



**Determination to resolve a
dispute between BT and various
communications providers about
INCA/CLI**

Statement

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Section 1

Determination

Determination under sections 188 and 190 of the Communications Act 2003 to resolve a dispute between British Telecommunications plc (“BT”) and five other communications providers (“CPs”) concerning Inter-Network Call Accounting (“INCA”) using Calling Line Identification (“CLI”) (referred to in this document as INCA/CLI) for NTS calls.

WHEREAS:

- (A) Section 188(2) of the Communications Act 2003 (the “Act”) provides that where there is a dispute between different communications providers, and Ofcom has decided pursuant to section 186(2) of the Act that it is appropriate for it to handle the dispute, Ofcom must consider the dispute and make a determination for resolving it. The determination that Ofcom makes for resolving the dispute must be notified to the parties in accordance with section 188(7) of the Act, together with a full statement of the reasons on which the determination is based. Section 190 of the Act sets out the scope of Ofcom’s powers for resolving a dispute which may include, in accordance with sections 190(2) of the Act, making a declaration setting out the rights and obligations of the parties to the dispute, and to give a direction fixing the terms or conditions of transactions between the parties to the dispute;
- (B) Following the review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets, the Director General of Telecommunications imposed SMP Conditions AA1(a) and AA11 on BT on 28 November 2003 pursuant to which BT is required to grant Network Access and to provide NTS Call Origination on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as the Director may from time to time direct (“the SMP Conditions”);
- (C) On 28 October 2004, Ofcom published a direction under the SMP Conditions, pursuant to which BT is required to use INCA/CLI for the calculation of charges for NTS calls transiting its network (“the Direction”);
- (D) On 2 February 2006 BT wrote to Ofcom asking it to resolve a dispute between BT and certain CPs who had failed to sign, or who had rejected an Operator Charge Change Notice (“the OCCN”) issued by BT on 5 October 2005;
- (E) The CPs who are in dispute with BT about this matter are 1RT Group Limited, Flextel Limited, Networks Direct plc and Skytel Limited;
- (F) On 27 February 2006 Ofcom decided pursuant to section 186(2) of the Act that it was appropriate for it to handle the dispute and informed the parties of this decision;
- (G) In order to resolve this dispute, Ofcom considered, among other things, the information provided by the parties and its relevant duties set out in sections 3 and 4 of the Act;
- (H) Ofcom issued a draft of this Determination and explanatory statement on 25 May 2006 and responses were invited by 5pm on 9 June 2006;

- (l) An explanation of the background to the dispute and Ofcom's reasons for making this Determination are set out in the explanatory statement accompanying this Determination;

NOW, THEREFORE, PURSUANT TO SECTIONS 188 AND 190 OF THE ACT, OFCOM MAKES THE FOLLOWING DETERMINATION:

1. It is hereby declared that, should BT calculate charges for NTS calls originating on BT's network or NTS calls transiting BT's network on the terms set out in the OCCN, such provision would be regarded as being on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as Ofcom may direct in accordance with the SMP Conditions and the Direction.
2. With effect on the date 14 days from the date of this determination, Ofcom directs that the terms and conditions of the NCC Standard Interconnect Agreement between BT and each of 1RT Group Limited, Flextel Limited, Networks Direct plc and Skytel Limited shall include the terms set out in BT's OCCN of 5 October 2005.
3. Words or expressions used in this Determination shall have the same meaning as in the Act, except as otherwise stated in this Determination.
4. For the purposes of interpreting this Determination, the following definitions shall apply:
 - a. "NTS" means Number Translation Services.
5. For the purposes of interpreting this Determination;
 - a. Headings and titles shall be disregarded; and
 - b. The Interpretation Act 1978 shall apply as if this Determination were an Act of Parliament.
6. This determination shall take effect on the day it is published.
7. This Determination is binding on BT, 1RT Group Limited, Flextel Limited, Networks Direct plc, and Skytel Limited in accordance with section 190(8) of the Act.

