



Supplying numbers for 09
premium rate services and codes
to facilitate mobile number
portability

Statement

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Section 1

Summary

- 1.1 This statement sets out Ofcom's (the Office of Communications) decisions in relation to making additional numbers available for premium rate sexual entertainment services and additional routing codes to facilitate mobile number portability. It follows on from our consultation *Supplying numbers for 09 premium rate services and codes to facilitate mobile number portability* published on 11 May 2006 ("the May 2006 consultation").
- 1.2 Premium rate services are offered on numbers from the 09 range, a subset of which is Sexual Entertainment Services ("SES"). SES refers to services of a clearly sexual nature or services where the promotional material is, or implies that the service is, of a sexual nature. This specific term is used for such services as it provides consistency with the terminology used by the Independent Committee for the Supervision of Standards of Telephone Information Services ("ICSTIS")¹ in the application of its Code of Practice². Increased competition in the provision of premium rate services has created an increase in demand for 09 numbers. In particular this has resulted in a scarcity of numbers currently designated for SES.
- 1.3 The May 2006 consultation offered three options for ensuring the continued availability of numbers for SES. Our preferred option was to designate a new number range – 098. This was due to the improved transparency and large increase in number resource offered by a 2-digit range. An alternative option was to follow the established approach and open an additional 3-digit sub-range - 0919. The third option was to await the completion of the Numbering Policy Review³ work on revising the 09 number structure before selecting a new set of numbers for SES.
- 1.4 In addition, general views were sought on whether SES accessed through a telephone number charged at a geographic rate, but where the sexual entertainment content associated with that service is billed separately from the call charge (i.e. through reverse-billed Short Message Service ("SMS") or credit card billing), should be kept within the 09 number range, allowing for selective call barring arrangements.
- 1.5 The May 2006 consultation also included proposals on a completely separate issue, namely making 31 additional codes available to facilitate the provision of mobile number portability. Porting codes are the means by which calls to ported numbers are routed to the correct terminating network. An increase in the number of providers with mobile numbers has generated an increase in demand for mobile number portability codes to identify recipient providers.
- 1.6 Ofcom received 14 submissions during the consultation period and has considered these responses in reaching the conclusions set out in this statement. Ofcom has decided to:

¹ ICSTIS is the industry-funded regulatory body for all premium rate telecommunications services and has responsibility for regulating the provision, content, promotion and marketing of services through its Code of Practice. Website: www.icstis.org.uk

² <http://www.icstis.org.uk/publications/cop/default.asp>

³ The Numbering Policy Review is Ofcom's review of the long term plan for the UK's telephone numbers. A consultation document (23 February 2006) and statement (27 July 2006) both entitled *Telephone Numbering: Safeguarding the future of numbers*, can be found on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/numberingreview/>.

- designate the number range 098 for premium rate sexual entertainment services;
- to open 0982 for initial allocations;
- close the existing 0908 and 0909 SES ranges to prevent further allocation to communications providers;
- consider the issue of the most appropriate number range for adult services where the content is billed separately from the carriage of the call in a forthcoming consultation on the 09 number range structure as a whole; and
- designate codes 7603 to 7622 inclusive and 7682 to 7692 inclusive as mobile number portability codes (and protect from allocation the corresponding paging numbers).

1.7 In order to reflect the decisions set out in this statement, the National Telephone Numbering Plan (“the Plan”) and the application form for 09 numbers (“09 application form”) need to be modified. The May 2006 consultation set out the notifications of proposed modifications together with necessary legal tests to the make modifications. The final notification of modifications to the provisions of the Plan and the direction under condition 17.9 in respect of the 09 application form are in Annexes 4 and 5 of this statement. The modifications come into immediate effect on publication.

Section 2

Introduction and background

Introduction

- 2.1 Ofcom is responsible for the publication of the Plan and the administration of the National Numbering Scheme (“the Scheme”). The Plan sets out numbers available for allocation and any restrictions on their adoption or use, whilst the Scheme provides the day-to-day record of the status of telephone numbers in the UK. It is Ofcom’s duty, as set out in section 63 of the Communications Act 2003 (“the Act”), to ensure that best use is made of the UK’s numbering resource and to encourage efficiency and innovation for that purpose, thus ensuring sufficient and appropriate telephone numbers are available to provide communications services to consumers.
- 2.2 Where the supply of blocks of numbers and/or codes required for the provision of communications services is limited, it is Ofcom’s duty to rectify the situation. This is because a lack of available numbers and codes would hinder competition, consumer choice and innovation in the provision of networks and services.
- 2.3 The numbering resources currently assigned for the provision of SES and routing codes for mobile number portability are nearing exhaustion. It is important to address this issue now to ensure the continued allocation of these numbers and codes to communication providers. Ofcom therefore proposed to expand the resources set aside for these services in the May 2006 consultation.

Background

The consultation: Supplying numbers for 09 premium rate services and codes to facilitate mobile number portability, 11 May 2006

- 2.4 The purpose of the May 2006 consultation was to consult on proposals to introduce a new number range for premium rate SES and, separately, to make available additional codes for mobile number portability. The proposals were made due to a scarcity of numbering resources for these services. The May 2006 consultation is available on the Ofcom website at http://www.ofcom.org.uk/consult/condocs/supply_numbers/.
- 2.5 The Act states that one month is the minimum period for consultation on modifications to the Plan and telephone numbering application forms. Ofcom decided not to extend the consultation period beyond the statutory requirement because the proposals only directly relate to persons that apply for telephone numbers, not the public at large, thus the changes proposed were limited in scope and related only to existing policy and policy documents (i.e. the Plan and the 09 application form). The deadline for responses to the consultation was 12 June 2006.
- 2.6 Ofcom received 14 responses to the May 2006 consultation. A list of respondents (apart from the names of three confidential respondents) is provided at Annex 1. The non-confidential responses have been published on Ofcom’s website at http://www.ofcom.org.uk/consult/condocs/supply_numbers/responses/. A summary of responses and Ofcom’s comments on those responses forms Section 3 (premium rate numbering) and Section 4 (mobile number portability codes) of this statement. A list of consultation questions is provided at Annex 2.

Links to the Numbering Policy Review

- 2.7 On 27 July 2006, Ofcom published its statement *Telephone Numbering: Safeguarding the future of numbers*⁴ (“the Numbering Policy Review”). This statement followed our consultation published on 23 February 2006. It confirmed a number of strategic principles which are intended to inform numbering policy, plus a number of policy initiatives intended to address certain consumer concerns. One of the initiatives was the need to ensure the ongoing supply of premium rate numbers against a background of rapid growth in demand, while establishing greater transparency and enhancing consumer trust.
- 2.8 The responses to the Numbering Policy Review consultation confirmed Ofcom’s view that premium rate numbering should no longer be confined to the complex 3-digit service structure in the 090 and 091 number ranges. Instead, premium rate services should be categorised at the two digit level (i.e. 09X) to allow for greater transparency of service and/or tariff and to promote the opportunity for selective call barring.
- 2.9 The case for separating SES was made strongly in responses to the Numbering Policy Review. The best means of dividing the 09 range to accommodate other premium rate services requires further examination and will be the subject of a separate consultation on the structure of the 09 number range later this year.
- 2.10 The principles which were set out in the May 2006 consultation on additional numbers for SES were consistent with, and supported the delivery of, the proposals set out in the Numbering Policy Review.

Legal framework

- 2.11 Ofcom regulates the communications sector under the framework established by the Act. The Act provides, amongst other things in relation to numbering, for the publication of the Plan and the setting of General Conditions of Entitlement relating to Telephone Numbers (“Numbering Conditions”). It also sets out statutory procedures governing the modification of the Plan and the giving of directions under conditions such as the Numbering Conditions.
- 2.12 The legal framework for Ofcom’s administration of the Plan and Numbering Conditions was set out in Section 5 of the May 2006 consultation. It is provided for reference at Annex 3 of this document.
- 2.13 The decisions set out in this document require a modification to the Plan to bring them into effect. In addition, the designation of additional numbering for SES requires a consequential modification to the 09 application form. The reasoning for and effect of the modifications are set out in this statement. An explanation of how the modifications comply with the legal tests in the Act is set out in Annex 3.

