



**BT's response to Ofcom's consultations**

**SIMPLIFYING NON-GEOGRAPHIC NUMBERS**

POLICY POSITION ON THE INTRODUCTION OF THE UNBUNDLED TARIFF AND CHANGES TO  
080 AND 116 RANGES

**080 AND 116 NUMBER RANGES**

CONSULTATION ON PROPOSED DISPUTE RESOLUTION GUIDANCE

**28<sup>th</sup> May 2013**

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## 1. EXECUTIVE SUMMARY

The regulatory regime underpinning the NGCS market has helped deliver a vibrant and competitive market, but it is clear that, after nearly 20 years, there is an unfulfilled need for certainty, trust, and Consumer confidence. To achieve this aim:

- customers need to know the price of a call from the networks they use and the price of the service they're calling
- all call originators need a fair return and have freedom to compete on the price of their Access Charge
- terminating operators and Service Providers must know what they will get for the service provided, and
- there must be sufficient flexibility in the regime, for Terminators offering competitive value-added services to Service Providers.

Overall, we continue to welcome Ofcom's proposals for non-geographic call services ("NGCS"). We believe the introduction of a new unbundled pricing model and true, transparent free-to-caller services from all networks will benefit all parties – the calling consumers, network operators and service providers.

Ofcom's proposals will improve price transparency and allow consumers to see and understand the cost of the call before they make it. In turn, this should stop any excessive consumer charging and enable them to see who is responsible for the different parts of the call cost. This is a significant advance on the current consumer experience and we anticipate it will improve both customer satisfaction and confidence. We believe it should also stimulate demand for NGCS services in the longer term, so long as there is appropriate regulation in place to ensure:

- all consumers have access to the services
- that the regulation is not unnecessarily onerous, and
- free-to-caller origination payments are not set too high for terminators or Service Providers to absorb into their costings.

It is essential that the rules governing the unbundled model are clear, consistent and reciprocal across all networks at the outset, while remaining flexible enough to allow price competition and innovation. The rules will help all of industry comply with a common and practical framework. Any actions that distort price transparency should be avoided as these could undermine the aims of the new scheme and impact the value of NGCS services for all involved.

We believe, there is an overwhelming case to increase the caps on PRS prices now given the fossilisation of the current rates, the significant and unjustified imbalance with the mobile sector and consumer demand for these services. We are not aware evidence base to extend Phonepay Plus's regulatory remit to 0870 calls; a departure from Ofcom's previous conclusion and a policy shift on which Ofcom does not specifically consult here.

Finally, Ofcom must continue to work closely with industry to agree practical solutions during the implementation phase that do not complicate implementation or encourage Service Provider migration. We look forward to further involvement with Ofcom, industry, Service Providers and Consumer representatives as this project moves into the implementation phase.

## 2. INTRODUCTION AND POINTS NOT COVERED BY SPECIFIC QUESTIONS

We recognise that implementing the Non-Geo Call Services unbundled tariff and free-to-caller 080/116 is complex and we welcome the opportunity to comment on Ofcom's proposed changes to the existing regulation.

We are pleased that Ofcom has set a provisional date of January 2015 to implement the unbundled tariff and free-to-caller regulation as we believe the benefits of the change should be delivered as soon as is practically possible - though there is an overwhelming case to increase the caps on PRS calls now (see section 4). Certainty and consistency of timings for implementation is essential to avoid unnecessary expense and confusion. We also welcome Ofcom's recognition that Public Payphones should be exempt for the proposals and that a price cap on 118 directory services is unnecessary.

Aside from our points in relation to Ofcom's specific questions (Sections 4 and 5, below), we believe Ofcom must also refine its proposals in the final statement:

- to ensure clarity and consistency as this will help to avoid different interpretations of the regulation being made by different Comms Providers which would be likely to lead to consumer harm
- to provide additional clarity, and
- to maximise Consumer access to services and potential distortion of competition.

### 2.1. CONSISTENCY

Ofcom uses the terms "Customer", "Consumer", "Subscriber", "Caller" and "End-User" interchangeably. Given the decision to apply the EU Framework definition of 'Consumer' to the implementation of both the unbundled tariff and free-to-caller 080/116, we think this term should be used wherever applicable in the amendments. 'Caller' should be avoided along with 'End-User' as both terms widen the interpretation of Ofcom's proposals beyond 'Consumers' and cannot easily be implemented by the Comms Industry.

### 2.2. CLARITY

In addition to the comments for consistency (which also apply here), the tables at pages 254-256 should be aligned to the text in the main body. For example, changing the heading of the last column from '*Applicable tariff principles and maximum prices*' to 'Applicable tariff principles and maximum prices for calls originated from a Consumer line' will ensure 080 and 116 follow the same rule as the unbundled tariff (i.e. that they are free-to-caller only from Consumers' lines).

### 2.3. ACCESS TO SERVICES

While Ofcom proposes specific regulation to ensure Terminating Operators implement the unbundled tariff and free-to-caller services, we believe that there must be an additional obligation on Originating Comms Providers to open access to Non-Geographic Call Services. The ability to set and control the Access Charge for the Unbundled Tariff and receive payment for origination of free-to-caller is insufficient to guarantee all Comms Providers will open the

number ranges. Without regulation to ensure reciprocity, smaller resellers, for example, may think the potential call volumes from their customers are not enough of an incentive to build the price points and put in place the necessary bill transparency. Failure by Originators to open number ranges has a dual negative effect; Consumers are denied the opportunity to use services operating on non-geo ranges and Service Providers are unable to maximise their potential customer base making it more difficult for them to determine and put together accurate business plans. Furthermore, it builds in the risk of continued Consumer confusion, about which numbers they can call, which, defeats one of the purposes of this regime change. Ofcom can protect both Consumers and Service Providers by implementing an obligation on Originators under Condition 1 – ‘General access and interconnection obligations’. Article 5 [*Powers and responsibilities of the national regulatory authorities with regard to access and interconnection*] of the Access Directive provides National Regulatory Authorities power to ensure access to services as follows, which we believe can be justified in the case of non-Geo call services:

