



COMISIÓN DEL MERCADO DE LAS TELECOMUNICACIONES

IGNACIO REDONDO ANDREU, Board Secretary of the Comisión del Mercado de las Telecomunicaciones (Telecommunications Market Commission, CMT), by means of those capacities bestowed on him by article 40 of that Commission's Regulations, approved by Spanish Royal Decree 1994/1996, of 6 September,

HEREBY CERTIFIES:

That during Board Meeting No. 13/09 of the Telecommunications Market Commission held on 16 April 2009, it was resolved to adopt the following agreement.

AGREEMENT

By this we hereby approve the following:

CIRCULAR 1/2009 FROM THE TELECOMMUNICATIONS MARKET COMMISSION WHICH INTRODUCES VERBAL CONSENT VERIFIED BY A THIRD PARTY WHEN CONTRACTING REGULATED WHOLESALE FIXED-LINE COMMUNICATION SERVICES AND REQUESTING NUMBER PORTABILITY.



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Circular 1/2009 from the Telecommunications Market Commission which introduces verbal consent verified by a third party when contracting regulated wholesale fixed-line communication services and requesting number portability.

- (1) General Telecommunications Law 32/2003 of 3 November (LGTel) states in article 48.3 that one function of the Telecommunications Market Commission within its scope and purpose, is to adopt the necessary measures for ensuring a varied service offer and safeguarding operators' access to electronic communications networks, the interconnection of networks, the operation of the network under open network conditions, and service providers' pricing and marketing policies. Likewise, articles 3 and 11.4 of the same Law state that the aim of the Telecommunications Market Commission is to foster effective competition in telecommunications markets, particularly as regards operating networks and providing electronic communications services.

For this purpose, and regarding the indicated topics, the Commission may dictate instructions directed to operators acting in the electronic communications sector, which will be binding once they are announced, or, where applicable, published in the Spanish Official Journal.

- (2) In the course of its duties, on 7 June 2004 the Telecommunications Market Commission approved Circular 1/2004 , which enabled a new mechanism for obtaining the subscriber's consent for processing operator pre-selection, with the aim of providing and strengthening that mechanism in order to foster competition in the fixed-line telephone market and provide users with an essential tool granting them access to the quality, price and new service advantages that exist when multiple operators are present on the market.

The 1/2004 Circular made verbal contracting, which is common when contracting other telecommunication services, applicable to the pre-selection process, and responded to the repeated requests by alternative operators to make preselection mechanisms easier and promote changing operators.

- (3) At present, use of this option is a practice that is common and widely recognised by major operators. Use of this practice has improved end-user access to different offers provided by various fixed-line telephone providers.
- (4) Mindful of the evolution of verbal consent with third-party verification, and the favourable response which it has been met for processing pre-selection applications, this Commission feels that applying the same to applications for fixed-line and mobile telephone number portability, and to wholesale services regulated by the Reference Unbundling Offer (RUO) and Bit-stream Access Broadband Offer frameworks (OIBA), could be instrumental in granting a greater flexibility for the operations that a provider must carry out in order to process an application for this type of service.



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- (5) Regarding number portability, article 18 of the LGTel establishes the right of the user to keep his or her phone number and foresees the subsequent technical and administrative steps that are necessary for it to be carried out.

On this subject, Spanish Royal Decree 2296/2004 of 10 December, which ratified the Regulation on electronic communications markets, networks access and numbering (Market Regulation), states that the Telecommunications Market Commission, which is the sector's authority that understands market conditions, must establish and publish the appropriate technical and administrative solutions.

Likewise, section 2 of article 44 of the Regulation cited above, which was modified by Spanish Royal Decree 329/2009, states that the procedure for requesting to keep a number can be carried out by any means that provides proof of the same.

At present, portability is one of the most important measures facilitating the entry of new providers, and use of portability is largely responsible for the success that these providers may have in the market. For these reasons, and with a view to continue promoting portability, this Commission feels that use of verbal consent with third-party verification is beneficial to both the market and customers.