⁴ <http://www.ofcom.org.uk/consult/condocs/numberingreview/>

Section 3

Special services at a premium rate

Introduction

- 3.1 Special Services at a Premium Rate are services which commonly provide information or entertainment via the telephone or other terminal. They range from voting and competition lines to sports-related and business information to sexual entertainment services. Sexual Entertainment Services or “SES” at a Premium Rate provide sexually explicit content and are one particular category of premium rate service.
- 3.2 In the May 2006 consultation it was explained that due to increased competition and demand available numbers for premium rate SES were nearing exhaustion. Demand trends indicated that available numbers in the 0908 and 0909 ranges were likely to run out completely before the end of 2006. In addition, because each 10, 000 number block available for allocation has already been assigned a tariff, SES numbers would run out at some price points imminently. Therefore, additional numbers must be made available as soon as possible.
- 3.3 The May 2006 consultation was published during the consultation period for the Numbering Policy Review. Ofcom considered that this was a necessary step due to the need for additional numbers for SES being designated before the conclusion of the Numbering Policy Review’s long-term strategy for premium rate numbers. As mentioned in paragraph 2.9, the overall structure for the 09 number range requires further consideration and consultation and it will be some months before that work is concluded. This timeframe for the Numbering Policy Review’s work on 09 numbers means that it is almost certain that available SES numbers would run out before its conclusion unless action was taken in the meantime, hence the proposals set out in the May 2006 consultation.

Consultation proposals for SES numbering

- 3.4 In order to ensure that numbers for SES are available for allocation to communications providers, the May 2006 consultation proposed options for additional ranges which were consistent with the Numbering Policy Review’s proposals. This, in Ofcom’s view, allowed for SES numbers to be made available without prejudicing the outcome of the review and the long term strategy for premium rate numbers. The May 2006 consultation also included an option to delay designating additional SES numbers until the conclusion of the Numbering Policy Review work on premium rate numbering.
- 3.5 Three options for extending the SES numbering resource were proposed in the May 2006 consultation. These were:
 - i) **0919**, which would follow the “business as usual” approach of opening 3-digit codes within the 090 and 091 ranges when existing ranges exhaust;
 - ii) **098**, a 2-digit range which would improve consumer transparency of SES and facilitate the provision of selective call barring arrangements. It would also provide a substantial amount of numbers; and

- iii) delaying the decision to designate additional SES numbers until the Numbering Policy Review had determined a strategy for premium rate numbering.

3.6 Ofcom also posed a broad question on whether SES accessed through a telephone number charged at a geographic rate, but where the sexual entertainment content associated with that service is billed separately from the call charge (i.e. through reverse-billed SMS or credit card billing), should be kept within the 09 number range, allowing for call barring arrangements. This was not presented as a set of options in the May 2006 consultation as the concept will be further progressed in the consultation on the 09 number range structure later this year. However, initial comments were sought.

Responses to the consultation on premium rate SES numbers and Ofcom's comments

Question 1: Ofcom has proposed three options to accommodate the continued high demand for numbers for premium rate sexual entertainment services. These options are to (a) open 0919; (b) open 098; or (c) delay a decision until the Numbering Policy Review has selected a strategy for premium rate numbers. Which option do you prefer and why? Do you have an alternative proposal?

Responses to the consultation

- 3.7 The strong message from respondents was that any decision on 09 numbers must be consistent with the outcome of the Numbering Policy Review. Ofcom was urged to avoid piecemeal decisions and to consider the long-term future of the 09 range as a whole. Interim solutions would only serve to increase consumer confusion. Many respondents would have preferred the decision on additional numbers for SES to be delayed until the overall structure of the 09 range was clearer. However, they generally agreed that such a delay was not a viable option given the shortage of numbers.
- 3.8 As a concept, there was general support for opening 098 for SES. It was agreed that a 2-digit range, rather than a succession of 3-digit ranges, would provide greater transparency, resulting in a "service identity", which was particularly relevant for services unsuitable for minors. It was also argued that a 2-digit range would supply a sufficient source of numbers. Therefore, opening 098 was supported as an option if it was certain that the long-term strategy for premium rate numbering would be a move to 2-digit ranges as clearer indicators of service and/or tariff. However, if this outcome to the Numbering Policy Review was not certain, many respondents preferred the "business as usual" approach of opening 0919, arguing that this would at least provide consistency with the current approach to premium rate numbers until the long-term solution had been decided.
- 3.9 Some respondents suggested that the decision on numbers for SES could be delayed until the outcome of the Numbering Policy Review if Ofcom could, as a priority, seek the withdrawal of unused number blocks and return them to the pool of numbers for allocation. It was mentioned that there was little visibility of Ofcom audits to ensure that allocated numbers were being used efficiently.

- 3.10 Strong concerns were expressed at the prospect of a forced migration of services from existing 0908 and 0909 numbers if 098 was opened for SES. It was argued that such migration would cause considerable cost and inconvenience to service providers and detriment to consumers who found that the number required for a service had changed. Uncertainty about any future requirements for migration of existing services to new 2-digit number ranges resulted in some hesitancy in supporting the opening of 098.
- 3.11 A number of respondents suggested that the 0908 and 0909 ranges should be closed to new allocations if the 098 range was opened for SES. This would help establish the SES service identity on 098.
- 3.12 A few respondents expressed surprise that the need for additional numbers for SES was being addressed in the May 2006 consultation, given that Ofcom was already consulting on arrangements for premium rate numbers in the Numbering Policy Review. It was felt that Ofcom needed clearer forecasting to avoid a succession of consultations on making additional numbers available.
- 3.13 The issue of adult services being required to move from 08 numbers to 09 was raised. Ofcom published its statement *NTS: a way forward*⁵ on 19 April 2006. The statement announced the intention to implement a number of measures, including the extension of PRS regulation to adult services currently on 08 numbers. Ofcom intends to amend the Plan later this year to clarify that adult services should only be provided on the specific 09 number ranges. As a result, adult services currently provided on 08 numbers would have to move to appropriate 09 numbers. Respondents commented that a clear indication of the appropriate 09 numbers was required to facilitate planning. It also meant that a large supply of numbers for SES may be required, which would suggest that opening 098 would be a sensible approach.
- 3.14 One communications provider criticised the setting of tariffs at the 100, 000 number block level in the Scheme and argued that this practice had contributed to the lack of available number blocks to meet communications providers' requirements at different tariff levels.
- 3.15 Finally, it was commented that the notion suggested in the Numbering Policy Review, that the higher the 09X number the higher the level of potential consumer detriment from the service, was not helpful to the premium rate industry. A ranking order of detriment was for the consumer not Ofcom to decide and such an approach would discriminate against providers of SES who were offering consumers a legitimate service. However, it was accepted that the 2-digit concept would promote the potential for selective call barring.

Ofcom's comments

- 3.16 Ofcom fully supports the need to address numbering strategy as a whole and to avoid piecemeal or interim decisions on numbering arrangements where possible. Indeed, one of the main drivers of the Numbering Policy Review was to create a strategic framework that would inform our numbering decisions and develop a long-term plan for telephone numbering. However, the requirement for numbers continues during the review process and it is Ofcom's duty to ensure that number availability is maintained. For this reason Ofcom was required to consult separately on immediate

⁵ http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/

issues of number supply while the Numbering Policy Review consulted separately on issues of numbering strategy.

