do you agree that in landline and broadband markets consumers are insufficiently protected from poor quality of service and that intervention is required?*

The level of failure to meet service commitments which has been identified by Ofcom's research is a legitimate cause for concern. However, we believe the the fundamental problem lies with Openreach as the monopoly wholesaler.

Question 3: *Do you agree that it is appropriate for automatic compensation to be introduced for landline and broadband consumers?*

In principle yes, but we believe that the regulatory imposition of automatic compensation should be restricted to consumers and not businesses.

Question 4: *Do you agree with our proposal to provide automatic compensation when a loss of service takes more than two full working days to be restored?*

Subject to the caveat above, we believe that two days is an appropriate trigger. It is important, however, that the wording of the new General Condition is unambiguously in line with Openreach Service Level 1 (and we believe this to be the case) i.e. faults reported on Tuesday, must be fixed by midnight on Thursday.

Question 5: *Do you agree with our proposal to provide automatic compensation when there are delays in provisioning a landline or fixed broadband service?*

Subject to the same caveat, we agree that it is appropriate to pay compensation in cases of failure to activate service by midnight on the date agreed with the customer.

Question 6: *Do you agree with our proposal to provide automatic compensation when missed appointments take place with less than 24 hours of prior notice?*

We believe that this is an appropriate area for compensation.

Question 7: *Do you agree with our proposals on transparency?*

The proposals in this area are potentially onerous for CPs and may encourage unrealistic levels of expectation by customers (i.e. if the fault turns out to have been caused by the customer or is otherwise outside the scope of the General Condition). It is debatable whether these prompts are really necessary, given that payment of compensation will be made without any need for the customer to claim.

Question 8: *Do you agree with our proposals on the method and timing of payment?*

Yes, in principle this seems practical and proportionate. However, in order to avoid cash flow problems for CPs, agreement on the timing of payment of SLGs by Openreach must reflect the timescales mandated for retail CPs.

Question 9: *Do you agree with our proposal not to have a payment cap (and our assessment of the reasons for and against it)? - If you consider there should be a payment cap, what should it be and why?*

This would only be acceptable if the current caps on Openreach's SLG payments are removed.

Question 10: *Do you agree with our proposed exceptions?*

Broadly, yes. Clearly compensation cannot be payable where a delay or the original fault was caused by the customer.

Question 11: *Do you agree we should not allow for a blanket exception for force majeure-type events?*

This is a very problematic area. We note that responses to from consumer representative organisations to Ofcom's call for inputs indicate that they do not expect compensation to be paid in situations where the delay is genuinely beyond the CPs control (e.g. Force Majeure).

The issue is potentially exacerbated by the fact that where MBORC is declared by Openreach, there is likely to be a high concentration of faults in a specific geographic area, which could disproportionately affect CPs who have a local customer base.

This approach would only be acceptable if Openreach is not allowed to waive SLG payments on the basis of MBORC (or other Force Majeure issues).

Question 12: *Do you agree with our proposal on complaints and disputes?*

We agree that complaints and disputes about customers' eligibility for compensation should be handled via existing complaints processes and ADR.

Question 13: *Do you agree with the impacts we describe? Please wherever possible give your reasoning and provide evidence for your views.*

We agree that increases in costs of developing and operating new systems and an increased level in the payment of compensation will lead to higher costs for CPs and this may lead to increases in prices.

Question 14: *Do you agree with our provisional conclusions on residential landline and broadband services?*

We understand Ofcom's reasoning in arriving at the decision to mandate payment of automatic compensation. We also welcome the flexibility indicated by Ofcom, specifically its readiness to accept an improved voluntary code in lieu of regulation if industry proposals address Ofcom's initial concerns about not fully meeting its policy objectives.

Question 15: *Do you agree with our proposal of 12 months to implement automatic compensation?*

The proposed implementation period seems acceptable in principle. However, this will only be the case if the negotiations with Openreach (and any disputes arising) are concluded well within this period - we suggest 6 months from publication of the statement. Where this is not the case, we would expect Ofcom to extend the implementation period.

Question 16: *Do you agree with our proposal to monitor the impact of automatic compensation?*

We believe that requiring all CPs to provide this information would not be proportionate. We would welcome clarification from Ofcom on which CPs will fall within the scope of the proposed information provision requirements and the basis and frequency on which the information would be sought.

Question 17: *Do you agree with our proposals for greater transparency regarding service quality and compensation for products targeted at SMEs?*

Yes. We believe that this is an appropriate approach for business customers. This will allow CPs to set appropriate levels of compensation in line with customer requirements and their willingness to pay for enhanced levels of service.

Question 18: *Do you agree with our provisional conclusions not to introduce automatic compensation for delayed repair of mobile loss of service?*

We agree.

Question 19: *Do you have any comments on the draft condition set out in Annex 14 to this document?*

The wording of the condition is critical. The description of the period of delay beyond which compensation becomes payable must be completely unambiguous. Furthermore, this trigger point must align precisely with the point at which Openreach SLGs become payable.

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