- (6) Regarding regulated wholesale services, article 48.2 of the LGTel states that the purpose of the Telecommunications Market Commission will be establishing and overseeing the specific obligations with which providers in the telecommunications markets must comply.

In order to comply with the said objective, article 48.3 of the LGTel assigns the Commission the function of defining which are the pertinent markets for establishing specific obligations, according to that stated in chapter II of title II and in article 13 of the abovementioned law.

In turn, article 13 of the LGTel determines what obligations may be imposed on those providers identified as having significant market power. These may include obligations relating to transparency, interconnection and access, according to which providers must make a certain type of information public. Furthermore, when a non-discrimination obligation is imposed on a provider with significant market power, that provider may also be obliged to publish a reference offer.

Adding to that stated in the LGTel relating to the obligation of transparency to be imposed on providers identified as having significant market power, we find article 7 of the Market Regulation. The second section of this document states that the Telecommunications Market Commission can determine what specific information should be included in offers, what level of detail is required, and the means by which it is to be published or made available to the parties that are involved, taking into account the nature and purpose of the information in question.



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- (7) Based on the above, this Circular's aim is to implement processing of applications to contract regulated wholesale fixed-line communication services, as well as portability, after receiving verbal consent from the subscriber.

Specifically, verbal consent will be applicable in the following cases: (i) requests for fixed-line number portability, (ii) requests for mobile number portability, (iii) requests to cancel fixed-line/mobile portability, (iv) requests to receive or transfer wholesale unbundled or bit-stream access services associated with portability, and (v) requests to receive or transfer wholesale unbundled or bit-stream access services without portability.

- (8) Therefore, this Circular provides for another means of consent in addition to the method currently in use (an application with the prior written consent of the subscriber). This will result in quicker, easier processing, due to the immediate nature of using verbal consent between agents who are not in each others' presence (the parties do not meet to enter into a contract).

Likewise, this process, which arises from the subscriber's verbal consent, will be provided with the identity requirements currently in place for processing requests following receipt of prior written consent from the subscriber; in addition to this, an independent third party will be present to objectively verify said consent under the required conditions.

- (9) This Circular affects management between providers as concerns processing applications relating to regulated wholesale fixed-line communication services and/or portability, and it is approved without prejudice to the regulations on contracting telephone services that apply to providers and users, or to the regulations on protecting personal data which are mandatory for providers and reporting agencies.

- (10) By virtue of the above, and according to the competition restructuring described in article 48.3.e).1 of Spanish Law 32/2003 of 3 November (General Telecommunications Law) and in article 20 of the Commission Regulations, approved by Spanish Royal Decree 1994/1996 of 6 September,

This Commission has prepared the following:



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Circular 1/2009 from the Telecommunications Market Commission which introduces verbal consent verified by a third party when contracting regulated wholesale fixed installed communication services and in requests for number portability.

First. Purpose

The purpose of this Circular is to permit processing of requests relating to regulated wholesale fixed-line communication services (RUO and OIBA), as well as requests to retain numbers (portability) for both fixed-line and mobile telephones, following prior verbal consent by the subscriber which is expressed by telephone through a reporting agency, according to that expressed in the following articles.

Second. Scope of application and administrative responsibility of the provider benefiting from the processing of requests for regulated wholesale fixed-line communication services and/or portability

The provider benefiting from regulated wholesale fixed-line communications services and/or portability (hereafter, the benefiting provider) will be able to initiate processing of a request following receipt of the subscriber's verbal consent which is verified by a third party, provided that each and every one of the conditions and deadlines stipulated in the present Circular has been met.

The benefiting operator will be directly responsible before the corresponding government entity for having valid prior consent from the subscriber in question, and will be obliged at all times to follow all rules and procedures set forth in this Circular.