- 3.17 The timeframes for comments on the Numbering Policy Review and the May 2006 consultations coincided, which meant that Ofcom could progress both pieces of work at the same time and be informed of developments in the review which would help us reach conclusions on the most appropriate source of additional numbers for SES. Ofcom took heed of the concerns in the responses that the decision on numbers for SES should be consistent with the decisions made as part of the Numbering Policy Review. This was always Ofcom's intention and we were careful to present options for SES that were consistent with, and supported the delivery of, the proposals set out in the review.
- 3.18 The statement on the Numbering Policy Review has now been published. In the statement, Ofcom announced its next steps for premium rate numbering. As there was support for the 2-digit concept in responses to both consultations, Ofcom announced that it intended to pursue a 2-digit structure for 09 numbers, with a consultation planned later in the year to determine the best way of dividing the 09 range. In the meantime, Ofcom recognised the strong support for maintaining the separation of SES and confirmed that we would definitely continue this approach. Given the commitments on premium rate numbering in the Numbering Policy Review statement, it is now certain that the option of opening 098 for SES is consistent with the plan for the long-term future of premium rate numbering. Accordingly, Ofcom announced in the Numbering Policy Review statement that we intended to designate the 098 range for SES when we published our statement on supplying numbers for premium rate SES (i.e. this statement).
- 3.19 Ofcom believes that 098 is the most suitable choice of 2-digit number range for SES. It avoids the potential misdials to emergency services that could occur on 099. Also, the digits 098 are as close as possible to existing SES numbers to aid consumer recognition of the service type. In answer to the point about Ofcom's consideration of some services to be potentially more detrimental than others, Ofcom refers to its principal duty to further the interests of citizens and consumers in relation to communications matters and to have regard, in performing that duty, to the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection. It is with this statutory duty in mind that we have given consideration to the types of services that may be considered detrimental, particularly to vulnerable consumers.
- 3.20 Ofcom agrees that on opening 098 for SES, it would be sensible to close the existing SES number ranges to prevent allocation of further 0908 and 0909 numbers to communications providers. This action would help to establish consumers' association of the 098 range with SES, increase transparency and promote selective call barring options. It would also reduce the number of services which would need to migrate to 098 if such an action was required in the future.
- 3.21 Ofcom understands communications and service providers' resistance to number change. However, we believe that in order for there to be a more transparent structure to deliver benefits to consumers, both in terms of service/tariff transparency and selective call barring, eventually all premium rate services would need to use numbers according to that structure. Migration will, of course, need to take place with the minimum possible disruption to all parties and Ofcom therefore advocates the setting of a sufficiently forward looking sunset date by which all services on 090 and 091 numbers would either have moved to the new structure or be withdrawn. Further work is envisaged on this matter and this will be taken forward in the forthcoming

consultation on the 09 number structure. However, an initial view expressed in the Numbering Policy Review statement was that a sunset date of two years from when the new structure is agreed would be appropriate. However, it may be suitable to consider an earlier sunset date for SES on the 0908 and 0909 ranges in order to allow the early introduction of selective call barring for these services.

- 3.22 Ofcom agrees that regular audits of allocated numbers are a useful tool in ensuring that communications providers use the premium rate numbering resource in an efficient and effective manner. We intend to use this process further in our general approach to maintaining the ongoing availability of numbers. However, due to legacy network restrictions, which require tariffing to be indicated at the 100, 000 number block level, tariffs on blocks need to be pre-set. Ofcom would not be able to withdraw a sufficient amount of number blocks at all tariffs to meet communications providers' requirements for SES numbers.

Question 2: What are your thoughts on the concept of opening a distinct 09 number range for SES where the call charge is linked to standard geographic call rates and the associated SES content is charged using a separate billing mechanism?

Responses to the consultation

- 3.23 Respondents generally disagreed with the concept of opening a distinct 09 number range for SES with a geographic call rate and a separate billing mechanism. Those that disagreed with the concept either considered that such services should be accommodated on the same range as premium rate SES or that there was no demand for the services to be moved to 09. It was argued that a separate range for differently billed SES would only serve to increase consumer confusion. 09 numbers signalled premium rate services where content is paid for through the telephone bill of the customer. To break this link between number and billing mechanism would alter the clear identity of the number range. Current arrangements were considered transparent as consumers could differentiate between the charge for the carriage of the call (i.e. a geographic call rate if accessed on an 01 or 02 number) and the charge for the SES service, which would be billed separately (eg on a credit card bill).
- 3.24 Some respondents wished to reserve judgement until the issue was further considered as part of the forthcoming consultation on the 09 number range structure. It was argued that the matter required a standard consultation timeframe and consideration by a wider audience than those responding to the consultation on SES numbering. An understanding of the amount of services currently offered using such charging mechanisms would be useful, as well as an assessment of whether demand would continue if the services were forced to use 09 numbers.
- 3.25 One respondent welcomed Ofcom's intention to review the situation and partially agreed with the concept of a distinct number range for such services. However, it was felt that a separate range of 100 million numbers (eg the whole 097 range) would not be an economical use of the numbering resource, although the service transparency was appreciated. On balance, it was suggested that part of the 098 range could be used, for instance, 0980. A similar structure, using sub-ranges beginning with the digit '0', could be used throughout the 09 number range structure to denote geographic rate calls with separate charging mechanisms for different types of content.
- 3.26 A few respondents to the May 2006 consultation and the Numbering Policy Review consultation supported the concept of a separate 09 range for adult services where

the call was charged at geographic rates and content was payable through alternative billing mechanisms. In this situation, call revenue would not be shared between the terminating communications provider and the service provider. A separate number range would highlight the different tariff and charging arrangements for such services. There was also a request for a separate number range outside 09 for a non-adult version of the service.

- 3.27 Finally, one respondent argued that the ICSTIS remit was clearly defined to cover premium rate calls where the payment for the service is made via the telephone bill. Attention to this principle was requested and consideration of whether such services would be outside the ICSTIS remit.

Ofcom's response

- 3.28 Ofcom posed the question of a separate number range for SES where alternative billing mechanisms are used to charge for the content because we were interested in seeking initial views on the concept. We believe that a separate number range could help increase transparency of content which, in the case of SES, may be more useful information for the consumer than call cost. A separate 09 range would promote the opportunity to bar access to SES regardless of call tariff. As stated, Ofcom must, when performing its duties, have regard to the vulnerability of children and others in need of special protection.
- 3.29 We have taken note of the suggestion that 0980 may be an appropriate range on which to offer geographic rate calls with adult content alternatively billed. In order not to prejudice the outcome of the further consultation on the 09 number range structure, Ofcom would initially open 0982 for allocation of premium rate SES.
- 3.30 Ofcom is not making any proposals to introduce a separate range for SES with alternative content billing arrangements at this stage. We agree that further analysis and consideration is required, including issues such as the ICSTIS remit. We intend to examine these issues in the forthcoming consultation on the 09 number range structure. The responses to the May 2006 consultation received on this issue will help inform our views.

Question 5: Do you have any specific comments on the proposed modifications to the Plan and/or the 09 application form?

- 3.31 One respondent remarked that the draft text in the schedule of proposed modifications to the Plan regarding the option of designating 098 as SES could be interpreted to read that only the 098 would be designated for SES and that the 0908 and 0909 ranges would no longer be used for SES. The respondent understood that this was not the position but requested confirmation that 0908 and 0909 would remain designated for SES in the Plan if 098 was to be opened.
- 3.32 Ofcom can confirm that the draft text in the Plan for opening 098 was proposed as an insertion in the Plan alongside the existing text on 090 and 091. The Schedule did not propose any deletion of text from the Plan in relation to 09 numbers. Although 0908 and 0909 would be closed to further allocations by Ofcom to communications providers, the ranges would still be designated for premium rate SES. However, communications providers would be encouraged to use 098 numbers for the provision of new SES.

Analysis and conclusions on premium rate SES numbering

Consumer interests and policy objectives

- 3.33 The key elements of the proposals for premium rate SES numbering is to make available sufficient and appropriate numbers on which services can be provided to consumers and to do this in a way that increases transparency and provides a clear service identity. These aims are in the interests of telephone users, as a scarcity of telephone numbers would impact consumer choice and competition. Improved information helps inform choices on whether to call or bar access to certain types of premium rate numbers.
- 3.34 The intended outcome of Ofcom's proposals for premium rate SES numbers is that sufficient numbers are available to meet demand from within a transparent 09 numbering structure and that consumers are better informed and protected. In Ofcom's view, the current 3-digit service structure in 090 and 091 is too complex to deliver adequate information on service and tariff.