**1. National regulatory authorities shall, acting in pursuit of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), encourage and where appropriate ensure, in accordance with the provisions of this Directive, adequate access and interconnection, and the interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, efficient investment and innovation, and gives the maximum benefit to end-users.**

*In particular, without prejudice to measures that may be taken regarding undertakings with significant market power in accordance with Article 8, national regulatory authorities shall be able to impose:*

**(a) to the extent that is necessary to ensure end-to-end connectivity, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks where this is not already the case;**

*(ab) in justified cases and to the extent that is necessary, the obligations on undertakings that control access to end-users to make their services interoperable;*

*(b) to the extent that is necessary to ensure accessibility for end-users to digital radio and television broadcasting services specified by the Member State,*

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<sup>1</sup> (a) "access" means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services, including when they are used for the delivery of information society services or broadcast content services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services and access to virtual network services.

*obligations on operators to provide access to the other facilities referred to in Annex I, Part II on fair, reasonable and non-discriminatory terms.*

*2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6, 7 and 7a of Directive 2002/21/EC (Framework Directive).*

*3. With regard to access and interconnection referred to in paragraph 1, Member States shall ensure that the national regulatory authority is empowered to intervene at its own initiative where justified in order to secure the policy objectives of Article 8 of Directive 2002/21/EC (Framework Directive), in accordance with the provisions of this Directive and the procedures referred to in Articles 6 and 7, 20 and 21 of Directive 2002/21/EC (Framework Directive).*

[Emphasis added]

Should Ofcom choose not to act on this recommendation, we will of course expect its prompt support in the event that a threat to code access emerges post-implementation.

#### 2.4. 0800/116 ORIGINATION CHARGES

We believe that the free-to-caller origination charge must be agreed for the industry rather than differ for individual Originators. It is possible to implement one fee for fixed and another for mobile CLIs but any attempt to make it more granular than this is doomed to failure from the outset. This is because:

- Terminating Comms Providers won't know from which provider the call Originated
- Service Providers need confidence to estimate the cost of offering a free-to-caller service based on approximate call volumes rather than who their client takes telephone services with
- The origination charge should not be unwieldy to implement and manage – different origination payments suggest these could be easily changed and no mechanism to manage this is in place or under consultation.

This principle has been discussed within the Technical Working Party and the following questions raised for Ofcom's consideration as a result:

*Assuming 0800 / 0500 are made free to caller on all originating networks:*

*(57) Should MNOs receive a different origination payment for 0800 traffic (assuming it is all free to caller) than fixed CPs?*

*(58) If an MNO is to receive a different origination payment for 0800 traffic then fixed CPs, what distinguishes an MNO from a fixed CP?*

*(59) If an MNO is to receive a different origination payment for 0800 traffic than a fixed CP, will the rate be the same for all MNOs?*

These questions remain unanswered and we expect will be picked up in future industry discussions during the implementation phase however we believe Ofcom's comment would be a helpful addition to the final statement as guidance for how industry should proceed.

Given Ofcom's proposal to limit the free-to-caller regime to Consumers only, there are additional implications for the recovery of origination cost from Terminating Comms Providers/Service Providers. It is unreasonable that Originators should be able to over recover the cost of providing Consumer calls; however, the Terminating provider is not able to tell whether the call originated from a Consumer or business customer and will therefore pay the origination charge for all calls. If Originators are then free to pass on the provision cost to business customers, this equates to an over recovery overall. We believe that this issue needs to be taken into account when setting the origination charge(s) and potentially, the recovery of one be offset against the other so that the origination charge paid by Terminating Comms Providers/Service Providers is reduced overall.

Finally, within the current regime, some 080 numbers are already provided free-to-caller voluntarily by Originators without any charge to the terminator. The proposed free-to-caller regulation threatens the goodwill under which these services are provided and we believe Originators should voluntarily agree to maintain the existing situation as implementing an origination charge might result in these special, free access services being withdrawn to the detriment of Consumers. We also believe that to maximise the benefit and price transparency of 080/116 services, free-to-caller numbers should always be provided free of charge, regardless of whether they originate from a Consumer or a business line. A voluntary industry agreement to not charge callers for 080/116 services would also remove the risk of double recovery of costs for business calls, identified above.

## 2.5. ROUNDING

We believe there needs to be a specification from Ofcom for how rounding should work. Whilst Ofcom has taken the need to set out duration rounding rules (to the nearest second) into account, it has failed to consider the issue of price rounding for the Service Charge. We think this must be included within the final statement or specific guidance provided during the implementation phase to ensure rounding works correctly in the new regime.

## 2.6. INTERCONNECT AND CHARGING FOR ADDITIONAL CONVEYANCE FROM THE ASSUMED HANDOVER POINT (AHP)

BT believes that discussions about the costs of additional conveyance, where a call is handed over at somewhere other than the AHP, could be protracted during the implementation phase. The logistics of agreeing and implementing multiple conveyance charges for different CPs, and building this into billing systems, could lead to a delay in implementation of the NGCS review. It would be helpful if Ofcom could clarify expectations, and set out how additional conveyance costs are to be recovered, to avoid any delays in implementation.

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### 3. OFCOM'S PROPOSED MODIFICATION TO THE PRS CONDITION

#### 3.1. EXTENSION OF PPP'S REGULATION TO 0870

We are concerned by Ofcom's proposals to bring the entire 0870 number range into the regulatory remit of PhonepayPlus (PPP) given both the lack of evidence of consumer harm (which Ofcom has itself acknowledged) and the fact that regulation does not meet the tests within Ofcom's own analytical framework for PRS regulation. It also runs counter to Ofcom's provisional conclusion in its last NGCS consultation:

*Our provisional view is that, in line with our principle of bias against intervention, it would be preferable to pursue Option 2 [a requirement on SPs to advertise their SCs] rather than widening PPP's remit, subject to the industry being able to establish a robust and code to supplement the regulatory obligation.<sup>2</sup>*

In that consultation, Ofcom also said:

*In terms of the 084X and 0870 ranges, we consider that there is a risk that inclusion of the 084 and 0870 number ranges in the PPP regime would impose an unnecessary additional regulation on a very large number of organisations who might, in any case, voluntarily meet the requirements for price publication.<sup>3</sup>*

In our response, following preliminary discussions with industry, we submitted an outline code of practice on SPs advertising their SC rates in support of the challenge Ofcom had laid down to industry.<sup>4</sup>

We are not aware of new evidence that could have shifted Ofcom's view. This is an important policy shift and Ofcom does not explicitly consult on extension of PPP's remit in this policy document.