Verbal consent will be valid for the following actions:

- a) Requests for fixed-line portability.
- b) Requests for mobile portability.
- c) Requests for cancellation of mobile/fixed-line portability.
- d) Cancellation/transfer of a wholesale unbundled or bit-stream access service associated with portability.
- e) Cancellation/transfer of a wholesale unbundled or bit-stream access service without portability.

Third. Third-party verification

In order for the benefiting operator to initiate processing of a request after receiving verbal consent from the subscriber, that verbal consent must be demonstrated by an independent reporting agency, referred to as a third party in this Circular. This agency must meet the following requirements:



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- a) Not be a member of the same economic group of companies to which the benefiting provider belongs, and have none of its shares held by companies in that group. To the effects of this Circular, an economic group is understood to exist when several companies form a decision-making unit. Specifically, a decision-making unit is thought to exist when a company in a dominant position is a partner of another company that is dependent, and when the relationship of the former with the latter is consistent with one of the following situations:
1. Possession of the majority of the voting rights.
 2. Having the right to nominate or unseat the larger part of the governing body's members.
 3. Having access to the majority of the voting rights by means of agreements with other members.
 4. Having designated most of the governing body's members exclusively with its votes, where those members take up their assignment at such time when the aggregated accounts must be prepared, and during the two immediately preceding financial years.
- b) Not receive incentives for positive verification (its compensation must be independent from the results of its investigation).
- c) Carry out its activity in different, geographically separated regions from those of the benefiting provider.
- d) Comply with current legislation regarding protection of personal data.
- e) Not provide electronic communications services, and not hold a majority of shares or stock in any company acting as an electronic communication service provider.
- f) Not provide any services to the benefiting operator except for third-party verification.

Forth. Processing requests for regulated wholesale fixed-line communication services and/or portability following verbal consent

In order for the benefiting operator to be able to initiate processing of a request with the subscriber's verbal consent, the following will be necessary:

- a) The verification that attests to the subscriber's consent to change providers with or without number portability, or that attesting to consent to retain a number following a change in provider (fixed-line or mobile) complies with the following requirements:
1. The verification call will be made by the subscriber (to the reporting agency) or by the provider's sales agent (who will transfer the call to the



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reporting agency and incur the cost of the same).

2. Direct verification will take place over the telephone by a third-party verifying agent. No recordings or synthesised voices may be used for this process.
 3. The verifying agent may not promote that service or any other type of commercial or marketing activity during the verification call.
 4. The verification call will fit the content of the verification questionnaire included in Annex 1 of this Circular as is necessary for each type of action, regardless of the specific sentences to be employed during the verification call.
 5. The verification call should be encoded in MP3 or WAVE format.
- b) Once the verification call has ended, the verifying agent must have determined whether the verification is positive or negative according to the verification criteria listed in the present Circular, and then communicate the same to the benefiting operator.
- c) The benefiting operator must provide the subscriber with a confirmation document for the telephone contract and for its verification once the positive verification notice has been received. To these ends, the benefiting operator, upon which the burden of proof rests, must send the confirmation documents in accordance with applicable law.

These documents must include:

1. Terms and conditions to which the application being processed is subject.
2. A notice that said application has been verified by a third party by means of a telephone call and which states the date and time of verification.
3. Information regarding the subscriber's right to cancellation, including the procedure to be followed (as a minimum, the benefiting operator must have a 901 telephone number which the subscriber may call to cancel the application) and the time span in which, according to applicable law, cancellation may be carried out without the subscriber incurring any penalties or costs (these will fall to the benefiting operator).
4. The subscriber will be informed that all complaints must be directed to the operator's customer service section or department within one month of becoming aware of the motive for the complaint. If the complaint concerns invoicing, it will be counted from the date of receiving the invoice. The subscriber will receive a reference number for the complaint. Likewise, the subscriber will be informed that if he/she has not received a satisfactory answer from the operator within the time span of one month, the complaint may be directed through the following channels, according to the internal



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policy of each entity:

- SETSI, the Spanish Secretary of State for Telecommunications and the Information Society. Telephone hotline: 901 33 66 99; Web page <http://www.usuarioteleco.es>

- Consumer arbitration committees, whether directly or through a Consumers' Association.