Impact Assessment

Introduction

- 3.35 The analysis presented below represents an impact assessment, as defined in section 7 of the Act.
- 3.36 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

Assessment

- 3.37 Premium rate services need to meet the challenge of establishing greater tariff transparency and enhancing consumer trust. Ofcom also has to ensure sufficient numbers are available to meet communication providers' needs. As demand escalates, Ofcom needs to determine the next available numbering range to open for allocation. This is an urgent requirement for SES. Therefore, regulatory action must be taken to offset the negative impact on competition that would arise from a lack of available numbers for SES.
- 3.38 Ofcom's approach is to designate the 098 range for premium rate SES. This option provides a 2-digit number range, which allows for increased service transparency for consumers and promotes the opportunity to selectively bar access to a service category not suitable for minors.
- 3.39 In addition, the 098 range provides an abundant supply of 100 million numbers to meet service providers' requirements and will allow for the branding of an SES range without the impact being eroded by a multitude of sub-ranges.

- 3.40 The option of opening 098 for SES is consistent with Ofcom's stated preference to structure the 09 range using 2-digits rather than the existing 3-digit approach to denote service and/or tariff. In the Numbering Policy Review statement, Ofcom signalled its intention to restructure the 09 range according to a new set of service categories, with 2-digit number ranges allocated to each, providing sufficient capacity for the foreseeable future as well as greater transparency. These service categories could be ranked in ascending order of potential consumer detriment or concern, that is, the likelihood of a service causing consumers harm or distress either through high call costs or the type of content provided. Due to the inappropriateness of SES for certain consumers, particularly minors, Ofcom considers that it is appropriate for SES to be offered on a higher 2-digit range.
- 3.41 Responses to the Numbering Policy Review consultation agreed with this approach for SES. There was general agreement that services which consumers might particularly want to bar should be separated. Sexual entertainment was one such service requiring a distinct number range so that minors could be protected. A 2-digit range, rather than a succession of 3-digit ranges, would contribute to an 09 number plan that helps promote selective call barring facilities in practice.
- 3.42 The alternative option was to open the 0919 number range for SES numbers. This option provided a "business as usual" approach, as the concept of opening additional 091 ranges when 090 ranges exhaust was established in Ofcom's 2004 review of premium rate numbering arrangements⁶.
- 3.43 The concern with the 0919 option was that service and tariff transparency would be further eroded as a third 3-digit number range was designated for SES, making it less likely that consumers would be aware of which numbers were SES and the options for selective call barring arrangements. Also, as two 3-digit ranges had already been exhausted and the requirement for premium rate SES numbers is likely to increase if SES can no longer be provided on 08 numbers, it is likely that the 0919 range would only supply sufficient numbers to meet short-term demand.
- 3.44 The third option was to wait for the Numbering Policy Review to conclude its work on numbering arrangements for premium rate numbers. However, sufficient clarity on the long-term proposals for premium rate numbering was provided by the statement published on 27 July 2006. As stated in that document, there was strong support for SES to be separated by a distinct number range. Consensus was also achieved on the overall strategy to move to a 2-digit structure for premium rate numbers. Therefore, there is no benefit in delaying a conclusion on the most appropriate number range for additional SES numbers.
- 3.45 The impact of the different options on consumers relates to number availability and service transparency. As explained, a lack of numbers on which to provide SES has an impact on competition and choice. Similarly, delaying a decision until the conclusion of the Numbering Policy Review would also lead to such an outcome. Opening 098 would further consumers' interests by establishing an SES "label". This would be difficult to achieve through the continued opening of multiple 3-digit sub-ranges. Consumer recognition of this label would be furthered by closing the existing 0908 and 0909 ranges to allocation to communications providers encouraging new SES to be offered on 098 numbers.

⁶ Premium rate services numbering review, consultation and statement
<http://www.ofcom.org.uk/consult/condocs/prs/>

- 3.46 The impact on communications providers relates to number availability. A lack of numbers would have a considerable impact on providers wishing to launch services and a delay in the decision would lead to such a situation. The impact on communication providers' administrative and technical processes would be similar whether 098 or 0919 was opened, although initially there may be a greater impact associated with opening the 098 range. This is due to the modifications for billing and other purposes which would need to be made for a completely new number group. However, the difference in impact of opening 098 and 0919 is not expected to be significant and was not referred to in any responses to the consultation.

Ofcom's decision and next steps

- 3.47 After considering the responses to the consultation and performing the above impact assessment, Ofcom has decided to:
- designate the range 098 in the Plan as "Sexual Entertainment Services at a Premium Rate, that are charged at rates for Customers of BT which are generally either a) higher than 10p per minute up to and including £1.50 per minute including VAT, or b) fixed fee calls costing over 10p, up to and including £1.50 including VAT";
 - modify the 09 application form to include 098 for SES;
 - open the 0982 range for initial allocations;
 - close the 0908 and 0909 ranges to further allocations to communications providers; and
 - consider further the issue of opening a distinct 09 number range for SES where the call charge is linked to standard geographic call rates and the associated SES content is charged using a separate billing mechanism in the forthcoming consultation on the 09 number range structure.
- 3.48 In order to implement our decision on additional numbers for premium rate SES, Ofcom has decided to make the modifications to the Plan as set out in Annex 4 of this document. Ofcom considers that the modifications meet all the legal tests in the Act, as set out in Annex 3. We have also decided to modify the 09 application form to reflect the change to the Plan.
- 3.49 The modifications are the same as those on which Ofcom consulted in the Schedule to the Notification of proposals for a modification to the Plan (Annex 5 of the May 2006 consultation). They are also the same in principle as the modifications consulted on in the Schedule to the draft Direction for the 09 application form. There are, however, two differences in the final Schedule to the Direction. Firstly, Ofcom is removing 0908 and 0909 from the application form as these ranges will no longer be available for allocation by Ofcom to communications providers. Secondly, Ofcom has deleted section A4 and a paragraph from section A1 as these refer to the now defunct register of providers of public electronic communications networks. We are systematically deleting this section whenever we update a numbering application form.
- 3.50 Ofcom has simultaneously published this statement, the revised Plan and the revised 09 application form. Numbers in the new 098 range (initially 0982) are now available for immediate allocation to eligible communications providers who can demonstrate demand for SES numbers.

Section 4

Mobile number portability codes

Introduction

- 4.1 Number portability is the facility by which consumers can retain their existing telephone number when switching communications provider. Portability, the process by which communications providers offer number portability, is established in conjunction with industry and is provided in the UK using the “onward routing” solution. This means that calls to ported numbers are onward routed by the donor provider to the recipient provider for termination. Commonly this process is performed by the use of number portability routing codes although, for the avoidance of doubt, it is not a regulatory requirement that the portability of telephone numbers be enabled by the use of number portability codes.
- 4.2 Ofcom has designated sets of number portability codes for each type of number portability. Different code formats are used for geographic, non-geographic, mobile and personal number portability. Ofcom has traditionally followed the format for codes established by the Network Interoperability Consultative Committee (“NICC”) and proposes to keep to this general format when designating additional codes for number portability.

Mobile number portability codes

- 4.3 Mobile number portability codes are used in conjunction with the porting of mobile numbers. They are added by the donor provider (i.e. the communications provider to whom the block of mobile numbers containing the ported number is allocated) before onward routing calls to a ported mobile number and are used to identify the recipient provider (i.e. the communications provider to whom the number has been ported).
- 4.4 The NICC designed a signalling relay functionality process for mobile number portability that uses 4-digit routing prefix codes. Following NICC’s recommended format for mobile number portability codes, Ofcom set out ten initial codes in the format 7990 to 7999 inclusive for allocation to providers. It was considered good practice by industry for Ofcom not to issue for mobile number use the correlating mobile number blocks, and where Ofcom has, as in the case of 07990 and 07999, the correlating mobile number portability code has not been used. This has resulted in eight available mobile number portability codes, of which seven have been allocated.
- 4.5 There has recently been a growth in market entry of new mobile voice providers. These include network-based Mobile Virtual Network Operators (“MVNO”s), Wireless-Fidelity (“WiFi”) providers and Digital Enhanced Cordless Telecommunications (“DECT”) guard-band communications providers. Ofcom expects this growth to continue, and as it has begun to allocate mobile numbers to such providers, must make arrangements for the availability of additional mobile number portability codes so that they can be allocated where requested to facilitate portability.

