



# BT Public Call Boxes

Consent for non-uniform charging for geographic  
tariffing trials

Consultation

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## Section 1

# Summary

- 1.1 The Universal Service Obligation ('USO') ensures that certain basic fixed line services which are considered essential to everyone are available to all consumers upon reasonable request at an affordable and uniform price across the UK. Services provided under the USO include reasonable geographic access to call box services from Public Call Boxes ('PCBs').

### BT's request for consent

- 1.2 Under the specific Universal Service Condition 3.5 BT has to provide services from PCBs on the basis of uniform prices throughout the UK (excluding the Hull area) unless Ofcom consents otherwise.
- 1.3 BT has requested consent to provide call box services in the UK (outside of Hull) at non-uniform prices to the extent necessary to operate geographic public payphone tariffing trial(s) periodically over the next three years.
- 1.4 If granted the consent will mean that some consumers will pay different prices for calls from certain BT PCBs depending on whether the consumer is using a box operating under the tariffing trial(s) or one of the boxes unaffected
- 1.5 BT explains that the ability to conduct geographic tariff trials from time to time will enable BT to test price sensitivity and to assess how consumers respond to new prices and whether the increased use of PCBs is stimulated. In addition, BT argues that tariff trials limit commercial risk associated with implementing an untested price nationally.
- 1.6 BT has proposed certain criteria that would apply to trials under the requested consent. These relate, amongst other things, to the proportion of the PCB base affected and the maximum length of trials.
- 1.7 At the end of each trial all affected PCBs will either revert to the original price or a new price will be implemented nationally.
- 1.8 BT will notify Ofcom with details of the trial at least six weeks prior to the implementation of the trial. BT will publish the price and terms of the trial two weeks prior to implementation.

### Proposed Consent

- 1.9 Ofcom is proposing to consent to non-uniform charging for geographic tariffing trials, as set out in BT's request. We believe that the consent would be appropriate in order to allow BT to assess customer reaction to a new tariff through a geographically limited trial before implementing a new price nationally and in order to do so with minimum disruption for consumers. Following the completion of geographic tariffing trials, the price will either be withdrawn and the original price be restored or a new price will be implemented nationally, thereby removing any non-uniform pricing and allowing for a more appropriate tariff.

- 1.10 The consent will last for three years only and will be limited strictly to the extent necessary to undertake the proposed geographic trials under the proviso each trial will adhere to specified criteria:
- be implemented for a period of not exceeding 26 weeks;
  - be implemented on boxes that are all only located within the defined geographic area(s) where the trial is centred as notified to Ofcom prior to the trial;
  - have pricing and terms published in BT's Retail Price List at least 14 days prior to implementation; and
  - once completed revert all affected PCBs to the original price or uniformly implement a new national price following the end of the trial period.
- 1.11 The total number of PCB's involved in these tariffing trials will not exceed 16% of the total national box base at any one time.
- 1.12 Ofcom will be able to review and, where it considers it appropriate, modify or withdraw the consent at any stage.

## **Consultation**

- 1.13 This consultation document invites views on:
- the proposal to consent to non-uniform charging for geographic tariffing trials as requested by BT;
  - the proposed criteria relating to the scope and size of trials; and
  - the notification requirements proposed for trials.

## Section 2

# Introduction

## Universal Service Obligation

- 2.1 The Universal Service Obligation ('USO') ensures that certain basic fixed line services which are considered essential for everyone are available at an affordable and uniform price upon reasonable request to all consumers across the UK.
- 2.2 The scope of the Universal Service Obligations is defined by the EC Universal Services Directive<sup>1</sup> ('USD'). The Secretary of State for Trade and Industry specifies the services which must be provided throughout the UK in the Universal Service Order<sup>2</sup> ('the Order'). The Order has been implemented by Ofcom through specific conditions on the designated Universal Service Providers<sup>3</sup> ('USPs'), BT and Kingston Communications, and general conditions on all providers.
- 2.3 Under the Order, prices for services provided in accordance with the Order ('USO services') have to be offered at prices that are uniform throughout the UK, unless Ofcom consents and has determined that there is clear justification for not doing so. This is to ensure that customers are able to pay the same for basic telecommunications services wherever they live. This assists in particular those areas— generally rural parts of the UK – in which services are more expensive to provide.
- 2.4 Pursuant to Condition 3 of the Order, USO services include reasonable geographic access to call box services from Public Call Boxes ('PCBs').
- 2.5 Under the specific Universal Service Condition 3.5 BT has to provide call box services on the basis of uniform prices throughout the UK (excluding the Hull area) unless Ofcom consents otherwise.
- 2.6 A PCB is a public pay telephone located on a public highway. There are approximately 65,000 PCBs in the UK, of which around 62,700 are provided by BT.
- 2.7 Ofcom research in 2004 showed that over a third of adults use PCBs at least occasionally and 7 per cent use them at least once a month. The most frequent users of PCBs are younger consumers, consumers from lower income groups and those consumers with a mobile phone only or those without a fixed or mobile telephone. However Ofcom's research report Communications Market 2006 shows that virtually no consumers now rely on PCBs as their primary means of making calls, compared with 2% in 2004<sup>4</sup>.
- 2.8 This reduction in use has led BT to consider ways to stimulate use of PCBs and to address significant reductions in revenue.