Sean Williams

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

21 June 2006

Section 2

Summary

Background

- 2.1 The regulatory regime for Number Translation Services (“NTS”) was introduced in 1996. BT is required to originate and retail NTS calls that terminate on other Communications Providers’ (“CPs”) networks. Terminating Communications Providers (“TCPs”) are paid for the call from the retail price charged by BT to the end user, less certain charges deducted by BT for call origination and conveyance across its network to the point of handover to the TCP. Under this process, TCPs must invoice BT for their payments.
- 2.2 In 1999, the Director General of Telecommunications (“Of tel”) directed BT to use a manual system based on Network Charge Differential (“NCD”) methodology to calculate BT’s NTS call conveyance charges to TCPs. NCD was intended to be an interim measure until BT developed an automated billing system for NTS calls.
- 2.3 In 2000, BT introduced an automated system for the calculation of its NTS interconnection charges, using BT’s Inter-Network Call Accounting (“INCA”) billing system and Calling Line Identification (“CLI”) (referred to in this document as “INCA/CLI”). In December 2001 Of tel directed BT to enable TCPs to choose whether to use the NCD methodology or INCA/CLI, in the form it existed then, to invoice BT. However, INCA/CLI only had limited functionality at that time, which meant that TCPs were initially reluctant to use it.
- 2.4 Further to Of tel’s review of fixed narrowband wholesale exchange line, call origination, conveyance and transit markets¹ (“the Market Review”), Of tel imposed a requirement on BT to provide network access and NTS conveyance to other CPs on fair and reasonable terms and on such terms, conditions and charges as Of tel may direct. Ofcom subsequently assumed the functions of Of tel and, on 28 October 2004, Ofcom published a direction pursuant to which INCA/CLI billing was to be used by BT for NTS calls transiting its network from 28 February 2006 (“the Direction”)².

History of the dispute

- 2.5 BT issued an Operator Charge Change Notice (“the OCCN”) on 5 October 2005, proposing a change to NTS TCPs’ call termination charges resulting from the implementation of INCA/ CLI (essentially a re-calculation of BT’s pence per minute NTS call origination charges). Eighteen TCPs failed to sign or formally rejected the OCCN.
- 2.6 On 2 February 2006 BT requested that Ofcom resolve a dispute between BT and the eighteen CPs who had failed to sign, or who had rejected the OCCN, under s185 of the Communications Act 2003 (“the Act”). BT subsequently withdrew its dispute with eleven of the CPs.
- 2.7 On 27 February 2006 Ofcom decided that it was appropriate for it to handle the dispute and published an entry in Ofcom’s competition bulletin³, stating that BT was

¹ http://www.ofcom.org.uk/consult/condocs/narrowband_mkt_rvw/nwe/

² http://www.ofcom.org.uk/consult/condocs/inca_cli_nts/final_dec/#content

³ http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_892/

in dispute with 1RT Group Limited (“1RT”), Colloquium Limited (“Colloquium”), Flextel (“Flextel”) Limited, Networks Direct plc (“Networks Direct”), Skytel Limited (“Skytel”) (“the TCPs”) and two other CPs who wished to remain anonymous. The two anonymous CPs subsequently signed the OCCN and were no longer in dispute with BT.