Consultation proposals for mobile number portability codes

- 4.6 There is no intrinsic shortage of codes which can be used to facilitate mobile number portability. In order to make more codes available, Ofcom needs to identify further

suitable resources and, subject to consultation, modify Part A3 of the Plan to include the designations of the additional codes.

4.7 In keeping with the established 7XXX format, Ofcom proposed designating the following 31 additional routing codes for mobile number portability in the Plan:

7603 – 7622 inclusive (20 mobile number portability codes)

7682 – 7692 inclusive (11 mobile number portability codes)

4.8 Ofcom proposed the above sets of codes for mobile number portability because:

- they are in keeping with the NICC recommended format for mobile number portability codes;
- although there is a sufficient supply of mobile numbers for Ofcom not to be significantly concerned about availability, it is reluctant to protect from allocation one million mobile numbers for each mobile number portability code designated, i.e. 31 million mobile numbers;
- instead Ofcom believes that it would be more prudent to protect from allocation numbers from the paging number range 076 as it now receives minimal requests for allocation of paging numbers. Ofcom considers that it would continue to have a sufficient supply of paging numbers to meet demand if it protected 31 million paging number blocks;
- the 076 paging number blocks correlating with the proposed mobile number portability codes have not been allocated for use as paging numbers, so can be protected; and
- as statutory consultation is required to amend the Plan to make codes available for mobile number portability, Ofcom is conscious that it should designate a sufficient supply of codes during this consultation to meet demand for the foreseeable future, thus not impeding competition.

Responses to the proposals for mobile number portability codes

4.9 All respondents to the May 2006 consultation who commented on mobile number portability codes agreed with the concept of making additional codes available to facilitate mobile number portability. A few commented that this proposal was consistent with Ofcom's strategic objectives for mobile number portability, that is, facilitating its operation. It was also recognised that additional codes needed to be made available as only one code remained available for allocation and this would not meet the demand from the increasing number of mobile number range holders.

4.10 There was also agreement on designating the 31 codes identified in the consultation. The proposed codes were not seen as problematic and no alternative suggestions were received.

4.11 There was general, if not total, agreement that the 076XX paging number blocks corresponding to the proposed mobile number portability codes should be protected to ensure calls are routed and charged accurately.

4.12 One respondent commented that the underlying demand for codes was created by Ofcom's policy on allocation of mobile numbers. It was suggested that the increase in

communications providers eligible to receive a direct allocation of mobile numbers from Ofcom would be considered as part of Ofcom's forthcoming review of service definitions. In the meantime, it agreed that additional mobile number portability codes should be made available.

Ofcom's comments

- 4.13 Ofcom agrees with respondent's comments that making additional mobile number portability codes available is consistent with our strategic aims. We note the support for making additional mobile number portability codes available and the agreement that the proposed codes are suitable for the purpose of facilitating mobile number portability.
- 4.14 In line with the generality of comments that supported the proposal to protect the corresponding 076XX blocks, Ofcom will ensure that these numbers are not allocated to communications providers for use as paging numbers.
- 4.15 Ofcom confirms its intention to review the service definitions, including the definition of "Mobile Service", contained in the Plan. The intention behind the review is to ensure that the definitions which apply to each service are precise and well understood. Modifications will be subject to consultation.

Analysis and conclusions on mobile number portability codes

Consumer interests and policy objectives

- 4.16 Number portability enhances consumer choice and competition by allowing consumers to retain their telephone number when switching between communications providers. Although it is not a regulatory requirement to use number portability codes in the porting process, it is, however, common practice to do so. Therefore ensuring a supply of available mobile number portability codes to meet demand from an increasing number of providers with mobile number allocations contributes to the promotion of competition and promotes consumer interests.

Impact assessment

- 4.17 As set out in paragraph 4.5, there has been a growth in market entry of new mobile voice providers. Ofcom expects this growth to continue, and as it has begun to allocate mobile numbers to such providers, must make arrangements for the availability of additional mobile number portability codes so that they can be allocated where requested to facilitate portability. The option of no intervention would result in a negative impact on consumer choice and competition as only one mobile number portability code is available for allocation.
- 4.18 Ofcom believes that it has selected a suitable and sufficient range of codes to be designated as additional mobile number portability codes to meet likely future demand. It has also proposed to protect from allocation the corresponding paging numbers to avoid any impact on a) the availability of mobile number blocks by using codes that correspond to paging rather than mobile numbers; and b) the routing of paging calls by not using the corresponding paging numbers.
- 4.19 Ofcom's proposals for mobile number portability codes do not have a direct impact on consumers. However, as number portability is an important facilitator of competition, the proposals indirectly benefit consumers by assisting industry in its provision of mobile number portability.

- 4.20 The proposals are not expected to have an impact on communications providers as they do not constitute a change of policy. They do, however, benefit communications providers by ensuring sufficient and appropriate routing codes are available to be used in conjunction with mobile number portability.
- 4.21 Responses to the consultation supported the designation of the proposed 31 codes for the facilitation of mobile number portability and the protection of the corresponding 31 blocks of paging numbers.

Ofcom's decision and next steps

- 4.22 Given the above analysis, Ofcom has decided to implement its proposals to:
- designate codes 7603 – 7622 inclusive and 7682 – 7692 inclusive as mobile number portability codes in the Plan; and
 - protect from allocation paging number blocks 07603 – 07622 inclusive and 07682 – 07692 inclusive in the Scheme
- 4.23 In order to implement our decision on mobile number portability codes, Ofcom has decided to make the modifications to the Plan as set out in Annex 4 of this document. Ofcom considers that the modifications meet all the legal tests in the Act, as set out in Annex 3.
- 4.24 The modifications are the same in principle as those on which Ofcom consulted in the Schedule to the Notification of proposals for a modification to provisions of the Plan under section 60(3) of the Act (Annex 5 of the May 2006 consultation). The only difference to the final Schedule is that the existing entry relating to mobile number portability codes in the Plan has been modified to reflect that codes 7990 and 7999 are not used as porting codes but as mobile number blocks 07990 and 07999.
- 4.25 Ofcom has simultaneously published this statement and the revised Plan, therefore, the additional 31 codes are available for immediate allocation to eligible communications providers. We have also taken steps to display all the mobile number portability codes in the Scheme on Ofcom's website at the following address: http://www.ofcom.org.uk/telecoms/ioi/numbers/numbers_administered/#nppc

Annex 1

List of respondents to the consultation

A1.1 Ofcom received 14 submissions to the May 2006 consultation. Three responses were confidential. The non-confidential responses are available on Ofcom's website at: http://www.ofcom.org.uk/consult/condocs/supply_numbers/responses/

A1.2 The non-confidential respondents to the May 2006 consultation were:

BT plc

Federation of Communication Services ("FCS")

Hutchison 3G UK Limited ("H3G")

Kingston Communications (Hull) plc

Magrathea Telecommunications Limited

The Mobile Broadband Group ("MBG")

Network for Online Commerce ("NOC")

Premium Rate Association

Sovereign Telecom (UK) Limited

THUS plc

Vodafone Limited

Annex 2

Consultation questions

Question 1) Ofcom has proposed three options to accommodate the continued high demand for numbers for premium rate sexual entertainment services. These options are to (a) open 0919; (b) open 098; or (c) to delay a decision until the Numbering Policy Review has selected a strategy for premium rate numbers. Which option do you prefer and why? Do you have an alternative proposal?

Question 2) What are your thoughts on the concept of opening a distinct 09 number range for SES where the call charge is linked to standard geographic call rates and the associated SES content is charged using a separate billing mechanism?