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<sup>1</sup> [http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l\\_108/l\\_10820020424en00510077.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_108/l_10820020424en00510077.pdf)

<sup>2</sup> <http://www.opsi.gov.uk/si/si2003/20031904.htm>

<sup>3</sup> [http://www.ofcom.org.uk/telecoms/ioi/g\\_a\\_regime/sce/uso/](http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/sce/uso/)

<sup>4</sup> <http://www.ofcom.org.uk/research/cm/cm06/>

## **Request for consent**

- 2.9 This consultation considers a request from BT dated 1 February 2007 - set out in Annex 7 - that Ofcom consents to non-uniform prices in call box services to the extent necessary to operate geographic public payphone tariffing trial(s) periodically over the next three years.
- 2.10 Section 3 of this document considers BT's request and invites views on the proposal that Ofcom should grant consent to non-uniform pricing in these circumstances.
- 2.11 In the Annexes we set out the Explanatory Memorandum and draft consent and include an Impact Assessment.
- 2.12 Responses to the consultation are invited by 14 May 2007.

## Section 3

# The form of the proposed consent

- 3.1 BT has requested consent from Ofcom under section 49 of the Communications Act 2003 ('the Act') and Universal Service Condition 3.5 to provide call box services in the UK (outside of Hull) at non-uniform prices periodically over a three year period to the extent necessary to operate geographic public payphone tariffing trial(s) under the criteria set out below.
- 3.2 BT's request explains that consent is sought because the ability to conduct geographic tariff trials from time to time will enable BT to test consumer price sensitivity against call generation behaviour and, thus, determine consumer response to new prices. In addition, tariff trials limit commercial risks associated with implementing an untested price nationally.

### Criteria for each trial

- 3.3 Under BT's request, each trial will adhere to specified criteria:
- be implemented for a period of not exceeding 26 weeks;
  - be implemented on boxes that are all only located within the defined geographic area(s) where the trial is centred as notified to Ofcom prior to the trial;
  - have trial pricing and terms clearly annotated in the Notices section of the BT Retail Price List at least 14 days prior to implementation; and
  - once completed revert all affected PCBs to the original price and withdraw the Price List Notice accordingly or uniformly implement a new national price following the end of the trial period.
- 3.4 As an additional criterion, the total number of public call boxes involved in all such tariffing trials will not exceed 16% of the total national box base at any one time.
- 3.5 BT will notify Ofcom at least 6 weeks prior to implementation of a tariffing trial the details of each trial, including the geographic location(s) of the trial, the number of call boxes affected within the trial area(s), the current and proposed price being trialled, the start date of each trial and the envisaged end date. The trial will then only be implemented in the manner described to Ofcom in this notification but can be concluded earlier than envisaged.

### Ofcom's Proposed Consent

- 3.6 Ofcom has considered BT's request and is proposing to consent to non-uniform charging for call boxes services over three years until 30 June 2010 to the extent necessary to implement geographic tariffing trials described above under the criteria set out above, which will be attached as provisos to the consent.
- 3.7 In making this proposal Ofcom has taken into account the following factors:

- the trials are important because they will enable BT to assess price sensitivity and consumer reaction to new prices with minimum disruption;
- following the completion of the trial, the price will either be withdrawn or a new price uniformly implemented nationally, thereby removing any non-uniform pricing and allowing for a more appropriate national tariff;
- trials are intended to ensure an appropriate tariff is implemented at the national level;
- BT's letter of request explains that it is not in BT's commercial interest to operate trials, or indeed implement long-term price changes, that de-stimulate payphone use or reduce calling behaviour compared with existing national prices;
- it is unlikely that consumers outside the trial location will be aware of any differences in pricing between the nationally implemented tariff and the tariff being trialled outside of their geographic areas; and
- Ofcom will be notified of the details of the trial in advance. This will allow Ofcom to assess any potential detriment to the interests of consumers and, if it considers appropriate, modify or withdraw the consent.