Submissions of the parties

- 2.8 BT submits that the OCCN is fair and reasonable and that it issued the OCCN in order to meet its regulatory obligations under SMP Conditions AA1(a) and AA11 and the Direction.
- 2.9 The TCPs state that in order to implement INCA/CLI they will incur significant set-up costs, with no benefit, or in some cases an expected loss, from the adjusted payments under the new billing system. They object to the implementation of INCA/CLI being imposed on them, and they argue that Ofcom’s consultation process and the industry discussions did not elicit the views of smaller NTS TCPs. Therefore, it is not fair and reasonable for INCA/CLI to be implemented and NCD withdrawn.
- 2.10 On 25 May 2006, Ofcom published its proposals to resolve the dispute, together with a draft determination, for consultation until 9 June 2006⁴. Ofcom proposed to declare that the use of INCA/CLI for NTS calls was fair and reasonable and to direct the outstanding TCPs to sign the OCCN. Responses to the consultation were received from BT, Flextel, and two other respondents that wished to remain anonymous. A redacted copy of BT’s response and a copy of Flextel’s response are attached as Annexes to this determination and are also available on Ofcom’s website⁵. The two anonymous respondents provided confidential responses.
- 2.11 On 12 June 2006 BT confirmed that it has now received a signed OCCN from Colloquium, and therefore Colloquium is no longer in dispute with BT about this matter.
- 2.12 Ofcom has considered the responses to the consultation. Ofcom considers that it is fair and reasonable for BT to use INCA/CLI for NTS calls, and directs that the terms and condition of the NCC Standard Interconnect Agreement between BT and each of Flextel, 1RT, Skytel and Networks Direct shall include the terms set out in the OCCN with effect on the date 14 days from the date of this Determination.

⁴ http://www.ofcom.org.uk/consult/condocs/bt_dispute/

⁵ http://www.ofcom.org.uk/consult/condocs/bt_dispute/responses/

Section 3

Background and history of the dispute

Background

- 3.1 The regulatory regime for Number Translation Services was introduced in 1996. BT is required to originate and retail NTS calls on behalf of TCPs. Other CPs besides BT also offer the conveyance of NTS calls, which may terminate on either BT's network, or another TCP's network.
- 3.2 Where BT is responsible for NTS call origination and conveyance, TCPs receive an amount equal to the retail price paid by customers less BT's regulated retention costs for originating and transiting these calls. BT's retention, in turn, is based on the element based charge for call origination and transit⁶ across its network to the point of handover to the TCP's network. Under this process, TCPs must invoice BT for their payments, although BT itself also carries out its own calculation in order to verify the invoices it receives.
- 3.3 In 1999, Oftel directed BT to use a manual system based on NCD methodology to calculate BT's NTS call conveyance charges to TCPs⁷. The NCD methodology was introduced by Oftel as a short term expedient to allow BT to estimate its call conveyance charges for originating NTS calls. The NCD methodology was intended to allow BT to de-average its then single tandem call origination charge for all NTS calls. This was in anticipation of an automated billing system being able to calculate conveyance charges for NTS calls on a per-call basis.
- 3.4 In late 2000, BT introduced an automated billing system for the calculation of BT's NTS interconnection charges, using INCA/CLI. In December 2001, Oftel directed⁸ BT to enable TCPs to choose whether to use the NCD methodology or INCA/CLI, in the form it existed then, to invoice BT for their terminating outpayments, otherwise known as POLOs. Oftel also required BT to keep CPs fully apprised during the development stages in order that they could carry out any parallel modifications to their own systems prior to the introduction of INCA/CLI. The Director clearly stated that an automated wholesale billing system for NTS was essential to guarantee the accuracy and consistency of BT's charges: "The continued use of NCDs must be viewed as an extended expedient that should be withdrawn at the earliest opportunity."⁹
- 3.5 In addition, the explanatory statement indicated that once the outstanding issues had been resolved by the industry, Oftel might, in the absence of commercial agreement, direct that the use of the NCD methodology should be withdrawn for calls which originate from BT's own customers.¹⁰

⁶ Although for some NTS/PRS calls BT will submit its invoice for transit charges to the TCP after it has paid the TCP's terminating payment invoice.