Looking at this in more detail, Ofcom is proposing that, if the SC for a call to a 0870 number is set above 5.833p (ex VAT), then this should be treated as a premium rate service. BT disagrees for the following reasons:

- Whilst we support well targeted and proportionate policies to enhance price transparency and reduce the scope for consumer harm, extending PhonePay Plus regulation to 0870 would be a disproportionate regulatory action leading to migration away from 087 numbers as avoidance. The low cost of calls to these numbers means the potential for consumer

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<sup>2</sup> Paragraph 12.174 in "Simplifying non-geographic Numbers: Part B – Revenue Sharing Ranges", Ofcom 4 April 2012 <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geographic-no/summary/Partb.pdf>

<sup>3</sup> Paragraph 12.164, op cit

<sup>4</sup> 'BT's response to Ofcom's consultation "Simplifying Non-Geographic Numbers"', BT, 27 June 2012

harm is minimal and we are aware of no systematic evidence of harm that would justify regulation.

- It runs counter to Ofcom’s provisional conclusion last April. Ofcom has not presented evidence to support the reversal of its position on 0870.
- Crucially, imposing regulation does not meet Ofcom’s own tests in its analytical framework for judging whether PRS regulation is appropriate.<sup>5</sup> Ofcom has not applied this framework in making this proposal. The framework includes factors such as whether the supply chain is complex and fragmented, the level of expenditure and whether inappropriate or offensive content is carried on the number range. None of these tests are met in this case.
- Similarly, this does not fit with Ofcom’s own principles for regulating, i.e. that Ofcom will operate with a bias against intervention, will always seek the least intrusive regulatory methods of achieving its objectives and will strive to ensure that interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.<sup>6</sup>
- The changes within the NGCS policy document are aimed precisely at improving price transparency. These proposals should be given a chance to work before further regulation is considered.
- It risks shrinkage in call volumes if the experience of regulatory change with 0871 and 0870 calls of a few years’ ago is repeated. When Ofcom changed the regulation on 0870 in 2009 and, at that time moved 0871 to be under PPP’s remit, Service Providers using 0870 who wanted to retain their outpayments were expected to migrate to 0871. But, through fear of onerous regulation either then or thereafter, they moved to 0844 which was not under PPP’s remit. ✂, indicating that the introduction of the PPP remit to this number range (therefore branding it as Premium Rate) has hampered take up. We therefore believe that introducing 0870 to the PPP remit would further damage the 087x market.
- To brand these calls as similar to PRS could cause unnecessary concern in consumers’ minds and damage the effectiveness of Ofcom’s proposals.

Back in 2011, PPP proposed bringing all remaining revenue share ranges within its remit. BT responded to PPP’s Call for inputs in January 2012. Many of the arguments BT made at that time still stand and Ofcom drew on the responses to the PPP consultation in reaching its conclusion not to regulate 0870 last April.<sup>7</sup>

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<sup>5</sup> The framework is set out in Ofcom’s July 2011 consultation “Review of Premium Rate Services: An application of the analytical framework” at <http://stakeholders.ofcom.org.uk/binaries/consultations/review-prs/summary/condoc.pdf>

<sup>6</sup> Ofcom Annual Plan 2013/14, 28 March 2013, paragraph 1.5

<sup>7</sup> See “BT’s response to PhonepayPlus consultation *Call for inputs around the extension of PhonepayPlus regulation to remaining revenue-sharing ranges*”, 30 January 2012 at [http://www.phonepayplus.org.uk/For-Business/Consultations-and-Invitations-to-Tender/Previous-consultations/~media/Files/PhonepayPlus/Consultation%20PDFs/BT\\_response\\_08xx.pdf](http://www.phonepayplus.org.uk/For-Business/Consultations-and-Invitations-to-Tender/Previous-consultations/~media/Files/PhonepayPlus/Consultation%20PDFs/BT_response_08xx.pdf)

Ofcom's argument for bringing 0870 under PPP's remit is a tidying up argument, i.e. that there is no reason to treat different parts of the 087 number range differently. But, this is not a strong argument and does not address the critical points BT raises above. It's also important to draw a distinction between pricing transparency and consumers' perceptions of regulation. The unbundling regime is designed to address pricing transparency: whether or not 0870 falls within PPP's regulatory remit is a separate issue and is unlikely to affect how consumers perceive the transparency of prices.<sup>8</sup>

For the reasons set out above, BT considers that 0870 should not be included as a Controlled Premium Rate Service. As an alternative to Ofcom's proposals, we suggest that the pence per minute and pence per call thresholds at which services are considered PRS is set at a more proportionate level.

We recommend that for maximum Consumer understanding of how these numbers and services operate, Ofcom should set the level for Premium Rate at the proposed price cap for 087 numbers of 10.83 pence/minute exclusive of VAT. By doing this, we will have a much simpler regime where consumers can easily understand that while a greater transparency is provided for any non-geographic number through the unbundled structure; only 09 or 118 numbers are subject to additional PPP obligations as they are charged above a certain threshold.

Alternatively, should Ofcom have sufficient evidence to justify a lower price at which Premium Rate obligations should apply, we propose to set the threshold at a more moderate level, perhaps reflecting BT's current 8.51 pence/minute exclusive of VAT cap for 0871/2/3 numbers.