Question 3) Do you agree with Ofcom's proposals to designate codes 7603 to 7622 inclusive and 7682 to 7692 inclusive as mobile number portability codes? Do you have alternative suggestions for the format of mobile number portability codes?

Question 4) (directed to communications providers): Do you have any views on the need to protect from allocation the mobile/paging number blocks that correlate with mobile number portability codes?

Question 5) Do you have any specific comments on the proposed modifications to the plan and/or the 09 application form?

Annex 3

Legal framework and tests

The legal framework

A3.1 Ofcom regulates the communications sector under the framework established by the Communications Act 2003 (the "Act"). The Act provides, amongst other things in relation to numbering, for the publication of the Plan and the setting of General Conditions of Entitlement relating to Telephone Numbers ("Numbering Conditions"). It also sets out statutory procedures governing the modification of the Plan and the giving of directions under conditions such as the Numbering Conditions.

The Plan

A3.2 Section 56(1) of the Act states that:

"It shall be the duty of OFCOM to publish a document (to be known as "the National Telephone Numbering Plan") setting out-

- a) the numbers that they have determined to be available for allocation by them as telephone numbers;
- b) such restrictions as they consider appropriate on the adoption of numbers available for allocation in accordance with the plan; and
- c) such restrictions as they consider appropriate on the other uses to which numbers available for allocation in accordance with the plan may be put."

A3.3 The Act provides for Ofcom to review and revise the Plan. Section 56(2) states that:

"It shall be OFCOM's duty –

- a) from time to time to review the National Telephone Numbering Plan; and
- b) to make any modification of that plan that they think fit in consequence of such a review; but this duty must be performed in compliance with the requirements, so far as applicable, of section 60."

A3.4 Section 60 of the Act provides for the modification of documents referred to in the Numbering Conditions (which includes the Plan) and explains the procedures to be followed in order to conduct this review. Section 60(2) of the Act provides that:

"OFCOM must not revise or otherwise modify the relevant provisions unless they are satisfied that the revision or modification is -

- a) objectively justifiable in relation to the matters 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 the modification is intended to achieve; and
- d) in relation to what it is intended to achieve, transparent."

A3.5 Section 60(3) further provides that:

"Before revising or otherwise modifying the relevant provisions, OFCOM must publish a notification -

- a) stating that they are proposing to do so;
- b) specifying the Plan or other document that they are proposing to revise or modify;
- c) setting out the effect of their proposed revisions or modifications;
- d) giving their reasons for making the proposal; and
- e) specifying the period within which representations may be made to OFCOM about their proposal."

The numbering application forms

A3.6 Clause 17.9 of the Numbering Condition states that:

"When applying for an Allocation of Telephone Numbers, the Communications Provider shall:

- (a) use an appropriate application form as directed by the Director from time to time as he thinks fit;
- (b) provide such information as is required by such application form."

A3.7 By virtue of the Transitional Provisions, references to the Director in the Numbering Condition should be read as references to Ofcom.

A3.8 Before making a change to an appropriate application form, Ofcom must satisfy the tests set out in section 49(2) of the Act as follows:

"A person must not give, modify or withdraw the direction, approval or consent unless he is satisfied that to do so is:

- a) objectively justifiable in relation to the matters 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 the modification is intended to achieve; and
- d) in relation to what it is intended to achieve, transparent."

Ofcom's general duty as to telephone numbering functions

A3.9 Ofcom has a general duty under section 63(1) of the Act in carrying out its numbering functions

“a) to secure that what appears to them to be the best use is made of the numbers that are appropriate for use as telephone numbers; and

b) to encourage efficiency and innovation for that purpose.”

General duties of Ofcom

A3.10 The principal duty of Ofcom to be observed in the carrying out of its functions is set out in section 3(1) of the Act as the duty:

“a) to further the interests of citizens in relation to communications matters; and

b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.”

A3.11 As part of the fulfilment of these principal duties, it is Ofcom's responsibility to secure the availability throughout the UK of a wide range of numbering arrangements, having regard to the interests of consumers in respect to choice, price awareness, and consumer protection.

Duties for the purpose of fulfilling Community obligations

A3.12 In addition to its general duties as to telephone numbers, when considering revisions to the Plan and/or numbering application forms, Ofcom must also take into account the six Community requirements in carrying out its functions as set out in section 4 of the Act. These include the requirement to promote competition in the provision of electronic communications networks and services, and the requirement not to favour one form of network, service or associated facility or one means of providing or making available such network, service or associated facility over another, as well as the requirement to promote the interests of European citizens.

A3.13 Similar requirements exist for the making of directions under the Numbering Conditions.

A3.14 The various legal tests and duties, and how Ofcom has complied with them in making the modifications to the Plan and the 09 application form are set out below.

Legal tests

A3.15 It is Ofcom's duty, when proposing a modification to the Plan and/or numbering application forms, to show how it considers that its proposals comply with the legal tests in the Act.

A3.16 The effect of the modification to the Plan and the 09 application form is to make available additional numbers for premium rate SES and mobile number portability codes. Ofcom is satisfied that the proposal for modifications to provisions of the Plan and the 09 application form meets the tests set out in sections 60(2) and 49(2) of the Act being:

- **objectively justifiable**, in that it relates to Ofcom's duty to publish the Plan and is justified in order to ensure that sufficient numbering resource is available to meet communication providers' requirements and to promote competition and consumer choice. It is also Ofcom's duty to direct the appropriate application form on which to

apply for numbers for premium rate services and this form would need to be modified to reflect the modifications to the Plan;

- **not unduly discriminatory**, in that all communications providers eligible to apply for telephone numbers are subject to the modifications to the Plan and the 09 application form;
- **proportionate**, in that the modification to the Plan is the minimum revision necessary to its provisions to make additional SES numbering and mobile number portability codes available. The consequential modifications to the 09 application form are the minimum changes required to reflect the proposed modifications to the Plan; and
- **transparent**, in that the Notifications proposing the modifications to the Plan and to the 09 application form, and their effects, were set out in the May 2006 consultation and the schedules of modifications are set out in Annex 4 and 5 of this statement.

A3.17 Ofcom considers that it is fulfilling its general duty as to telephone number functions as set out in section 63 of the Act in making its proposals by:

- **securing the best use of appropriate numbers**, in that additional, appropriate resources would be made available for SES numbering and mobile number portability codes. The decision to make such numbers and codes available is consistent with the strategies set out in the Numbering Policy Review; and
- **encouraging efficiency and innovation**, in that the modifications ensure that sufficient and appropriate numbering resources are available to meet communication providers' demands thereby encouraging innovation.

A3.18 Ofcom considers that the modifications to the Plan and 09 application form are consistent with its general duties in carrying out its functions as set out in section 3 of the Act. In particular, it considers its decision will further the interests of citizens in relation to communications matters and consumers in relevant markets by ensuring that the supply of telephone numbers is maintained. By making the numbers on which SES are offered transparent, Ofcom has also had regard in performing its duties to the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection.

A3.19 In making the modifications to the Plan and the 09 application form, Ofcom has also considered the Community obligations set out in section 4 of the Act, particularly the requirement to promote the interests of all persons who are citizens of the European Union. In Ofcom's view, extending the resources for mobile number portability codes and SES numbering ensures the continued availability of numbering for associated services.