3.8 The criteria attached as a proviso to the consent that limits the trial to 26 weeks and to 16% of the national PCB base are intended to balance the need for BT to have trials that are sufficiently long and cover enough PCBs to provide meaningful data for BT with the need to limit the extent to which the non-uniform prices are implemented.

3.9 Based on the information currently available to Ofcom, BT's proposed criteria appear reasonable. However we would welcome stakeholders' views on the criteria proposed and in particular on the 26 week limit and the limitation of trials to 16% of the base.

3.10 BT argues that, in order to provide reliable data which shall help to assess whether a new price should be introduced on a national basis, the trials need to last up to 6 months and need to cover easily defined geographic areas – such as an entire city or region.

3.11 The limit of 16% of the total national PCB base reflects the proportion of BT's PCBs that are in the London 020 dialling code area so the consent would enable BT to carry out a trial in areas up to this size. The 16% cap would apply to the total number of PCBs affected by all trials at any one time.

3.12 Under the proposals BT could run an unlimited number of trials in different geographic areas simultaneously provided that BT did not exceed the cap of 16% of the total national PCB base. This would for example allow BT to trial different tariff rates at the same time in different areas and so choose the most appropriate tariff nationally.

3.13 An Impact Assessment is included in Annex 5.

*1. Do you agree with Ofcom's proposal to consent to BT providing call box services at non-uniform prices periodically to the extent necessary to implement geographic tariffing trials over a 3 year period?*

*2. Do you agree with the proposed terms and conditions for this consent as set out above and in BT's letter of request in Annex 7 and, in particular, do you agree that 26 weeks is appropriate for the maximum length of each trial and that an unlimited number of trials can take place simultaneously up to a cap of 16% of the total number of the national PCB base?*

## **Communications Act tests**

- 3.14 Ofcom considers that the draft consent set out at Annex 6 meets the tests set out in the Communications Act 2003 ('the Act').
- 3.15 Ofcom has considered its duties under section 3 of the Act and all the Community requirements set out in section 4. By consenting to BT's request to conduct geographic trials and thereby allowing non-uniform pricing under certain provisos, Ofcom is furthering the interests of citizens in relation to communication matters and of consumers in relevant markets because the proposed consent enables the implementation of an appropriate tariff at the national level, tested by consumers and in a manner and in a way that minimises costs and disruption to consumers.
- 3.16 Section 49 (2) of the Act requires the proposed consent to be objectively justifiable, non-discriminatory, proportionate and transparent.
- 3.17 Ofcom considers that the draft consent is:
- i) objectively justifiable as the draft consent is intended to ensure the implementation of measures aimed at stimulating payphone use and to allow for the national introduction of appropriate tariffs, tested by consumers, in a way that minimises costs to BT and disruption to consumers;
  - ii) proportionate as the draft consent is limited to a period of three years, is intended to be given under the condition that BT adheres to certain provisos which shall prevent abuse and that Ofcom has the power to modify or withdraw the consent at any time, should it consider it appropriate;
  - iii) not unduly discriminatory as it would apply to all persons using Public Call Box services in the geographical area where the trial was implemented; and
  - iv) transparent as the duration of the draft consent, the provision under which the draft consent shall be given and the criteria which BT has to adhere to when conducting a trial are clearly set out in this document.