We also recommend that there should be only light touch PPP regulation necessary if the current Premium Rate level is maintained at 5.833 pence/minute, exclusive of VAT, or set at a mid-range of 8.51 pence/minute exclusive of VAT, in line with those in place for 0871 services today.

This proposal would have the advantage of PPP regulation only applying where the SC exceeds a certain level rather than capturing all 0870 services given the lack of evidence of consumer harm.

Paragraph 2(e)(ii) of the proposed replacement to the PRS Condition could then be amended to read:

*(ii) from and including the Effective Date, the service is obtained through a PRS Number and the Service Charge for the call by means of which the service is obtained is a rate which exceeds 10.83 pence per minute or 10.83 pence per call, exclusive of value added tax;*

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<sup>8</sup> Realistically, most consumers are unlikely to have heard of PPP or understand the significance of whether PPP regulation applies.

If, despite the above points, Ofcom does decide to bring 0870 within PPP's remit (either in whole or in part), only lighter touch PPP regulation should apply. This would be in line with the treatment of 0871, where, as with 0870, there is no systematic evidence of consumer harm.

### 3.2. OTHER COMMENTS ON ANNEX 16

**Discrepancy with PPP's Code of Practice** – The wording in paragraph 2(e) (i) applies up until the effective date of change to the regime. However, the wording does not mirror that of PPP's current Code of Practice, which we believe it should do. Paragraph 2(e) (i) says:

*until the Effective Date, the service is obtained through a Special Services Number (except an 0843/4 number), and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax*  
[emphasis added]

Whereas PPP's current Code of Practice text says:<sup>9</sup>

*(i) the service is obtained through a Special Services Number (except on an 0870 number) and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax* [emphasis added]

In order to address the current inconsistency between the PRS Condition and the PPP's Code of Practice we believe paragraph 2 (e) (i) could be changed as follows:

'until the Effective Date, the service is obtained through a Special Services Number (except an 0843/4 number or an 0870 number), and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax  
[emphasis added]

**Purpose of Paragraph 2(e) (iii)** – It is not clear what paragraph 2(e) (iii) is designed to capture given the way it is drafted:

- (a) If it is designed to capture calls to 098 services/Sexual Entertainment Services after the Effective Date, then it omits a reference to "Service Charge." The word "charge" in the following phrase needs to be replaced by the term "Service Charge" to reflect the unbundled tariff regime, "the service is obtained other than through a Special Services Number, or a PRS Number, and the **charge** for the call by means of which" etc [emphasis added].

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<sup>9</sup> Paragraph 5.3.2 (i) in PhonepayPlus Code of Practice at <http://code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011.pdf>

(b) Otherwise, we are unclear what this sub paragraph is designed to capture or if it is needed.

**Service Charges enshrined in the PRS Condition** – Section (e) (ii) of the draft implies that any call where the SC exceeds the quoted pence per call or pence per minute rate (ex VAT) will be regulated as PRS from the Effective Date. However, putting the price point in the regulation will mean the regime will soon become out of date as the pence per minute or pence per call value becomes eroded by inflation. Ofcom will have to consult on a revised PRS Condition each time this rate needs increasing.

To make this a little more future proofed, BT proposes that this rate is instead put in PPP's Code of Practice and which will likely be more frequently updated in a way that is more in tune with the developments in this market. In place of the proposed text of (e) (ii), the PRS Condition would instead cross refer to the latest version of PPP's Code of Practice.

#### 4. RESPONSE TO OFCOM'S QUESTIONS ON THE INTRODUCTION OF THE UNBUNDLED TARIFF AND CHANGES TO 080 AND 116 RANGES

##### 4.1. PART A: POLICY POSITION ON THE INTRODUCTION OF THE UNBUNDLED TARIFF AND CHANGES TO 080 AND 116 RANGES (LEGAL INSTRUMENTS: SECTION 6, ANNEXES 14 TO 18)

***Q6.1: Do you have any comments on the notifications in Annexes 14 to 18 and the draft modifications set out within them? Where you disagree with any of the proposed modifications, please explain why.***

GC12 contains new definition of "Subscriber's Access Charge". However, GC12 specifically applies to Consumers and the definition of subscriber is far wider than this in other GCs. We therefore consider the new definition may be better expressed as the "Consumer's Access Charge".

The GC14 codes of Practice apply to Consumer and Small business. The new paragraphs at 14.9 to 14.13 specifically mention Consumer and so only relate to Consumers. It is therefore unclear whether the other new parts such as 14.8 apply to Consumers or more widely. We therefore believe Ofcom should provide additional clarification of this issue in the final revisions to avoid inconsistent interpretation and application of the regulation.

We are concerned that some of Ofcom's proposals for GC17 amendment will not work in practice and need further review.

- Consumer protection – with the exception of 118 numbers<sup>10</sup>, we believe that the rules should be clearer to ensure that specific Service Charges (price points) apply to each number block to ensure consumer's benefit from these changes as Ofcom intends. It is not enough

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<sup>10</sup> 118 numbers are all allocated to Directory Services. As such, the individual 118XXX number is used as the brand; to define and differentiate each service from its competitors. For these reasons, 118 services must be able to change the Price Point without changing the number, but this should not be necessary for other number ranges where the number is rarely used to brand the service provided.

to require CPs to comply with the maximum price set out in the Numbering Plan. To assist Ofcom in making this change we recommend the following revisions:

- the term “price point” should be capitalised and defined.
- Price Points should be listed in the National Numbering Scheme at: <http://stakeholders.ofcom.org.uk/telecoms/numbering/telephone-no-availability/numbers-administered/>, which should be defined and referred out to from GC17 or the Numbering Plan. Ofcom needs to know the Price Point of each block they allocate to help them manage number blocks.
- There should be a clear requirement for all Comms Providers then to adhere to the correct and exact Service Charge – not just the price ceiling for the number type.

We believe this is the intention of the proposed wording at GC17.31(a), but we consider it will be insufficient without the additional actions listed above.