Annex 4

Modification to the provisions of the Plan under section 56(2) of the Act

WHEREAS:

- A. section 56(2) of the Act provides that it shall be Ofcom's duty from time to time to review the Plan and make such revisions that they think fit, provided such revisions are made in accordance with section 60 of the Act;
- B. section 60 of the Act applies whereby General Condition 17 is a numbering condition for the time being having effect by reference to provisions of the Plan;
- C. by virtue of the Transitional Provisions, references to the Director in General Condition 17 should be read as references to Ofcom;
- D. Ofcom issued a notification pursuant to section 60(3) of the Act of a proposal to make a modification to Part A1 of the Plan on 11 May 2006 ('the Notification');
- E. for the reasons set out in the statement accompanying this modification Ofcom are satisfied that, in accordance with section 60(2) of the Act, this modification is:
 - objectively justifiable in relation to the matters to which it relates;
 - not such as to discriminate unduly against particular persons or against a particular description of persons;
 - proportionate to what the modification is intended to achieve; and
 - in relation to what it is intended to achieve, transparent.
- F. for the reasons set out in the statement accompanying this modification Ofcom are satisfied that they acted in accordance with the relevant duties set out in sections 3, 4 and 63 of the Act;
- G. a copy of the Notification was sent to the Secretary of State;
- H. in the Notification and accompanying consultation document Ofcom invited representations about any of the proposals therein by 12 June 2006;
- I. by virtue of section 60(5) of the Act, Ofcom may give effect to the proposal set out in the Notification, with or without modification, only if-
 - they have considered every representation about the proposal that is made to them within the period specified in the notification; and
 - they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- J. Ofcom received fourteen responses to the Notification and have considered every such representation made to them in respect of the proposals set out in the Notification and accompanying consultation document and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose;

- K. In considering whether to make the modification proposed in the Notification Ofcom have complied with all relevant requirements set out in section 60 of the Act.

Signed by Neil Buckley

Competition Policy Director

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

10 August 2006

Schedule

1. Ofcom, in accordance with section 56(2) of the Act, hereby makes the following modifications to the Plan to take effect on the date of publication of this notification:

A. 098 shall be inserted in the Plan under Part A1: Public Telephone Network Numbers –

098	Sexual Entertainment Services at a Premium Rate, that are charged at rates for Customers of BT which are generally either a) higher than 10p per minute up to and including £1.50 per minute including VAT, or b) fixed fee calls costing over 10p, up to and including £1.50 including VAT
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B. 31 mobile number portability codes shall be added and 2 mobile number portability codes shall be deleted from section A3: Network Codes -

7603 to 7622 inclusive	Mobile Number Portability Codes
7682 to 7692 inclusive	
7991 to 7998 inclusive	

Annex 5

Modification to the 09 application form under section 49(4) of the Act

Direction under paragraph 17.9(a) of the Condition

WHEREAS-

A. paragraph 17.9(a) of the Condition provides that when applying for an Allocation or reservation of Telephone Numbers, the Communications Provider shall use an appropriate application form as directed by the Director from time to time as he thinks fit;

B. by virtue of the Transitional Provisions, references to the Director in General Condition 17 should be read as references to OFCOM;

C. for the reasons set out in the Statement accompanying this Direction OFCOM are satisfied that the application form in the Annex to this Direction is appropriate for use by Communications Providers when applying for an Allocation or reservation of Telephone Numbers;

D. for the reasons set out in the Statement accompanying this Direction OFCOM are satisfied that, in accordance with section 49(2) of the Act, this Direction is:

- objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- not such as to discriminate unduly against particular persons or against a particular description of persons;
- proportionate to what it is intended to achieve; and
- in relation to what it is intended to achieve, transparent.

E. for the reasons set out in the Statement accompanying this Direction OFCOM are satisfied that they have acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;

F. OFCOM issued a notification pursuant to section 49(4) of the Act of a proposal to modify a direction given under Condition 17.9(a) directing the appropriate application form for 09 numbers on 11 May 2006 (the 'Notification');

G. a copy of the Notification was sent to the Secretary of State in accordance with section 50(1)(b) of the Act;

H. in the Notification and accompanying consultation document OFCOM invited representations about any of the proposals therein by 12 June 2006;

I. by virtue of section 49(9) of the Act, OFCOM may give effect to the proposal set out in the Notification, with or without Modification, only if-

- i. they have considered every representation about the proposal that is made to them within the period specified in the notification; and
- ii. they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;

J. OFCOM received fourteen responses to the Notification and have considered every such representation made to them in respect of the proposals set out in the Notification and accompanying consultation document and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;

K. In considering whether to make the modification proposed in the Notification OFCOM have complied with all relevant requirements set out in section 49 of the Act;

THEREFORE

1. OFCOM in accordance with Condition 17.9(a) hereby direct that for the time being the application form in the Annex to this Direction shall be used by Communications Providers when applying for an Allocation of Telephone Numbers starting '09' for Special Services at a Premium Rate.
2. In this Direction-
 - 'the Act' means the Communications Act 2003;
 - 'Allocation' shall have the same meaning as in the Condition;
 - 'Communications Provider' shall have the same meaning as in the Condition;
 - 'the Condition' means General Condition 17 of the General Conditions of Entitlement set by the Director on 22 July 2003 pursuant to section 45 of the Act by way of publication of a Notification pursuant to section 48(1) of the Act;
 - 'the Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
 - 'OFCOM' means the Office of Communications;
 - 'Telephone Number' shall have the same meaning as in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act;
 - 'Transitional Provisions' means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.
3. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them. Otherwise, any word or expression shall have the same meaning as it has-
 - i. in the National Telephone Numbering Plan published by Ofcom on 6 September 2004 pursuant to section 56 of the Act;
 - ii. if, and only if, it has no meaning ascribed as mentioned in (i) above, and only if the context so permits, in General Condition 17 (entitled 'Allocation, Adoption and Use of Telephone Numbers') in Part 2 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act;
 - iii. if, and only if, it has no meaning ascribed as mentioned in (i) and (ii) above, and only if the context so permits, in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act; and
 - iv. if, and only if, it has no meaning ascribed as mentioned in (i), (ii) and (iii) above, and only if the context so permits, in the Act.
4. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
5. Headings and titles shall be disregarded.

Signed by Neil Buckley

Competition Policy Director

Supplying numbers for 09 premium rate services and codes to facilitate mobile number portability

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

10 August 2006



SPECIAL SERVICES AT A PREMIUM RATE APPLICATION

Special Services at a Premium Rate numbers can be applied for under the following categories:

0900 and 0901	Special Services, time charged calls up to and including 60ppm and total call cost not greater than £5 or fixed fee up to £1 per call (all prices are for BT customers);
0904, 0905, 0906 and 0911	Special Services, open ended time dependent charge or fixed fee up to £1.50 for BT customers;
0907	Special Services pay for product that costs more than £1 in total for BT customers;
098	Sexual Entertainment Services at a Premium Rate

Please note that the promotion and content of Premium Rate Services ('PRS') is currently supervised by ICSTIS. Applicants should contact ICSTIS's Finance Officer on 020 7940 7474 or by e-mail on networkregistration@icstis.org.uk (web site: www.icstis.org.uk) before using any 09 number blocks that are allocated as a result of this application.

Definitions and Interpretation

1. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them. Otherwise, any word or expression shall have the same meaning as it has -
 - (i) in the National Telephone Numbering Plan published by Ofcom from time to time pursuant to section 56 of the Communications Act 2003 (the 'Act');
 - (ii) if, and only if, it has no meaning ascribed as mentioned in (i) above, and only if the context so permits, in General Condition 17 (entitled 'Allocation, Adoption and Use of Telephone Numbers') in Part 2 of the Schedule to the Notification published by the Director on 22nd July 2003 under section 48(1) of the Act;
 - (iii) if, and only if, it has no meaning ascribed as mentioned in (i) and (ii) above, and only if the context so permits, in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22nd July 2003 under section 48(1) of the Act;
 - (iv) if, and only if, it has no meaning ascribed as mentioned in (i), (ii) and (iii) above, and only if the context so permits, in the Notification pursuant to sections 48(1) and 120(5) of the Communications Act 2003 published by the Director on 23 December 2003;
 - (v) if, and only if, it has no meaning ascribed as mentioned in (i), (ii), (iii) and (iv) above, and only if the context so permits, in the Code for Premium Rate Services Approved under section 121 of the Communications Act 2003 by the Director on 23 December 2003 for the purposes of sections 120 and 121 of the Act; and
 - (vi) if, and only if, it has no meaning ascribed as mentioned in (i), (ii), (iii), (iv) and (v) above, and only if the context so permits, in the Act.

2. The Interpretation Act 1978 shall apply as if this Application Form were an Act of Parliament

(Applicants should ensure that all sections have been completed where relevant – incomplete Application Forms may not be processed within the 3-week deadline).