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 14 May 2007**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/pcb/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [sukhpreet.walia@ofcom.org.uk](mailto:sukhpreet.walia@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Sukhpreet Walia  
Floor 6  
Strategy and Market Development  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7981 3406
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact [sukhpreet.walia@ofcom.org.uk](mailto:sukhpreet.walia@ofcom.org.uk) on 020 7981 3863.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

### Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement setting out our conclusions.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

### Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash  
Ofcom  
Sutherland House  
149 St. Vincent Street  
Glasgow G2 5NW

Tel: 0141 229 7401  
Fax: 0141 229 7433

Email [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 4

# Consultation questions

*1. Do you agree with Ofcom's proposal to consent to BT providing call box services at non-uniform prices periodically to the extent necessary to implement geographic tariffing trials over a 3 year period?*

*2. Do you agree with the proposed terms and conditions for this consent as set out above and in BT's letter of request in Annex 7 and, in particular, do you agree that 26 weeks is appropriate for the maximum length of each trial and that an unlimited number of trials can take place simultaneously up to a cap of 16% of the total of the national PCB base?*

## Annex 5

# Impact Assessment

### Introduction

- A5.1 The analysis presented in this annex represents an impact assessment, as defined in section 7 of the Communications Act 2003 (the Act).
- A5.2 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- A5.3 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website:  
[http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf)

### The citizen and/or consumer interest

- A5.4 BT has requested consent from Ofcom under section 49 of the Communications Act 2003 (the Act) and Universal Service Condition 3.5 to provide call box services in the UK (outside of Hull) at non-uniform prices for a maximum term not exceeding three years expiring 30 June 2010 to the extent necessary to operate geographic public payphone tariffing trial(s).
- A5.5 BT's request explains that consent is sought because the ability to conduct geographic tariff trials from time to time will enable BT to test price sensitivity and determine whether pricing of calls can significantly influence consumer behaviour and thereby potentially stimulate payphone calling. Tariff trials are also sought because they reduce commercial risk associated with implementing an untested price nationally in the first instance and are aimed to ensure the introduction of new, more appropriate prices with minimal disruption to consumers.
- A5.6 Each trial will have to adhere to specified criteria – explained in detail in section 3 and in BT's letter set out in annex 7- and Ofcom has to be notified of certain information before start of the trial, including the period and location for each trial, the current and proposed price being trialled, the type of calls affected by the proposals, the notice given to consumers in each PCB affected and the nature of the notice to be given to Ofcom.
- A5.7 The total number of public call boxes involved in such tariffing trials will not exceed 16% of the total national box base at any time.
- A5.8 There are approximately 62,700 PCBs in the UK provided by BT. Ofcom research in 2004 showed that over a third of adults use PCBs at least occasionally and 7 per cent use them at least once a month. The most frequent users of PCBs are younger

consumers, consumers from lower income groups and those consumers with a mobile phone only or those without a fixed or mobile telephone. However Ofcom's research report Communications Market 2006 shows that virtually no consumers now rely on PCBs as their primary means of making calls, compared with 2% in 2004.

- A5.9 The requirement that prices for USO services are uniformly priced assists in particular those areas - generally rural parts of the UK - in which such services are more expensive to provide.
- A5.10 The proposed consent to non-uniform prices for calls from BT Call Boxes to the extent necessary to operate geographic public payphone tariffing trial(s) would result in some consumers paying different prices for a call from certain BT Call Boxes depending on whether the consumer is using a call box operating under the tariffing trial(s) or one of the call boxes unaffected.

### **Ofcom's policy objective**

- A5.11 USO services provide a safety net that ensures certain basic fixed line services are available at an affordable price upon reasonable request to all citizens and consumers across the UK.

### **Options considered**

- A5.12 Ofcom has considered three options:
- to consent to non-uniform charging for geographic trials for a period of three years under the provisos set out above
  - to consent to individual geographic trials for non-uniform charging.
  - not to consent to non-uniform charging for geographic trials

### **Analysis of the different options**

#### **To consent to non-uniform charging for a period of three years under the provisos set out above**

- A5.13 By consenting to BT's request, calls from PCBs will be charged on a non-uniform basis to the extent necessary to implement tariffing trials periodically during the next three years. Consumers using PCBs will pay different amounts for certain calls depending on whether they are using a PCB operating under the trial tariff or one of the PCBs unaffected.
- A5.14 The impact of non-uniform charging for geographic trials under the conditions mentioned is set out below:

#### Impact on BT:

- the consent will allow BT to carry out geographic tariffing trials to test how consumers react to the new price and whether the price increases PCB use;
- following the completion of the trial, BT will either withdraw and revert to the original price or will uniformly implement a new price nationally, thereby removing any non-uniform pricing and allowing for a more appropriate national tariff.