There also need to be rules around how a range-holder might change the price point of a block. For example, Ofcom might allocate a block at 20p per minute, and the CP could ask for it to be changed to say a £5 drop charge. Thus, customers could easily be deceived into thinking a call is cheaper than it really is by the time they use the service. We recommend that to minimise the risk of consumer harm that Ofcom implements an explicit prohibition on changing (and certainly on increasing) the Price Point once it has been allocated.

- GC17.31(a) (Service charges must not vary) appears to be contradicted by GC17.24(b), which seems to imply that the Service Charge can be varied, allowing discounts, bundling and special offers. It is possible Ofcom intended part of the revision to apply to the Access Charge to allow these options but, if so, we believe it has been incorrectly drafted and this is not sufficiently clear. If Ofcom does intend to allow flexibility on how Service Charges apply to Consumers, we suggest the text is reworded to remove the current ambiguity.
- GC17.23 – it is not clear how to treat calls from outside the UK . We believe clarity is needed here to ensure consistency of application.
- GC17.29 and GC17.30 - we are confused as to how paragraph 17.29 and 17.30 apply. While we assume that for 17.30 to apply, all the criteria at 17.29 must be met, the current wording does not make this clear. Inserting the word ‘all’ at 17.29 would remove any opportunity for misinterpretation. However, further change is needed, as we do not believe that Ofcom intends the very wide interpretation of paragraphs 17.29 and 17.30, meaning no Access Charge could ever apply to any 08,09 or 118 number where a single, or several Unbundled Tariff number ranges are offered within inclusive call bundles. Such an interpretation carries considerable risk that no Originating Comms Provider will include an Unbundled Tariff number range, such as 0845, within call bundles under the new regime due to the inability to off-set or recover the cost of the higher rate, 09 and 118, Unbundled Tariff services, for which the Originating Comms Provider would still pay the Service Charge. Additionally, we do not consider that a calls bundle including Unbundled Tariff numbers automatically has an Access Charge of zero. It is more accurate that in this case, the Consumer has paid for minutes of which, an element is attributed to the recovery of the Originator’s costs for providing access.

We think it is more important that Consumers understand what is included and how much they will pay for calls outside their inclusive bundle. It is therefore far more beneficial to Consumers, to allow Originating Comms Providers to choose which Unbundled Tariff number ranges they include within either inclusive call minutes or all-you-can-eat bundles and require clear, easy to understand Access Charge and tariff information on the bill.

We therefore recommend Ofcom amend the proposed text as follows:

17.29 ~~The~~ *is* paragraph **17.30** applies if **all** the following conditions are satisfied—

- a) the Consumer has purchased a bundle of inclusive call minutes from the Communications Provider;
- b) the terms and conditions of the bundle provide for the Access Charge Element to be waived in respect of any call to **numbers within the inclusive Unbundled Tariff number range(s)** ~~an Unbundled Tariff Number~~, regardless of the Unbundled Tariff Number which is called **within the inclusive Unbundled Tariff number range(s)**, to the extent there are remaining minutes in the bundle; and
- c) the call counts towards remaining minutes in the bundle of inclusive minutes purchased by the Consumer.

17.30 Where ~~paragraph~~ **all the conditions set in paragraph 17.29 are satisfied** applies, the Access Charge Element **that shall apply for calls exceeding the minutes in the bundle or for Unbundled Tariff Numbers excluded from the bundle of inclusive call minutes shall be clearly stated on the Consumer's bill with the relevant Unbundled Tariff number range(s) deemed to be zero.**

Failure to limit the condition in this way will result in the exclusion of all Unbundled Tariff number ranges from all inclusive call bundles.

- GC17.33(q) – it is unclear what is meant by the “Numbering Condition”. If this is GC17 then this should be clarified, If it refers to something else, Ofcom needs to make this clear.

#### CHANGES TO THE NUMBERING PLAN

- **Deletion of reference to mobile short codes:** We agree with the proposed deletion as it clarifies that any service of a sexual nature is captured, regardless of the underlying technology used to deliver it.
- **Effective Date:** We do not agree that the effective date for higher caps to apply to 09 numbers should be delayed to January 2015 for the reasons set out in section [see the response to question 11.1/Annex 1] of our response.
- Definition in “**Definitions & Interpretation**” section: The term “Premium Rate” has been deleted but Ofcom has not replaced it with another term. For the Numbering Plan to be self-standing, it needs a replacement definition given the term is used at a number of points in the Plan e.g. in the definition of Sexual Entertainment Service. For consistency, the definition could mirror that in the Premium Rate Condition.
- Similarly, Ofcom has deleted the term ‘Special Service’ but is still using this term in the definition of Corporate Number. The definition of Corporate Number needs amending to reflect this deletion.

- Maximum Service Charge Caps: Ofcom proposes putting the SC caps of £3 per minute and £5 per call in table A1 of the Numbering Plan. We've set out our concerns that, without Ofcom committing to periodic review of these caps, they will again become fossilised [see BT's response to question 11.1/Annex 1]. To avoid this, Ofcom could:
  - In the absence of any evidence of consumer harm after the caps are set at £3 and £5, set the caps at the maximum of advertised rates for mobile short codes. This would ensure technological neutrality and ensure the caps are set at market driven rates.
  - Add a third bullet point to table A1 in the Plan saying the caps "alternatively, must not exceed the rates set by the Competition Group Director of Ofcom from time to time and which will likely be more frequently updated in a way that is more in tune with the developments in this market." This would allow Ofcom to update the rates in a separate Ofcom letter to industry to allow swift changes in line with market conditions. This would avoid repeating the current 16 year plus delay in increasing the rates.

### **Text to support the £3 and £5 caps**

BT strongly supports Ofcom's conclusions to:

- Set a maximum price for the Service Charge (SC) for calls to the 09 range of £3 per minute and £5 per call. This a good starting point.
- To exclude VAT from the caps.
- Not to impose a cap on the SC for calls to the 118 range; and
- That further consumer protection measures are not required at this stage.