⁷ <http://www.ofcom.org.uk/static/archive/oftel/publications/1999/consumer/nts1199.htm>

⁸ <http://www.ofcom.org.uk/static/archive/oftel/publications/pricing/inca1201.htm>

⁹ <http://www.ofcom.org.uk/static/archive/oftel/publications/pricing/inca1201.htm> paragraph 4.7

¹⁰ <http://www.ofcom.org.uk/static/archive/oftel/publications/pricing/inca1201.htm>, paragraph 4.9

- 3.6 However, CPs identified two main issues with the use of INCA/CLI for NTS calls which made them reluctant to switch to INCA/CLI:
- a) its inability to identify transit calls from Indirect Access ("IA")/Carrier Pre-Selection ("CPS") providers or ported numbers at the point of handover; and
 - b) calls may not always be charged according to least cost routing principles i.e. using the measurement of the shortest route between the point of origin of a call on the BT network and the point of handover to the TCP at the nominated point of connection ("POC") with the TCP's network.
- 3.7 In addition, BT had no incentive to develop INCA/CLI as BT expected to find INCA/CLI to be revenue neutral for BT (i.e. BT's revenues under INCA/CLI were expected to be broadly the same as under NCD).
- 3.8 Following OfTel's Market Review¹¹ published on 28 November 2003, BT as a Dominant Provider in those markets now has a formal obligation (amongst other things) to provide NTS call origination on fair and reasonable terms. Certain SMP conditions were imposed on BT including Condition AA1(a) (Requirement to provide Network Access on reasonable request) and AA11 (Requirement to provide NTS Call Origination). Under Condition AA1(a).2 BT must provide Network Access as soon as reasonably practicable on fair and reasonable terms and on such terms, conditions and charges as Ofcom may from time to time direct. Under Condition AA11 BT must provide NTS Call Origination on fair and reasonable terms, and on such terms, conditions and charges as the Director may from time to time direct.
- 3.9 Both Conditions AA1(a) and AA11 contain a direction-making power for Ofcom to set terms, conditions and charges for, in this case, NTS transit (which is a form of Network Access covered by Condition AA1(a)), and NTS Call Origination.
- 3.10 On 28 October 2004 Ofcom published the Direction¹² requiring BT to move to a more accurate system of calculating NTS call origination and transit network charges, using the Element Based Charging ("EBC") matrix through BT's INCA wholesale billing system using CLI, which was already in use for most other call types. Ofcom directed that INCA/CLI billing was to be used for NTS, and the manual method using NCD to be withdrawn, from 28 February 2006. It had been envisaged in Ofcom's consultation document that there would be a short period when NCD was running in parallel with INCA/CLI to enable TCPs to become familiar with the new reports and to resolve any initial problems. However, BT's response to Ofcom's consultation indicated that it would be too costly to run both billing systems in parallel. Therefore, the Direction simply directed BT to withdraw NCD, and to implement INCA/CLI by the end of February 2006 at the latest, although it was left open for BT to agree with industry to do so earlier.
- 3.11 In addition to the issues described in paragraph 3.6 above, another issue for CPs was the practice by BT of only updating the EBC matrix to take account of new POCs every three months. However, this has now been addressed following a series of workshops held by BT in 2004, from which one of the outcomes was a move to refresh the EBC matrix on a monthly basis.

¹¹ http://www.ofcom.org.uk/consult/condocs/narrowband_mkt_rvw/nwe/

¹² http://www.ofcom.org.uk/consult/condocs/inca_cli_nts/final_dec/#content

- 3.12 In the absence of Ofcom's direction, BT would have had no incentive to upgrade its INCA/CLI billing system, as BT considered that its wholesale revenues received through either INCA/CLI or NCD billing would be similar. However, as BT was under a regulatory obligation to upgrade its INCA/CLI billing system, BT incurred additional costs in meeting its regulatory obligation. BT was entitled to recover its additional costs from all the beneficiaries of the change. As all the respondents to Ofcom's consultation agreed that the move from NCD to INCA/CLI would be beneficial, Ofcom considered that BT's relevant costs for enhancing INCA/CLI should be shared by all NTS CPs, including BT itself.

