

Abridged Version

Best Practice Guide for resolving porting “ownership” disputes

Customers are allocated a telephone number by their Communications Provider (“CP”), whom in turn are allocated numbers by Ofcom. Whilst there isn’t a formal legal concept of “ownership” of a number, regulation allows the user of a number to change providers and take their existing number with them.

Unfortunately the current validation process allows numbers to be erroneously ported as it is based on postcode validation.

This guide aims to help the Losing and Gaining CPs experienced representatives review the evidence and hopefully reach a fair conclusion between them in determining who has the “right” to a number in the case of a dispute, e.g. divorcing couple, estranged business partners etc.

Evidence required – for a person

- A copy of a recent telephone bill – showing their name and telephone number to which they claim to own
- A signed statement expressing their desired course of action
- Proof of identity - Name & Address e.g. Passport/Driving License

Extra evidence required – for a business

- A copy of a recent telephone bill – showing the exact company name and telephone number to which they claim to own
- A signed statement from the Director of the company expressing the desired course of action
- Proof of identity e.g. Council Tax Bill

Both the CPs should be able to confirm that the statement is written by an authorised person.

Evidence required – for another type of trading

- A copy of a recent telephone bill – showing the exact entity name and telephone number to which they claim to own
- A signed statement from the Director of the legal entity expressing the desired course of action from company email address /headed stationary
- Proof of identity e.g. Council Tax Bill

Both the CPs should be able to confirm that the statement is written by an authorised person.

Evidence review

- More evidence can be provided (where available) to support the claim. For example you may wish to review the Emergency Services Database (999) records. These records can be informative and show which CP is currently listed as the owner of the record, how long that listing has existed, whether any attempts have been made to change the record in the past, etc.

- Experienced representatives from both CPs should review the evidence and attempt to reach a fair conclusion.
- In cases when the evidence points to a clear outcome, then the two CPs should resolve the dispute in as timely a manner as possible. This decision should take into account the guidelines specified in General Condition 18 and General Condition 4.
- If there is no obvious clear decision, then due to the Losing CP (“LCP”) already having a relationship with the customer, then the benefit of doubt must be given to them.
- The LCP can restore service, until a legally binding decision (by a relevant and appropriate regulatory or judicial body) is made over ownership. The disputing customers should be obtaining their own independent legal advice at this point. Proceedings would need to progress to County Court.
- If there are allegations of an unlawful transfer then the decision may require legal intervention, outside of this process.

Full Version

Best Practice Document for resolving a dispute between two parties in relation to legitimate “ownership” of a telephone number

This paper was prepared for the Office of the Telecommunications Adjudicator’s Number Portability Process and Commercial Group by Peter Farmer (Commercial & Regulatory Manager at Gamma Telecom Holdings Limited). This paper has been prepared by the author (who hereby asserts their moral rights) on an ‘as is’ basis and is not intended to constitute advice on regulatory or any other matters, whether general or specific, and accordingly the author disclaims all liability, however arising, from any reliance placed on this guide.

Considered Best Practice

A telephone number is allocated from the National Telephone Numbering Plan by a Communications Provider (“CP”) to a Subscriber (defined equally as bodies natural and corporate), only that entity has the right to Number Portability under General Condition of Entitlement (“GC”) 18.

Where two such entities dispute whom had such a right, e.g. business partners that have a disagreement, married persons divorcing *et cetera*, the following outlines the evidence that CPs agreeing to use this Best Practice Document should use to determine whether the alleged Subscriber to the Recipient CP’s (“RCP’s” and sometimes referred to as the “Gaining CP” or “GCP”) or the Donor CP’s (“DCP’s” sometimes referred to as the “Losing CP” or “LCP”) Public Electronic Communications Service (“PECS”) is lawfully entitled to invoke GC18 or not. For the avoidance of doubt, the terms RCP and DCP apply throughout their respective value chains, e.g. where the PECS is a reseller or dealer of a Public Electronic Communications Network and the RCP and DCP may be the same entity.