1. <u>Your reference (optional):</u>	
2. <u>Applicant details and date of application:</u> Your name, company name, address, direct telephone, direct fax, direct e-mail, mobile. <i>(Where you are acting on behalf of a Communications Provider (e.g. a consultant, solicitor, etc), and if you have not previously supplied one, you should enclose a letter from that Communications Provider confirming that you are authorised to represent it).</i>	<u>Date of application:</u>
3. <u>Communications Provider details:</u> If different from 2. above (e.g. where you are a consultant, solicitor, etc), provide the name and address of the Communications Provider on behalf of whom you are applying for Telephone Numbers.	
4. <u>Declaration of ‘Public Electronic Communications Network’ or ‘Public Electronic Communications Service’</u> The information requested in Annex A helps Ofcom to assess your eligibility to be allocated Telephone Numbers. If you are a provider of a Public Electronic Communications Network: confirm whether you have previously supplied the information requested in Annex A (or information equivalent to it), to Ofcom’s Numbering Unit; or if not, you <u>must</u> complete in full all relevant questions in Annex A and submit it along with this form. If you have previously supplied the information in Annex A, then move onto the next question – you do not need to submit Annex A with this form.	<i>(For providers of Public Electronic Communications Networks, please ensure you <u>have</u> previously supplied the information requested, before you confirm this – your application may be rejected if this is not the case).</i>

If you are a provider of Public Electronic Communications Services:

you MUST complete all relevant questions in Annex A each time you apply for Telephone Numbers and submit it with this form.

5. Telephone Numbers required:

When completing the table below, you should:

- i) give a 1st and 2nd choice for each type of Telephone Number block applied for in case the block you have applied for is not available at the time the application is processed;
- ii) select number blocks within the appropriate block (as shown at the top of the Form); and
- iii) within the required range, select blocks within the appropriate tariff as indicated on the website. If there are no available blocks at the tariff you require you should contact Ofcom's Numbering Unit for a new range to be opened at the tariff.

		Number block Type? e.g. time charged <= £5 Call-cap for BT customers block, Pay for Product, Sexual Entertainment, etc. (state which)	Code - first 4 digits after initial '0' (SABC)	Next 2 digits of number (DE)	Tariff for each number block for BT customers (including VAT):	Planned 'In-Service' Date (applications should not be submitted more than 6 months prior to in-service date)	Forecast of expected Adoption in 1st 12 months (%)	Forecast of expected Adoption in 2nd 12 months (% cumulative)
e.g. 1 st Block	1 st Choice	Time charged <= £5 Call-cap for BT customers	9014	25	50ppc	mid Oct 2006	20	80
	2 nd Choice	Time charged <= £5 Call-cap for BT customers	9016	78	50ppc	mid Oct 2006	20	80
e.g. 2 nd	1 st Choice	Sexual entertainment	9820	80	60ppm	beg. Nov 2006	40	100
	2 nd Choice	Sexual entertainment	9820	60	60ppm	beg. Nov 2006	40	100
e.g. 3 rd Block	1 st Choice	Pay for product > £1 for BT customers	9077	00	£1.20pc	end Dec 2006	15	90
	2 nd Choice	Pay for product > £1 for BT customers	9077	46	£1.20pc	end Dec 2006	15	90
1 st Block	1 st Choice							
	2 nd Choice							
2 nd Block	1 st Choice							
	2 nd Choice							
3 rd Block	1 st Choice							
	2 nd Choice							
4 th Block	1 st Choice							
	2 nd Choice							
5 th Block	1 st Choice							
	2 nd Choice							

5. continued

		Number block Type? e.g. time charged <= £5 Call-cap for BT customers block, Pay for Product, Sexual Entertainment, etc. (state which)	Code - first 4 digits after initial '0' (SABC)	Next 2 digits of number (DE)	Tariff for each number block for BT customers (including VAT):	Planned 'In-Service' Date (applications should not be submitted more than 6 months prior to in-service date)	Forecast of expected Adoption in 1st 12 months (%)	Forecast of expected Adoption in 2nd 12 months (% cumulative)
6 th Block	1 st Choice							
	2 nd Choice							
7 th Block	1 st Choice							
	2 nd Choice							
8 th Block	1 st Choice							
	2 nd Choice							
9 th Block	1 st Choice							
	2 nd Choice							
10 th Block	1 st Choice							
	2 nd Choice							
11 th Block	1 st Choice							
	2 nd Choice							
12 th Block	1 st Choice							
	2 nd Choice							
13 th Block	1 st Choice							
	2 nd Choice							
14 th Block	1 st Choice							
	2 nd Choice							
15 th Block	1 st Choice							
	2 nd Choice							

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6. Service and Market:

For each of the Telephone Number blocks applied for above, give a brief description of the type of Public Electronic Communications Service for which the Telephone Numbers applied for will be Adopted, and the market to be served by the service.

7. Adoption of existing Telephone Number blocks:

For each type of Telephone Number block applied for above, you should provide details, in the table below, of any other number blocks in the same category and at the same tariff, that you have been allocated to date - consistent with its duty in the Communications Act 2003 to secure best use of numbers Ofcom requires a justification for applying for further numbering capacity where there may be non-utilised numbers.

<p>Number Block Type? e.g. time charged <=£5 Call-cap for BT customers block, Pay for Product, Sexual Entertainment, etc. (state which)</p>	<p>Code and Number (part) – first 6 digits after initial ‘0’ Show as ‘SABC’ ‘DE’ (SABC) (DE)</p>		<p>Tariff for BT customers (NB. these tariffs should be at the same tariff, and within the same blocks as the blocks you are applying for above)</p>	<p>Total Numbers Allocated to End Users: i.e., in use or ported out (Numbers or %)</p>	<p>Total Numbers not in use but contracted out (Numbers or %)</p>
Time charged <= £5 Call-cap for BT customers	9016	65	50ppm	8560	250
Pay for product	9074	44	£1pm	9050	40

(You should e-mail this application form to numbering.applications@ofcom.org.uk)

Form S9 - Annex A

A1. Confirmation of Status:

Ofcom generally only Allocates Telephone Numbers to providers of Public Electronic Communications Networks.

Ofcom may also Allocate numbers, where number resource implications do not preclude allocation, to providers of a Public Electronic Communications Service. Ofcom would also normally expect to see that the provider has arrangements in place for its service to be carried over a network, and, where appropriate, would usually expect the provider to have taken reasonable steps to seek a sub-allocation of Telephone Numbers of the type applied for prior to making the application.

Providers of Public Electronic Communications Networks

Please provide details of:

a) the Electronic Communications Network on which the Telephone Numbers applied for are intended to be Adopted;

(a diagram may be useful to assist Ofcom in assessing your eligibility for Telephone Numbers)

b) the Electronic Communications Service which you are intending to provide over that network.

Providers of Public Electronic Communications Services

In order to determine whether or not you are a provider of a Public Electronic Communications Service, Ofcom needs certain information from you. Please provide details of:

c) the Electronic Communications Service which you are intending to provide with the Telephone Numbers applied for. Please also provide details of the network on which the numbers you are applying for will be Adopted.

A2. Applications from providers of Public Electronic Communications Services

If you are applying for Telephone Numbers as a provider of Public Electronic Communications Services, where appropriate Ofcom would usually expect your company to have already taken reasonable steps to obtain a sub-allocation of Telephone Numbers of the type you are applying for from a provider of a Public Electronic Communications Network.

- a) Have you taken steps to obtain a sub-allocation of Telephone Numbers of the type for which you are applying? If not, would you please provide a justification for that; and
- b) If you have taken steps, would you provide a brief description of the steps you have taken, and state why did you not obtain a sub-allocation?

A3. Interconnection arrangements

Describe your Interconnection arrangements (or those of the provider of a Public Electronic Communications Network on whose network the Telephone Numbers applied for would be Adopted), if any, with other Communications Providers – a simple network diagram may be useful.

(You should e-mail this application form to numbering.applications@ofcom.org.uk)