History of dispute

- 3.13 In order to meet its regulatory obligations arising from the Direction regarding INCA/CLI, BT was required to withdraw the NCD and implement a new payment mechanism for NTS call settlements, calculated using INCA/CLI. On 5 October 2005 BT issued the OCCN proposing a change to NTS TCPs' call termination charges resulting from the introduction of INCA/CLI (essentially a re-calculation of BT's pence per minute NTS call origination charges).
- 3.14 Eighteen TCPs failed to sign or formally rejected the OCCN.
- 3.15 On 2 February 2006 BT wrote to Ofcom requesting that Ofcom resolve a dispute between BT and the eighteen Communications Providers who had failed to sign, or who had rejected the OCCN. BT referred the dispute to Ofcom under s185(1) of the Act.
- 3.16 Ofcom contacted all parties mentioned in the referral, to confirm that they were in dispute, and to establish the scope of the dispute. Of the original eighteen TCPs who had not signed the OCCN, nine subsequently signed and returned the OCCN to BT, four confirmed that they were in dispute with BT, two confirmed that they were not in dispute over the use of INCA/CLI, and three others had simply not returned the OCCN to BT.
- 3.17 On 27 February 2006 Ofcom decided it was appropriate for it to handle the dispute and published an entry in Ofcom's competition bulletin¹³, stating that BT is in dispute with 1RT Group Limited, Colloquium Limited, Flextel Limited, Networks Direct plc, Skytel Limited and two other Communications Providers who wished to remain anonymous.
- 3.18 The scope of the dispute (as published in Ofcom's competition bulletin) is to determine:

“whether it is fair and reasonable for BT to set its charges for NTS calls originated by BT or which transit BT's network using INCA/CLI.

If Ofcom determines that it is fair and reasonable for BT to set its charges for NTS calls originated by BT or which transit BT's network using INCA/CLI, Ofcom will decide what action is necessary. This may include requiring the Communications Providers that are in dispute with BT on this matter to sign BT's OCCN of 5 October 2005.”

¹³ http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_892/

- 3.19 Following confirmation from BT that the two communications providers who wished to remain anonymous had accepted the OCCN, Ofcom added an update note to the competition bulletin on 4 April 2006 to confirm that they were no longer in dispute and removed them from the list of parties to the dispute.
- 3.20 Ofcom published its proposals to resolve this dispute on 25 May 2006¹⁴. Ofcom provisionally concluded that it is fair and reasonable for BT to use INCA/CLI for NTS calls, and proposed directing the TCPs to sign the OCCN. The deadline for responses to the consultation was 9 June 2006.
- 3.21 Ofcom received four responses to the consultation. Two responses are confidential. Responses from Flextel and BT have been published on Ofcom's website¹⁵. BT's response was partly confidential, and therefore three paragraphs have been redacted from the published version.
- 3.22 On 12 June 2006, BT confirmed that Colloquium has signed and returned the OCCN to BT. Colloquium had no further comments on the draft determination.

¹⁴ http://www.ofcom.org.uk/consult/condocs/bt_dispute/

¹⁵ http://www.ofcom.org.uk/consult/condocs/bt_dispute/responses/

Section 4

Responses and Ofcom's conclusions

Responses to the consultation

- 4.1 Responses from TCPs concentrated on the two main issues at the centre of the dispute:
 - 4.1.1 The financial impact on TCPs resulting from the set-up costs associated with switching to INCA/CLI; and
 - 4.1.2 The reduced payments some TCPs expect to receive under INCA/CLI, compared to NCD.
- 4.2 Flextel also argued that Ofcom had failed to consider the interests of small TCPs during the original consultation process and, in particular, those smaller regional TCPs which are likely to be disadvantaged by the transfer to INCA/CLI.
- 4.3 BT welcomed Ofcom's proposals, but raised some concerns about implementation of the provisions.