Where the lawful Subscriber is a natural person, they should be able to produce;

A copy of a recent telephone bill from a *bona fide* (as verifiable by the Alternative Dispute Resolution (“ADR”) list on the Office of Communications (“Ofcom”) website) showing their name and the telephone number to which they claim to be the Subscriber;

A signed statement asserting a desired course of action

Proof of their identity, which would be sufficient under Section 8 of Her Majesty’s Revenue and Customs’ “*anti-money laundering guidance for money service businesses*”¹.

Where the Subscriber is an incorporated company, they should be able to produce;

A copy of a recent telephone bill from a *bona fide* PECS (as verifiable by the ADR list on the Ofcom website) showing the exact legal entity name and telephone number to which they claim to be the Subscriber;

A signed statement from a Director of the legal entity in question asserting a course of action ;

The Director should prove their identity with items which would be sufficient under Section 8 of Her Majesty’s Revenue and Customs’ “*anti-money laundering guidance for money service businesses*” .

The DCP and RCP can verify themselves that the author of the statement is a Director by referencing public Companies House information.

Where the Subscriber is another form of trading entity;

A copy of a recent telephone bill from a *bona fide* PECS (as verifiable by the ADR list on the Ofcom website) showing the exact legal entity name and telephone number to which they claim to be the Subscriber;

A Statement from a duly authorised representative of the entity asserting a course of action;

The “duly authorised person” should prove their identity with items which would be sufficient under Section 8 of Her Majesty’s Revenue and Customs’ “*anti-money laundering guidance for money service businesses*” .

¹ http://www.hmrc.gov.uk/mlr/mlr_msb.pdf

There is no statutory register of duly authorised persons for such entities, however, standard credit reports will list known individuals which the RCP and DCP can use to determine the probability of the individual making the request being duly authorised.

In all cases, the alleged Subscriber may produce more evidence to support their claim, however, if there is allegations of an unlawful transfer of an account or service between entities prior to the disputed claim to a number, this is highly unlikely to be able to be adjudicated by the DCP/RCP without judicial intervention.

Duly qualified and authorised representatives from the DCP and RCP should discuss the evidence and attempt to reach a conclusion expediently and in good faith.

If it is tolerably clear from the above that either the DCP or the RCP customer is the Subscriber to the telephone number(s) in question, then both shall resolve the dispute timely upon that fact as that Subscriber is either exercising their lawful right under GC18 to either remain with the DCP or switch to the RCP and that right cannot be interfered with.

If there is no tolerably clear result from the above, then, given that the alleged Subscriber to the DCP's PECS relationship has been with the longest standing by definition, then, as they are more qualified to make such a judgement, the benefit of doubt should be given to the DCP; i.e. they can, if so minded, restore service unilaterally, until such time as an independent and relevant body can make a lawful determination as to who the legitimate Subscriber may be. The disputing customers of the CPs should be referred to their own independent legal counsel at this point, though they may wish to represent themselves, to commence civil proceedings at the County Court².

Guide for Porting Staff

Only the actual "bill payer" of a service has the legal right to number portability. Industry standard validation, especially for geographic numbers, allows individuals (and companies) to "steal" numbers by virtue of knowing the postcode alone. Where such situations arise, there is a standard that the Gaining and Losing Providers can resort to decide whether or not the customer of the Gaining Provider had the right in law to request the port.

The legitimate Subscriber (i.e. the customer which has "title" to the number) should be able to prove it through;

² The Civil Procedure Rules 1999 outline the process for commencing such an action.

1. Producing a recent telephone bill from a legitimate communications provider clearly showing their name and the disputed telephone number(s)
2. Producing evidence of their identity; name and address (which should reconcile with point 1). Where the entity is a company, then it is evidence of their identity and whether or not they are a Director is a matter of public record. The burden of proof is satisfied with a copy of a valid passport and driving licence, or other reasonable proof such as a council tax bill or bank statement.

Where the entity is not a company or a natural person, it is more complex as there is no public record of “officers” of a business, but in any event, each Communications Provider should have a nominated contact for such escalations that can talk it through with their opposite number to reach a conclusion. Where, using the above, a conclusion cannot be reached, the recommendation is to give the benefit of the doubt to the Losing Communications Provider, as by definition of their longer standing relationship, they are better qualified to make such a judgement; thereafter, the disputing customers should be referred to the County Court for resolution.