Fifth. Verification criteria

The operator benefiting from the services mentioned in this Circular will not go through with the action if verification of the subscriber's verbal consent is negative.

For the purposes of this Circular, verification will be considered negative if any stipulation of the same has not been met, and particularly if one of the following circumstances has arisen:

- a) The verification call has not been recorded.
- b) The recording is inaudible or cannot be understood.
- c) The recording does not include the entire transaction.
- d) The verification call is made by the verifying agent.
- e) The sales agent remains on the line during the call that has been established between the subscriber and the verifying agent.
- f) Verification is not carried out live by a verifying agent.
- g) The customer's answer to changing operators is negative.
- h) The customer asks questions or makes statements that clearly indicate that he/she does not understand the process.
- i) The verifying agent answers customer's questions about services when those questions are not related to the points on the verification questionnaire.
- j) The verification questionnaire is not completed in the order set forth in this Circular.
- k) The verifying agent actively pressures the subscriber to answer in a certain manner during the verification process.
- l) The verifying agent states his/her opinion of the service or of the benefiting operator.



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- m) The verifying agent carries out an activity that could be considered as commercial advertising for an operator's service.

Sixth. *Periodic information to be sent to the Telecommunications Market Commission*

The benefiting operators intending to process applications with the subscriber's verbal consent must indicate that intent to the Telecommunications Market Commission; this entity will publish a list of such operators on its Web page for the knowledge of interested third parties.

This communication will take place before beginning processing of applications with verbal consent, and will identify the third-party verification companies that are to be employed for the same. Likewise, prior notice will be provided to the Telecommunications Market Commission of any changes relating to the verification companies that are used.

The benefiting operators that begin to process actions based on the subscriber's verbal consent must send the following information to the Telecommunications Market Commission on a quarterly basis:

- a) Number of applications begun based on subscriber's verbal consent verified by a third party as a percentage of total applications.
- b) Verifying agent's breakdown of the number of verification operations with positive and negative results, presented by that agency.
- c) Verifying agency's breakdown of the number of operations for which that entity gave a positive verification, where the benefiting operator detected incorrect verification.

This information will be sent by E-mail to smayoristas@cmt.es and presented in the format shown in Annex II of this Circular.

Final provision. – The present Circular will become effective one month after its publication in the Spanish Official Journal.

THE SECRETARY

APPROVED BY THE PRESIDENT

Ignacio Redondo Andreu
Reinaldo Rodríguez Illera



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Annex I

Verification Questionnaires

Processing fixed-line portability applications

1. The customer will be informed that the conversation is being recorded, and asked if he/she agrees to the conversation being recorded.
2. The verifying agent will state the date (day, month, year and time) of the conversation.
3. The verifying agent will inform the subscriber of the application's reference code.
4. The customer will be asked to provide or confirm the following information:
 - Name of the subscriber to the line or the name of the subscribing entity and the name of its representative
 - If the speaker is the subscriber to the line or the company's representative (this answer must be affirmative or verification will not be possible):
 - Spanish Tax ID Number/Tax Id Code
 - Address
 - Individual numbers and/or number range (in this case, the subscriber must give express consent to transfer all numbering associated with the indicated principal numbers)
 - Type of access (the subscriber must indicate if his/her access is individual analogue, basic ISDN, primary ISDN/multiple access (exchanges), or numbers for special-rate services).
 - Benefiting operator
 - Relinquishing operator
 - Subscriber's preferred moment to transfer service, in the form of the date and time to begin the transfer process (as stated in applicable legislation for that time).
5. The subscriber will be asked for his/her consent for the benefiting operator to perform the necessary tasks in order to transfer all requested numbers.