Set-up costs

- 4.4 It has been suggested by one respondent that Ofcom should require BT to provide TCPs with the internal data used by BT to verify invoices received, as this would reduce TCPs' set-up costs. It has been alleged that BT is reluctant to provide this data because BT benefits from under-billing by the TCPs, due to the complexities of the billing process.
- 4.5 Ofcom understands that BT has provided an interim solution to customers for a period of one year to facilitate the transition to INCA/CLI based billing. The information provided within the report has helped CPs to bill BT during this period. Should BT be requested to continue to provide these reports after December 2006, then BT would look to make a nominal charge to operators to cover associated costs.
- 4.6 Ofcom considers that this is outside the scope of this dispute, and therefore should be agreed through commercial negotiation between the parties. However, Ofcom welcomes the offer from BT, as this provides a further option for TCPs to consider when deciding how to implement INCA/CLI.

Lower future revenues for TCPs

- 4.7 Ofcom received responses from some smaller TCPs which expect to receive lower payments under INCA/CLI than under NCD, suggesting that the INCA/CLI methodology is detrimental and discriminatory. Ofcom, however, considers that the introduction of the new methodology simply corrects inaccuracies which were inherent in the NCD methodology, and ends the 'overpayments' from which some smaller TCPs have benefited for several years.

Ofcom's consultation process prior to directing BT to use INCA/CLI

- 4.8 Flextel alleges that Ofcom's direction requiring BT to use INCA/CLI for NTS calls was based on an erroneous Impact Assessment, as Ofcom failed to take account of the needs of small regional CPs. Flextel's allegations concern two separate issues: (1) Ofcom's consultation process; and (2) Ofcom's consideration of the needs of small regional CPs.

Ofcom's consultation process

- 4.9 Flextel argues that smaller telecoms companies cannot fully consider and adequately respond to consultations, due to the large volume of Ofcom consultations. Ofcom welcomes feedback on its consultation process and interaction with stakeholders, as this is an area which Ofcom continuously strives to improve. Ofcom makes every attempt to highlight the issues and target audience for each of its consultations in order that stakeholders can focus their attention on those consultations which are most relevant to them. As a result, Ofcom would expect CPs providing NTS services to review those consultations which have implications for NTS providers.
- 4.10 Flextel acknowledges that it did not realise the impact of the INCA/CLI proposals, despite Ofcom stating "TCPs will incur costs in adjusting their billing systems to work with INCA/CLI data output. These costs have been estimated by TCPs at between £100k and £250k per CP. This may differ for TCPs who have contracted out their billing function and will depend on the costs of switch suppliers in applying the requisite software modifications."¹⁶
- 4.11 As stated in the explanatory statement accompanying the draft determination¹⁷, Ofcom is satisfied that it did meet the procedural requirements under section 49 of the Act and follow good practice for such public consultations. Ofcom worked closely with industry throughout the development of the proposals over more than six years. An example of the efforts to involve as many relevant stakeholders as possible can be found in Oftel's Direction published in December 2001 when Oftel specifically invited all interested parties to attend the meetings of the NTS Focus Group to discuss the development of an accurate, automated billing mechanism for NTS: "all operators are urged to attend to express their views". Furthermore, there was a lengthy two stage public consultation process before the direction requiring BT to use INCA/CLI was made in 2004, to which none of the TCPs which are party to this dispute responded.
- 4.12 Flextel argues that the input of the NTS Focus Group resulted in an outcome biased towards the larger London based TCPs, as the NTS Focus Group does not reflect the opinion of the whole industry. Ofcom notes Flextel's comments regarding the NTS Focus Group, and in particular, that it may not represent the opinion of the whole industry. Ofcom recognises that this is the case, which is why efforts were made to encourage wider attendance (see paragraph 4.11 above), and to consider the impact of INCA/CLI on smaller TCPs in the absence of representations. The NTS Focus Group is an industry group, sponsored by Ofcom and is open to all network operators with an interconnection agreement with BT, regardless of size. Ofcom is not aware of any regional meetings of this group, but has suggested on a number of