Impact on consumers:

- there will be less disruption for consumers as the consent will allow BT to test prices, which could help to ensure an appropriate tariff is implemented at the national level. Such disruption could be caused, for example by introducing a new tariff nationally and withdrawing the tariff again should it prove to be not viable;
- it is unlikely that consumers outside the trial location will be aware of any differences in pricing between the nationally implemented tariff and the tariff being trialled outside of their geographic areas; and
- BT will notify Ofcom of the details of the trial in advance. This will allow Ofcom to assess any potential detriment to the interests of consumers and, if necessary, withdraw consent promptly.

**Consent to individual geographic trials for non-uniform charging**

A5.15 Not consenting to BT's request for non-uniform charging for trials for a maximum of three years, could result in Ofcom having to consider, and consult upon each individual request for a trial to allow non-uniform pricing.

Impact on BT:

- BT has not specified the number of potential trials at this stage, but the alternative to consent to individual trials will mean that BT would have to request consent for each trial, and Ofcom would have to consult on each individual request. This is likely to prove burdensome for BT as it would require additional resources and would cause delays to the trialling and implementation of tariffs; and

Impact on consumers:

- the obligation of BT to request consent for each individual trial coupled with the fact that Ofcom would have to undertake individual consultations in each individual case is likely to delay the adoption of a more appropriate tariff nationally. This could harm the interests of consumers who may not be paying the most appropriate charges for calls in the interim period.

**Not to consent to non-uniform charging for geographic trials**

A5.16 Not consenting at all to BT's request for non-uniform charging for the purpose of conducting geographic trials is likely to result in BT choosing to either leave all national tariffs as they are or to implement trials at a national level. Under both circumstances, BT will meet its requirements for non-uniform charging across the UK (except for Hull).

A5.17 However, based on the information currently available Ofcom considers that constraints on BT's ability to conduct geographic trials for new prices could have effects which are not desirable, practical or cost effective.

Impact on BT:

- the inability for BT to assess consumer reaction to new tariffs in a geographic defined area could result in BT having to adopt new tariffs nationally without

testing price sensitivity and may, thus, prevent BT from implementing the most appropriate tariff on a nationwide basis.

Impact on consumers:

- if BT is unable to carry out geographic tariffing trials it may choose to trial new tariffs on a nationwide basis. Trials conducted on a nationwide basis may result in more frequent price changes (introduction and subsequent withdrawal), thus, leading to a decrease in price transparency and to confusion for consumers and may not result in the most appropriate tariff being adopted nationally at any one time.

### **The preferred option**

A5.18 Ofcom's proposed conclusion is to consent to non-uniform charging for geographic trials taking place periodically over the next three years under the provisos set out in Section 3 above and in BT's request in Annex 7 taking account of:

- the desirability of BT implementing an appropriate tariff, which has been subject to a test of consumer price sensitivity, nationally;
- the desirability of minimising disruption to consumers caused by trials conducted nationally; and
- Ofcom's continued ability to assess the detriment of any trial to the interest of consumers before each trial commences and to withdraw consent promptly, if necessary.

## Annex 6

# Notification of [Draft] Consent under section 49 (4) of the Communications Act 2003

**Proposals for giving Consent to BT pursuant to section 49 of the Communications Act 2003 ('the Act') and Universal Service Condition 3.5, which is set out in the Schedule to the Notification published by the Director General on 21 July 2003 under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003**

### WHEREAS:

1. Ofcom hereby makes, in accordance with section 49 of the Act, the following proposal for Consent to be given to BT under section 49 of the Act and Universal Service Condition 3.5, which is set out in the Schedule to the Notification published by the Director General on 21 July 2003 pursuant to Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003.
2. The [Draft] Consent is set out in the Schedule to this Notification.
3. The effect of the [Draft] Consent and the reasons for making the proposal are set out in the accompanying consultation document.
4. Representations may be made to Ofcom about the [Draft] Consent by **5pm on 14 May 2007**.
5. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with section 50(1) (a) of the Act.
6. For the purposes of this Notification:
  - "Act" means the Communications Act 2003;
  - "BT" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989;
  - "Director General" means the Director General of Telecommunications;
  - "Ofcom" means the Office of Communications; and
  - "Universal Service Conditions" means as set out in the Schedule to the notification published by the Director General on 21 July 2003 pursuant to regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003".
7. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or

expression shall have the same meaning as it has in the Universal Service Conditions and otherwise any word or expression shall have the same meaning as it has in the Act.