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6. The subscriber must state his/her wish to discontinue the service and conserve existing numbers.

7. The subscriber will accept the possibility of an interruption to or limitation in the service during the minimum time that will be necessary for carrying out tasks to change operators (at the moment of entering into the contract, the subscriber must be informed of the maximum time span established by law).

8. The subscriber will be informed of the maximum legally established time frame for carrying out the entire process in the event that the portability application is not associated with a request for a service involving loop unbundling (this information will not be necessary if the subscriber chooses a longer time frame than that established by law).

9. The subscriber will give consent for the handling of personal data that may be involved, whether that data appears on the application or is known by the operator with which he/she has a service contract. The subscriber's consent will be voluntary, free, unmistakable, specific and informed, and will authorise the transfer of his/her data from the former contracted operator to the new operator that will provide service in the future, with the exclusive purpose and under the condition of conserving the number in the portability process.

10. The verifying agent will remind the subscriber of his/her right to cancel the request and explain the process to do so and the time during which it may be done.

Processing mobile portability applications

1. The customer will be informed that the conversation is being recorded, and asked if he/she agrees to the conversation being recorded.

2. The verifying agent will state the date (day, month, year and time) of the conversation.

3. The verifying agent will inform the subscriber of the application's reference code.

4. The customer will be asked to provide or confirm the following information:
 - Name of the subscriber to the line or the name of the subscribing entity and the name of its representative
 - If the speaker is the subscriber to the line or the company's representative (this answer must be affirmative or verification will not be possible):
 - Spanish Tax ID Number/Tax ID Code
 - Address/registered address
 - Number(s) to be transferred



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- Benefiting operator
- Relinquishing operator
- ICC-ID or SIM series number (only for prepaid service users)
- Desired moment for the change (day, month and year when the subscriber wishes portability to become effective according to applicable legislation at that moment).

5. The subscriber will be asked for his/her consent for the benefiting operator to perform the necessary tasks in order to transfer all requested numbers.
6. The subscriber must state his/her wish to discontinue the service and conserve existing numbers.
7. The subscriber will accept the possibility of an interruption to or limitation in the service during the minimum time that will be necessary for carrying out tasks to change operators (at the moment of entering into the contract, the subscriber must be informed of the maximum time span established by law).
8. The subscriber will be informed of the maximum legally established time frame to complete the portability process (this information will not be necessary if the subscriber has chosen a longer time frame than that which is legally established).
9. The subscriber will give consent for the handling of personal data that may be involved, whether that data appears on the application or is known by the operator with which he/she has a service contract. The subscriber's consent will be voluntary, free, unmistakable, specific and informed, and will authorise the transfer of his/her data from the former contracted operator to the new operator that will provide service in the future, with the exclusive purpose and under the condition of conserving the number in the portability process.
10. The verifying agent will remind the subscriber of his/her right to cancel the request and explain the process to do so and the time during which it may be done.

Processing requests for cancellation of mobile/fixed-line portability.

1. The customer will be informed that the conversation is being recorded, and asked if he/she agrees to the conversation being recorded.
2. The verifying agent will state the date (day, month, year and time) of the conversation.
3. The verifying agent will inform the subscriber of the application's reference code.
4. The customer will be asked to provide or confirm the following information:
 - Name of the subscriber to the line or the name of the subscribing entity



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and the name of its representative

- If the speaker is the subscriber to the line or the company's representative (this answer must be affirmative or verification will not be possible):
- Spanish Tax ID Number/Tax ID Code
- Address
- Individual numbers and/or range of numbers for which a previously requested portability process is being cancelled
- Date on which portability was requested

5. The subscriber will be asked for his/her consent for the benefiting operator to perform the necessary tasks in order to cancel the requested portability.

6. The subscriber must indicate his/her wish to cancel the portability application and remain with the operator that had been providing service previously.