However

- We do not agree that the changes should be delayed by a further 18 months. The case for immediate change is overwhelming. It is almost a year since Ofcom consulted on increasing caps to this level. So by January 2015 they will be nearly 3 years old.
- Delay will drive further competitive distortions between the fixed and mobile sectors, yet there is no justification for different regulatory treatment between the sectors.
- Ofcom should commit to a future or periodic reviews of the cap to avoid future fossilisation of the caps. More boldly, Ofcom could remove the maximum caps altogether after a few years if justified by a lack of consumer issues, as Ofcom itself trails in the Policy Document.<sup>11</sup>
- Ofcom's proposals are a good start, but the ultimate aim must be equivalent regulatory treatment between different technologies and micropayment mechanisms – provided there is demonstrable compliance and a lack of consumer harm.

### **ASSESSMENT OF COSTS (Annex 10)**

***Q10.1: Do you agree with our estimates of the billing costs for implementing the unbundled tariff? If not, please explain why and provide evidence to support your response, particularly of the level of costs you are likely to incur as a result of our approach.***

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<sup>11</sup> Paragraph A22.171

We agree in principle however, we do not think we have sufficient detail of the impact of implementing Ofcom's proposals to respond more fully to this question. This will most likely only become available once we move to the implementation phase and can consider the actuals of how the Price Points will be put in place, how Access Charges will be set out on the bill and how much information will be disseminated to Consumers and by whom. Until these issues have considerably more clarity we do not consider we can provide any useful comment.

***Q10.2: Do you agree with our estimates of the level of misdialling costs for calls to service providers who may migrate as a result of making 080 free-to-caller? If not please explain why and provide evidence.***

We agree in principle however, we do not have any evidence to support Ofcom's estimates. Service Providers choosing to migrate away from 080 because of the implementation of free-to-caller payments should ensure they adequately communicate and promote number changes to minimise cases of misdialling.

***Q10.3: Do you agree with our estimates of the level of consumer time costs as a result of making 080 free-to-caller? If not please explain why and provide evidence.***

We agree with Ofcom's estimates of consumer time costs. We do not have any evidence to show this is the case but the reasoning seems logical. We also agree that SPs migrating away from 080 numbers are less likely to run a PCA or provide an alternative number, so consumers would need to look up alternative numbers. We think 3 minutes seems on the high side but do not have any evidence to offer alternative timings.

#### **QUANTIFIED BENEFITS ASSESSMENT (Annex 11)**

***Q11.1: Do you agree with our assessment of the impact of implementing the unbundled tariff on the 09 range is likely to be positive overall? If not please explain why.***

BT believes that the introduction of the unbundled tariff on the 09 range is likely to be beneficial to consumers where OCP prices are significantly higher than BT's. Given the proposed increase in the price cap for 09 services, it is difficult to model the impact of unbundling on the 09 range on its own. The early introduction of higher rate PRS would reduce the impact of making this change at the same time as other changes and provide evidence of the benefit of that element of the plan.

#### **FRAMEWORK FOR ASSESSING FREE-TO-CALLER ORIGINATION PAYMENTS (SECTION 12)**

***Q12.1: Do you agree that we should rely on our estimates of the cost of BT's call origination in the Narrowband Market Review to derive the fixed origination payments for the Impact Assessment Range for origination charges? If not, please explain why.***

We agree with the principle that if call origination is to be regulated, it should be priced on a LRIC+ basis where the "+" includes a mark-up to off-set the common cost recovery foregone from externally provided wholesale call termination on a LRIC basis. We also agree that the fixed origination payments for the Impact Assessment Range for origination charges should be consistent with the cost of BT's call origination resulting from the Narrowband Market Review.

These would apply to 'near end' handover at the DLE with handover further into the BT network being subject to an additional commercially agreed charge. However, this should not be taken to imply that we agree with the costs proposed in the Review of Fixed Narrowband Markets Consultation dated 5 February 2013 which have been significantly understated in Ofcom's cost model. It is essential that this is corrected if Ofcom is to meet its principle of affording OCPs the opportunity to recover their efficient costs of originating calls to a free to caller number range.

***Q12.2: Do you agree that the upper bound of non-network costs that are relevant to recovery through origination charges to 080 numbers should be LRIC+ excluding A&R, billing and bad debt costs? If not, please explain why.***

Yes, we agree.

***Q12.3: Do you agree that the asymmetric risk of the level of payments supports limiting the increase in SP average outpayments below 1ppm? If not, please explain why.***

Any mechanism which significantly increases what Service Providers have to pay will deter them from using 080 numbers; the higher the differential between fixed and mobile origination charges, the more costs Service Providers will incur. Ofcom has provided evidence to support this belief. We consider that even with a differential between fixed and mobile origination of less than 1ppm, there will still be degradation of the service, as increased costs for Service Providers arising from covering the differential between fixed and mobile origination will be significant. For very large volume customers a "top up" of 1ppm would significantly increase their costs to almost double that for a mobile originated call compared with a fixed originated call.

***Q12.4: Do you agree that the potential for a positive caller externality supports limiting the increase in SP average outpayments to below 1ppm? If not, please explain why. Simplifying non-geographic numbers - Part A Annexes 1 to 7***

We believe that the potential for a positive caller externality could be eroded by any increase in the SP average outpayment. As noted in our answer to Q12.3 above any increase could result in churn off the 0800 number or potentially a SP bank deciding to raise bank charges to customers to fund additional 0800 costs. As Ofcom states to ensure the benefit of the externality is realised the optimum action is generally to reduce the price of the product in question or in this case to limit the increase.