8. For the purpose of interpreting this Notification:
  - (i) headings and titles shall be disregarded; and
  - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
  
9. The Schedule to this Notification shall form part of this Notification

**Claudio Pollack**

**A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications**

**6th March 2007**

## Schedule

**[Draft] Consent to be given to BT under section 49 of the Communications Act 2003 ('the Act') and under Universal Service Condition 3.5, which is set out in the Schedule to the Notification published by the Director General on 21 July 2003 pursuant to Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003**

### WHEREAS:

- (A) On 21 July 2003, the Director General published a Notification under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 setting out his proposals for the designation of universal service providers and the setting of Universal Service Conditions, including Universal Service Condition 3, that he intended to be given effect upon the coming in to force of any enactment which implemented the Universal Service Directive 2002/22/EC;
- (B) the proposals set out in the Notification dated 21 July 2003 under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 automatically entered into force by virtue of the transitional provisions in the Act;
- (C) this [Draft] Consent concerns matters to which Universal Service Condition 3 relates, in particular the requirement for BT to provide the Call Box Services referred to in Universal Service Condition 3.5 on the basis of uniform prices in the UK except for the Hull Area (as defined in those conditions);
- (D) for the reasons set out in the consultation document accompanying this [Draft] Consent, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this [Draft] Consent is:
  - a. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - b. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - c. proportionate to what it is intended to achieve; and
  - d. in relation to what it is intended to achieve, transparent;
- (E) for the reasons set out in the consultation document accompanying this [Draft] Consent, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act;

### **NOW THEREFORE PURSUANT TO SECTION 49 OF THE ACT AND UNIVERSAL SERVICE CONDITION 3.5 OFCOM GIVES THE FOLLOWING CONSENT:**

1. The obligation on BT in Universal Service Condition 3.5 to provide Call Box Services on the basis of uniform prices throughout the UK (except for the Hull Area) shall not apply up to and including 30 June 2010 to the extent strictly necessary to conduct geographically defined charge trials for Call Box Services and under the proviso that:-
  - (a) Each trial is implemented for a period not exceeding 26 weeks;

- (b) Each trial is implemented only on Public Call Boxes that are located within the defined geographic area(s) identified in the notification referred to in sub-paragraph (f);
  - (c) BT has trial pricing and terms clearly annotated in the notices section of the BT Retail price list at least 14 days prior to implementation of the trial;
  - (d) BT reverts once the trial is completed all affected Public Call Boxes to the original price and withdraws the price list notice accordingly or uniformly implements a new price nationally following the end of the trial period;
  - (e) The total number of Public Call Boxes involved in all such trials at any one time does not exceed 16 % of the total national base of Public Call Boxes;
  - (f) BT notifies Ofcom at least 6 weeks prior to implementation of a trial the details of each trial including:-
    - The exact geographic location(s) of the trial;
    - The number of boxes affected within the trial area(s);
    - The price which is being trialled (current and proposed);
    - The types of calls affected by the proposed trial; and
    - The proposed start and proposed end date of the trial; and
  - (g) Each trial is only implemented in accordance with BT's notification to Ofcom referred to in sub-paragraph (f) but can be terminated before the proposed end date.
2. Ofcom may, pursuant to section 49 of the Act at any time during the period of this [Draft] Consent modify or withdraw the [Draft] Consent.
3. For the purpose of interpreting this [Draft] Consent (including the recitals above), the following definitions shall apply:

"Act" means the Communications Act 2003;

"BT" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989;

"Call Box Services" means the repair and maintenance of Public Call Boxes, and the provision of Publicly Available Telephone Services to and from such Public Call Boxes;

"Director General" means the Director General of Telecommunications;

"Hull Area" means as set out in the Universal Service Conditions;

"Ofcom" means the Office of Communications;

"Public Call Box" means a Public Pay Telephone which is permanently installed on public land and to which the public has access at all times and

"Universal Service Conditions" means as set out in the Schedule to the notification published by the Director General on 21 July 2003 pursuant to regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003".