7. The subscriber will give consent for the handling of personal data included in the cancellation request. The subscriber's consent will be voluntary, free, unmistakable, specific and informed, and will authorise the release of his/her data by the operator with which a service contract has been established, to the operator that will in the future provide service with the exclusive purpose of cancelling the conservation of a number.

Processing registration/transfer applications for a wholesale unbundled or bit-stream access service with or without associated portability.

1. The customer will be informed that the conversation is being recorded, and asked if he/she agrees to the conversation being recorded.

2. The verifying agent will state the date (day, month, year and time) of the conversation.

3. The verifying agent will inform the subscriber of the application's reference code.

4. The customer will be asked to provide or confirm the following information:

- Name of the subscriber to the line or the name of the subscribing entity and the name of its representative
- That the speaker is the subscriber to the line or the company's representative (this answer must be affirmative or verification will not be possible).
- Spanish Tax ID Number/Tax ID Code
- Address/registered address
- Numbers to which the application applies. The subscriber must indicate the telephone number associated with the pair except for services that require transfer of the unbundled loop, in which case the subscriber address is sufficient.
- Operator(s) that will no longer provide services



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- Benefiting operator

5. The subscriber will be asked for his/her consent for the benefiting operator to perform the necessary tasks in order to activate or transfer all requested numbers.

Where necessary, the subscriber will be informed that beginning the new requested service will require terminating service(s) that had been provided up to that time, as indicated below:

a) If the new service will be provided by means of a wholesale fully unbundled access service or a wholesale shared access service without telephone service:

- If the customer had PSTN service contracted previously, the subscriber must be informed that contracting the new service will cause the PSTN service to be discontinued (whether it was offered directly or by means of wholesale line rental access [WLR] from the operator providing that service).

- If the subscriber had broadband service contracted previously, he/she must be informed that contracting the new service will discontinue the broadband service that had been offered by the previous operator.

b) If the new service is provided by means of a wholesale shared unbundled access service or by bit-stream access:

- If the subscriber had broadband service contracted previously, he/she must be informed that contracting the new service will discontinue the broadband service that had been offered by the previous operator.

6. The subscriber will accept the possibility of an interruption to or limitation in the service during the minimum time that will be necessary for carrying out tasks to change operators (at the moment of entering into the contract, the subscriber must be informed of the maximum time span established by law).

7. The subscriber will be informed of the maximum legal time span established for carrying out the registration/transfer process of a wholesale unbundled or bit-stream access service with or without portability.

8. The subscriber will give consent for the handling of personal data that may be involved, whether that data appears on the application or is known by the operator with which he/she has a service contract. The subscriber's consent will be voluntary, free, unmistakable, specific and informed, and will authorise the transfer of his/her data from the formerly contracted operator to the new operator that will provide service in the future, with the exclusive purpose of conserving the number in the portability process.

9. The verifying agent will remind the subscriber of his/her right to cancel the request and explain the process to do so and the time during which it may be done.



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10. If the subscriber asks for a service that implies providing wholesale unbundled or bit-stream access service that also includes the portability process for conserving telephone numbers, the subscriber must provide the data required by the verbal consent verification questionnaire for fixed-line portability, which is found in this Annex.

11. If the subscriber requests a service that involves providing a wholesale shared unbundled service or bit-stream access service that also includes preselection or WLR, the subscriber must provide data for the verification questionnaire in Annex I as stated in Circular 1/2004 which introduces verbal consent in the operator preselection process.



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Annex II

Format for sending periodic information to the CMT

PROCESSES WITH VERBAL CONSENT				
ON (DAY) OF (MONTH), (YEAR)				
	Verifier 1	Verifier 2	Verifier 3	TOTAL
Processes initiated following verbal consent				
Percentage of total initiated processes				
Verification operations carried out				
No. positive results from verification				
No. negative results from verification				
Incorrect verification detected by benefiting operator				