***Q12.5: Do you agree that SPs are likely to resort to alternative measures to mitigate the costs of calls from mobile (e.g. routing the mobile calls to a recorded announcement) at higher mobile origination payments? Do you agree that this supports a Base case scenario range towards the LRIC differential? If not, please explain why.***

Our experience suggests that Service Providers are very likely to resort to alternative measures; even with a LRIC differential, as discussed in our answer to question 12.3 above, costs to receive mobile originated calls will be significantly higher than those for fixed originated calls. There are technical solutions which would damage the whole Industry; for example it is technically possible to play a message to mobile callers such as, "this number does not received calls from

mobiles, please try from a fixed line” and then not return an answer signal. This allows costs to be incurred by both mobile OCP and TCP but no without any mechanism for charging to occur. Although situations like this should be discouraged, Service Providers would see no cost and some remain likely to resort to such measures. Another damaging behaviour for competition in the Industry would be if mobile Terminating Comms Providers wrote off the “top up” in order to gain custom from SPs currently with fixed TCPs.

***Wholesale free-to-caller regulation (Section 14)***

***Q14.1: Do you agree that the notice to be given by TCPs of initial revisions to origination charges (as set out in the draft access condition):***

***(i) should be given to OCPs; and***

***(ii) should be given within one month of the condition being set?***

***If you do not agree, please explain why.***

We agree that notice should be given to the OCPs rather than to service providers. However, given the logistical problems often experienced in the past with contacting all CPs, we would prefer Ofcom to maintain the previous proposal for two months’ notice.

Whilst we recognise the need to notify, we do not consider Terminating Communication Providers can take full responsibility for ensuring that notification reaches the intended or appropriate parties. It is a shared responsibility to maintain accurate contact and distribution lists and the contacted party holds all the information if these change. We therefore believe that in addition to notification, Terminating Comms Providers should also publish revisions so that the publication acts as a central information repository should any notification fail to reach the intended party.

We also request that Ofcom make clear that the responsibility for negotiating the origination charges lies with the TCP and the OCP, including where the traffic is carried by a transit operator. It should not be the responsibility of the transit CP to ensure that origination rates are fair and reasonable. In addition, it would simplify the implementation process if the benchmark rate, set as a result of any dispute on origination rates, could be used as the “default rate”; such that any CP wanting to charge a higher rate would have to prove their case, and the default rate would be legally binding until a different rate were determined by Ofcom.

**5. RESPONSE TO OFCOM’S QUESTION ON THE PROPOSED DISPUTE RESOLUTION GUIDANCE**

***Question 1: Do you have any comments on how we have applied these three Principles to generate the draft guidance in Annex 1?***

We do not agree that it is necessary or helpful to apply the three-principle test in the context of origination payments for free-to-caller services. We consider that the only relevant test is Principle

1<sup>12</sup>: i.e. the efficient costs of origination. Principle 2<sup>13</sup> was introduced in the context of non-geographic call termination, where Ofcom's policy preference for 080 calls to be free was to be balanced against other considerations. In the present case, the whole purpose of the regulation is to ensure that calls are free, so the only relevant consideration is whether or not the originator can recover its efficient costs.

We note that this test does not apply in the context of mobile termination rates. In its guidance on fair and reasonable MTRs, Ofcom did say that a charge higher than the benchmark could be justified if it could be shown to provide benefits through lower end-to-end costs, or increased quality of service, for consumers. However, this is in the context of each MCP having SMP in its own market for termination.

We have no comment on Principle 3<sup>14</sup>.

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<sup>12</sup> **Principle 1:** *OCPs should not be denied the opportunity to recover their efficient costs of originating calls to a free to caller number range.*

<sup>13</sup> **Principle 2:** *the origination payment should, taking into consideration our statutory duties:*

- *provide benefits to consumers, taking into account indirect and tariff package effects; and*
- *avoid a material distortion of competition either among OCPs or among TCPs.*

<sup>14</sup> **Principle 3:** *the origination payment should be practical to implement. 2.3 Our proposed guidance in Annex 1 sets out in detail the factors we will take into account and the issues we will consider under each of these Principles.*

## ANNEX 1

### COMMENTS ON LEGAL INSTRUMENTS TO IMPLEMENT HIGHER RATES PRS - ANNEXES 15 AND 16: WHY WE SUPPORT OFCOM'S CONCLUSIONS TO INCREASE THE CAPS AS A FIRST STEP

As outlined in sections 3 and 4 above, the case for changing PRS caps now (and not delaying this until January 2015) is overwhelming:

- The current cap was set back when Tony Blair became Prime Minister, 16 years ago in 1997.
- The premium rate industry, and services for which these numbers are used, has developed dramatically since then.
- For example, no-one predicted the emergence and explosive growth of charitable donations using PRS as a micropayment method. PPP recently published research under the headline *"mobile giving to rocket by nearly 900 per cent in 5 years"* with comments from large charities such as *"It is the breakthrough that we've been waiting for in the industry."*<sup>15</sup>
- Yet BT is virtually excluded from the market because of the regulatory lag in updating the caps. It is simply not worthwhile for charities to run a fundraising campaign generating a donation of less than £2. The public do not want to be kept hanging on a call simply to run up enough minutes to get to the same target value as they could with a single text donation. Although some service providers do their best to offer a fixed PRS option, it results in unnecessarily long call hold times and a poor caller experience.

Just three of the many examples of adverts for giving by mobile short codes are shown below.

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<sup>15</sup> 'Charitable Donations by Premium Rate,' PhonepayPlus, December 2012

by Vodafone



### Give your fundraising efforts a boost

JustTextGiving by Vodafone lets individuals and charities collect donations by text using a unique code. Our partnership with JustGiving means individuals and charities of any size can use the power of text messaging to raise money for charity – free. You don't even have to be a Vodafone customer to raise money or donate.

#### For donors

A convenient way for people to donate £1, £2, £3, £4, £5 or £10 by text to charities and individual fundraisers that have signed up for JustTextGiving by Vodafone.



Home | What we do | Get involved | Help and advice | News and views | **Don**

Home? Donate? **Crayons**

#### Why donate?

- Donate as you earn
- Donate in memory
- Gifts in wills
- Donate as a company
- Donate and celebrate
- Donate and buy
- Donate and recycle

## Just a crayon?



*This has the power to heal*

**To you, this might be just a crayon. To an abused child it can be the key to recovery.**

#### You can help

Help us raise £10,000 to help more children find the road to recovery. This could furnish 20 therapy rooms in our service centres, making them child friendly spaces with the tools and materials needed to help countless vulnerable children. Every penny you donate will make a difference.