4. Except insofar as the context otherwise requires, words or expressions used in this [Draft] Consent shall have the meaning ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has in the Universal Service Conditions and otherwise any word or expression shall have the same meaning as it has in the Act.
5. For the purpose of interpreting this [Draft] Consent:-
  - a. headings and titles shall be disregarded; and
  - b. the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.

## Annex 7

# BT's request for consent under Universal Service Condition 3



Alan Pridmore  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London  
SE1 9HA

1 February 2007

Dear Alan,

### **BT Payphones – Consent request: Universal Service Condition 3.5**

BT seeks consent from Ofcom under section 49 of the Communications Act 2003 (the Act) and Universal Service Condition 3.5 to provide call box services in the UK (outside of Hull) at non-uniform prices under the terms and conditions set out below and for a maximum term not exceeding 3 years expiring [01 June 2010]. BT understands that in carrying out its general duties Ofcom may at any time pursuant to section 49 (2) of the Act and following a consultation under section 49 (4) of the Act withdraw this consent, *inter alia* if it considers that a continuation of the proposed tariff trials might harm the interests of consumers. Furthermore, BT is aware that the consent sought by Ofcom only relates to BT's obligations under Universal Service Condition 3.5 and does in no way affect other obligations imposed upon BT under regulatory or competition law.

Such consent is sought since BT would like to conduct tariff trials from time to time to test price sensitivity and determine whether pricing of calls can significantly influence consumer behaviour and thereby potentially stimulate payphone calling. Tariff trials also are beneficial as they avoid the considerable commercial risk associated with implementing an untested price nationally in the first instance.

BT therefore seeks Ofcom's consent under section 49 of the Act and Universal Service Condition 3.5 to allow BT to operate geographic public payphone tariffing trial(s) under the following terms and conditions:

Each trial will:

- Be implemented for a period of not exceeding 26 weeks;
- Be implemented on boxes that are all only located within the defined geographic area(s) where the trial is centred as notified to Ofcom prior to the trial;
- Have trial pricing and terms clearly annotated in the Notices section of the BT Retail Price List at least 14 days prior to implementation;
- Once completed revert all affected PCBs to the standard national tariff quoted in the BT Retail Price List and withdraw the Price List Trial Notice accordingly.

The total number of public call boxes involved in such tariffing trials will not exceed 16% of the total box base at any one time.

BT will notify Ofcom at least [6 weeks] prior to implementation of a tariffing trial the details of each trial including:

- The exact geographic location(s) of the trial
- The number of boxes affected within the trial area(s)
- The price being trialled (current and proposed)
- The type of calls affected by the proposed trial
- The start and proposed end date of the trial

BT will immediately notify Ofcom should there be a requirement to end the trial before the notified end date of the trial.

BT does not believe that consumers making calls in public call boxes will be disadvantaged by these proposals. The trials that BT would seek to run would test customer price sensitivity against call generation behaviour. It is not in BT's commercial interests to operate trials, or indeed implement long term price changes, that de-stimulate payphone use, reduce calling behaviour or generate less revenue overall than the existing national price. In this way, customers themselves will set the boundaries of acceptable pricing of payphone calls but these can only be safely tested using a trials process.

Furthermore, it is unlikely that consumers outside the trial location will be aware of any differential charging between the nationally implemented tariff and the tariff being trialled outside of their geographical area. The published price will remain valid for all calls outside of the trial sites and, following the completion of the trial; the price will either be withdrawn or implemented nationally, thereby removing any non-uniform pricing.

Consistent with section 49(2) of the Act, BT considers that granting consent for non-uniform prices in these circumstances would be proportionate, objectively justifiable and transparent since it would enable BT to manage the potential risks associated with offering competitive prices for calls with minimal disruption to consumers.

Consent for non-uniform prices would also not be unduly discriminatory as the differential charging would apply to all persons using public call box services and in addition, the differential charging will only apply in the area of the trial for a limited time.

Yours sincerely



Sarah Jefferson  
Consumer Regulation Specialist

## Annex 8

# Glossary

PCB	Public Call Boxes. A public pay telephone located on a public highway
The Act	The Communications Act 2003 which came into force in July 2003
The Order	Electronic Communications (Universal Service) Order 2003 Statutory Instrument 2003 No. 1904
USD	Universal Service Directive. Directive 2002/22/EC of 7 March 2002 on universal service and users' rights
USO	The Universal Service Obligation
USP	Universal Service provider. Providers designated to provide services under Universal Service Obligation