¹⁶ INCA/CLI for NTS interconnection charging Explanatory Statement and Notification of a draft Direction, http://www.ofcom.org.uk/consult/condocs/inca_cli_nts/#content Regulatory Impact Assessment, Paragraph D.2

¹⁷ http://www.ofcom.org.uk/consult/condocs/bt_dispute/ paragraph 5.10

previous occasions that the CPs could host this meeting. Although the meetings are held at Ofcom's offices at Riverside House, this is simply on the basis that it is a convenient location for the majority of the attendees.

- 4.13 Finally, Flextel states that archived Oftel material was until recently inaccessible from the Ofcom website, and therefore background and historic information was unavailable.
- 4.14 Archived Oftel material has been available from the Ofcom website since Ofcom was established in December 2003. Although some technical problems may have arisen in accessing certain documents in the past, this has not been the case during the period of investigation of the dispute and therefore, to the extent that such historic information was required by Flextel in preparing its submissions on the present dispute, Ofcom has made all such information available to Flextel.

Ofcom's consideration of the needs of small regional CPs

- 4.15 Ofcom takes steps to consider the possible impact of regulatory changes on all stakeholders, especially as Ofcom recognises some smaller CPs may have difficulty in keeping up with regulatory changes. In this case, Oftel/Ofcom considered the differing impact on the range of TCPs, including small TCPs with a limited number of points of interconnection with BT. It was recognised that there may be a negative impact on such TCPs from the use of INCA/CLI¹⁸, as it is a more accurate billing system and therefore smaller TCPs would lose the benefit of the NCD system, which generally resulted in higher payments for smaller TCPs. However, as explained in Ofcom's 2004 consultation¹⁹, in some circumstances the less accurate NCD failed to give appropriate incentives for efficient network build. INCA/CLI was introduced to provide a more accurate billing system and to provide the correct incentives for TCPs to develop efficient networks. As explained in paragraph 4.7 above, Ofcom considers that the introduction of the new methodology simply corrects the inaccuracies which were inherent in the NCD methodology, and ends the 'overpayments' from which some smaller TCPs benefited for several years.
- 4.16 Flextel argues that INCA/CLI does not encourage efficiency for regional CPs with low call volume, as they would need to alter or add to their POCs, or remotely locate their switch, in order to maximise their INCA/CLI revenue. Flextel also argues that INCA/CLI is a driver for CPs to locate in London and/or the South East, which would be detrimental to the regional Citizen-Consumer.
- 4.17 Ofcom considers that Citizen-Consumers throughout the country benefit from the development of more efficient networks as this facilitates lower call charges in the longer term. Ofcom does not consider that the INCA/CLI methodology is discriminatory against smaller regional CPs. If INCA/CLI is a driver for CPs to locate in London and/or the South East, or adjust their network to reflect the fact that a large proportion of call traffic originates in the South East (and the London area in particular), this helps to encourage efficient networks. This was recognised in the consultation on the proposals to replace NCD with INCA/CLI: "The key benefit associated with element-based charging is that it provides an incentive to all TCPs to optimise their interconnect with BT. The current NCD-based system is sub-optimal in two respects: it provides an incentive to TCPs to establish more (POCs) with BT than

¹⁸ See, for example, Options for NTS Interconnection Charging, paragraphs 3.10 and 3.11 at

http://www.ofcom.org.uk/consult/condocs/nts_ic_condoc/#content

¹⁹ http://www.ofcom.org.uk/consult/condocs/inca_cli_nts/#content

is actually required for the efficient conveyance of traffic; and it provides no incentive to TCPs to optimise the geographic locations of these POCs.”²⁰