- £4** can buy five packs of crayons, to help a child express themselves when they are unable to find the words
- £22** can buy a doll with clothes, to help them act out events that might be too painful for them to talk about
- £50** can buy a child and their family one-to-one support with a practitioner who can, over time, help them find the road to recovery



Or text DRAW99 £2 / £5 / £10 to 70070 to donate through your phone. Don't forget to leave us a message when you donate!



BT agrees with Ofcom that there is no reason to believe that, as EE states, increasing the caps would incentivise SPs to price at the maximum allowed. Ofcom's analysis shows this is not the case currently for 09. Of the options, Option 2 gives SPs more flexibility in terms of where they can price. But the maximum is not the only price point: SPs can set prices below this.

In considering the level of the cap Ofcom says, *"In any case, we note that the available evidence suggests there is little demand for tariffs above our preferred option."*<sup>16</sup> BT disagrees with this statement. Firstly, BT and others have previously provided Ofcom with examples of services appropriate to price points above £3 and £5, such as digital content purchases, charitable donations, professional advice and exclusive high prize value competition.<sup>17</sup> Secondly, setting caps at higher levels will allow the kind of innovation that has been witnessed with mobile short codes to flourish – we don't know what kind of consumer-enhancing services might develop where regulation acts as a barrier to entrepreneurship. We propose that the £3 and £5 maxima are reviewed regularly and often in the light of demonstrable compliance and lack of customer harm.

### Level playing field

In the mobile sector, no such price caps apply. Hence the playing field is tilted heavily in favour of mobile operators. The growth of internet based micropayments only increases the imbalance. Technological neutrality is frequently used as a guiding principle in regulation, yet

<sup>16</sup> Paragraph A22.157

<sup>17</sup> ✂

this has not informed Ofcom's approach in this case. Yet such neutrality is one of the European Community obligations enshrined in the Communications Act, where section 4(6) states Ofcom's duties require:

*The fourth Community requirement is a requirement to take account of the desirability of OFCOM's carrying out their functions in a manner which, so far as practicable, does not favour—*

- (a) one form of electronic communications network, electronic communications service or associated facility; or*
- (b) one means of providing or making available such a network, service or facility.<sup>18</sup>*

Similarly, in our September response to Ofcom's July 2012 consultation on Higher Rate PRS, we argued that Ofcom's criteria omitted any consideration of the supply side.<sup>19</sup> Ofcom argues that this is not necessary as technological neutrality and competition have been considered as part of the analysis of the market failures in the NGCS review more generally.<sup>20</sup> But this is not persuasive as, here, we are specifically talking about the lack of a level playing field between competition in the mobile and fixed PRS market, not the generality of NGCS. Ofcom does not address this issue.

In reaching its conclusion on the new levels of the cap, Ofcom says:

*In light of our analysis we considered that Option 2 – a SC cap of £3pm and £5pc was our preferred option as this level was likely to...be sufficient to provide SPs with similar revenues to those existing on mobile short codes.<sup>21</sup>*

But we don't follow why "similar revenues" are important or are used as the criterion. The guiding principle should be for regulation to set similar competitive conditions. The MNOs O2 and EE make a number of comments on the caps,<sup>22</sup> but never address the level playing field issue.

### **Timing of the change**

We disagree that the changes in this document depend exclusively on Ofcom implementing the unbundled tariff model for NGCS given the overwhelming case to increase the caps now (as set out here and in BT's September 2012 response to Ofcom). The caps should be increased before January 2015 to allow the market for charitable donations to grow faster and to avoid further distorting competition between the fixed and mobile sectors. Workable proposals have been presented to Ofcom to ensure that consumer harm is avoided in doing this.

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<sup>18</sup> Communications Act 2003

<sup>19</sup> 'BT response to Ofcom Consultation document Service Charge Caps for 09 and 118 Services', BT, 19 September 2012

<sup>20</sup> Paragraph A22.29

<sup>21</sup> Paragraph A22.113

<sup>22</sup> In BT's view, a number of these comments are assertions.

### **Future reviews of the caps**

Ofcom make no firm commitment to a future review of the SC caps. Hence, there is nothing to stop history repeating itself and for the revised caps becoming fossilised once more. A periodic review or uprating of the caps would be good regulatory practice and maintain a vibrant and innovative market for services.

Ofcom argues that an annual uplift would be likely to impact consumer price awareness and undermine, to some extent, the benefits of increased pricing transparency of unbundling.<sup>23</sup> BT does consider this stands scrutiny as SPs might not necessarily take advantage of higher caps and increase prices. Rather they'd have the flexibility to make use of higher caps if justified by market conditions.

Looking to the future, Ofcom also says *"In time, it may be appropriate to remove the requirement of a maximum SC cap altogether, or adjust the level of the cap to reflect market developments."*<sup>24</sup> BT welcomes this and invites Ofcom to set out under what circumstances it would remove the requirement for a maximum. In our comments on legal instruments, we suggest Ofcom could link the cap to the maximum advertised rates for mobile short codes.

### **VAT should be excluded**

Ofcom invites comments on whether the new rates should include or exclude VAT.<sup>25</sup> We consider that the caps should exclude VAT so that changes in Government VAT rates can flow to call prices through without the need for an Ofcom review. SPs should be free to advertise VAT inclusive rates if they choose.

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<sup>23</sup> Paragraph A22.169

<sup>24</sup> Para A22.171

<sup>25</sup> Para A22.146 says "we invite stakeholders who consider that they would have responded differently if they had understood that the level of the caps excluded VAT, to comment specifically on the proposed level of the SC caps in response to our consultation on the modifications to the Numbering Plan (see Section 6 in Part A)."

## **ANNEX 2**