4.18 Finally, Flextel argues that smaller TCPs should be given an exemption from the requirement to use the INCA/CLI methodology, similar to the consents given to the mobile network operators (“MNOs”) to switch from traffic-specific to total volume controls in order for the MNOs to meet the controls for the charges set for call termination.²¹ Ofcom considers that there are two important factors which make such a comparison inappropriate here. Firstly, the use of INCA/CLI must be industry-wide. BT is unable to run both INCA/CLI and NCD in parallel without incurring significant additional costs. Although some of the TCPs have argued that they have continued to use NCD to prepare invoices for NTS calls during the last few months, BT reconciles all received NTS invoices using INCA generated data. Therefore, it is not possible for some TCPs to use NCD, and some to use INCA/CLI. Secondly, the MNOs continued to be subject to a charge control, which ensured the regulatory objectives were achieved, albeit via a different methodology, even with the consents in place. However, in the case of NTS TCPs, the use of NCD rather than INCA/CLI would perpetuate the inefficiencies discussed in paragraph 4.17 above, and would not provide the incentives to achieve the regulatory objectives (accurate billing and efficient networks).

Implementation of INCA/CLI

4.19 BT expressed concerns that if Ofcom were to direct CPs to sign the OCCN, TCPs would simply fail to respect the Ofcom direction where it did not comply with their commercial objectives. BT considered that this had been the case in the past and therefore, in order to avoid delay in BT’s implementation of INCA/CLI, requested Ofcom to fix the terms and conditions between the parties. Ofcom recognises BT’s concerns in this regard and has amended the draft determination accordingly. Ofcom has considered whether such a change to the determination would have any greater impact upon the parties to the dispute than that contained in the draft subject to consultation and has concluded that the consequences for the parties to the dispute would remain the same.

Conclusions

4.20 Therefore, having considered the responses to the consultation, Ofcom considers that it is fair and reasonable for BT to use INCA/CLI for NTS calls, and directs that the terms and condition of the NCC Standard Interconnect Agreement between BT and each of Flextel, 1RT, Skytel and Networks Direct shall include the terms set out in the OCCN with effect on the date 14 days from the date of this Determination.

4.21 Under section 190(1) of the Act, this determination is binding on the parties.

²⁰ http://www.ofcom.org.uk/consult/condocs/inca_cli_nts/#content Annex D.2

²¹ <http://www.ofcom.org.uk/consult/condocs/consent/>

Annex 1

Response from BT



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26th May 2006

Draft determination to resolve a dispute between BT and various communications providers about INCA/CLI

Dear Ruth

1. BT welcomes the opportunity to comment on the conclusions reached by Ofcom within the 25th May 2006 draft direction. It is gratifying to find that Ofcom considers the terms of the 5th October 2005 BT OCCN to be fair and reasonable.
2. As stated by Ofcom within the draft direction, BT is bound to apply the INCA billing methodology as directed by Ofcom in the 28th October 2004 direction. The actions taken by the referred Communication Providers (CPs), placed BT in a position of possible breach of that direction. It is reassuring, therefore, that Ofcom supports the contractual application of INCA billing terms and charges, as proposed within the BT OCCN.
3. BT is aware of the issues raised by the referred CPs. Considerable effort has been made to provide temporary support for these Operators during the implementation phase of the INCA billing solution. However, BT cannot be held responsible for the impact of changes to CPs' billing requirements. Such requirements should be addressed via appropriate commercial modelling
4. [✕]
5. [✕]

6. [✂]

7. It is BT's sincere hope that the decisions proposed by Ofcom are upheld within the final determination document. This will achieve a satisfactory conclusion to the lengthy process to develop, and implement, an acceptable billing mechanism for NTS products.

Yours Sincerely

Kath Embleton
Wholesale Regulation

Annex 2

Response from Flextel

- A2.1 The response from Flextel was provided as an encrypted PDF and can be viewed on the Ofcom website at http://www.ofcom.org.uk/consult/condocs/bt_dispute/responses/flextel.pdf