



Review of the Ofcom Metering and Billing Scheme

Statement

Statement

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Section 1

Introduction

The existing regulatory arrangements

- 1.1 On 24 November 2005 Ofcom published a Consultation on the review of the Ofcom Metering and Billing Approval Scheme at <http://www.ofcom.org.uk/consult/condocs/metering>
- 1.2 The existing scheme entered into force as part of the new regulatory framework on 25 July 2003. Its requirements are set out in Condition 11 (Metering and Billing) of the General Conditions of Entitlement (http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/gcoe/#content). The condition comprises two separate sets of requirements.
- 1.3 The first requirement applies to all Communications Providers providing Public Electronic Communication Services (PECS). It states that such providers shall not issue any bill in respect of the provision of services unless every amount in the bill represents and does not exceed the true extent of services actually provided. Additionally, providers are required to retain records so that they can demonstrate their compliance with the requirement. Ofcom may direct the length of time that such records are kept, up to a maximum of 15 months, but has not as yet exercised this power.
- 1.4 The second requirement is restricted to Communications Providers who provide Publicly Available Telephone Services (PATS) and whose turnover (less sales rebates, value added tax and other taxes directly related to turnover) from the provision of such services exceeds £40 million in the most recent complete financial year. PATS providers must apply for approval of their Total Metering and Billing System (TMBS) from a recognised Approval Body and obtain such approval as soon as is practicable. A TMBS will be approved when it is compliant with the Ofcom Metering and Billing Direction (<http://www.ofcom.org.uk/telecoms/groups/mandb/docs/?a=87101>) which is a technical standard applying numerical and quality objectives. Currently, three Approval Bodies: the British Approvals Board of Telecommunications (BABT), the British Standards Institution (BSI) and National Quality Assurance (NQA) are recognised by being referenced in the General Condition.
- 1.5 The second requirement constitutes the Ofcom Metering and Billing Approval Scheme. As at 16 June 2006 there are 32 companies participating in the scheme of which 17 have achieved approval and 15 are still seeking it.

Scope of the Review

- 1.6 The Review has been conducted in a rapidly changing environment. In the years since 2001, when the scheme acquired its essential features, developments such as the primacy of data over voice, capacity-based charging, unmetered voice calls, 'all you can eat' tariffs derived from ISP models and converged products and services have achieved a more salient presence in the market.
- 1.7 Notwithstanding the directions in which the market is moving, the review's focus has been limited to the current scheme with a view to identifying incremental improvements that will make the scheme sustainable over a medium term period.

However, we believe that the dynamics of the market will require a more root-and-branch review before the end of this decade. The development of next generation networks and the continuing movement towards convergence will have far-reaching consequences that make long-term projections unstable at present. The statement commits Ofcom to a fresh review in the next three years (see section 2.46).

Summary of the Review's proposals

- 1.8 The review proposed that industry had a more active role to play in the process of updating and maintaining the Direction so that it becomes flexible enough to accommodate new services and products while continuing to ensure that compliant systems achieve high standards of metering and billing accuracy.
- 1.9 The review also considered a number of options for revising the existing scope of the scheme. These included:
- extending the scheme to apply to selected data services;
 - modifying the threshold at which providers of voice telephony services must seek approval for their metering and billing systems, currently set at £40 million of annual turnover;
 - restricting the scheme to residential and SME customers;
 - the possibility of a self-declaration option to demonstrate compliance with the requirements of the Direction.

Summary of the Statement's conclusions

- 1.10 The statement proposes that:
- Ofcom will convene an industry experts group to revise the existing Direction;
 - data services will continue to be excluded from the Scheme although Ofcom will strongly encourage providers to include selected data services voluntarily in their approvals – this decision will be reviewed within three years;
 - there will be no change to the existing £40 million threshold;
 - the possibility of a self-declaration option will not be pursued.

Section 2

Analysis of responses and Ofcom's proposals

Introduction

- 2.1 The consultation on the Review of the Ofcom Metering and Billing Approval Scheme opened on 24 November 2005 and concluded on 3 February 2006. 42 responses were received in all, many of which demonstrated a great depth of knowledge and sharp insights into metering and billing processes which are inherently complex. 20 responses were submitted by communications providers or associated trade bodies. Four responses came from the Approval Bodies and their Forum; five from consumer stakeholders and user groups. 13 were made by individual end-users, indicating a lively degree of consumer interest in this topic.
- 2.2 What is most striking about the responses from communications providers is the degree to which they differ in their views of the direction in which the Ofcom Metering and Billing Scheme should evolve. There is little consensus about the merits or demerits of the present scheme and what should be done to address any shortcomings it might have. There was however a high degree of commonality that Metering and Billing should continue to be regulated by Ofcom for the foreseeable future, that the Ofcom Metering and Billing Direction (effectively a metering and billing standard) could be improved and that the industry should be involved in any review of the Direction.
- 2.3 This commonality does not extend to any agreement as to the nature of the body best fitted to review the Direction, which players should be involved in a review process, the long-term ownership of the Direction and the Scheme or the advantages and disadvantages of a self-certification route to compliance with the Direction.
- 2.4 Other responses were more uniform. The Approval Bodies strongly support the Scheme and are opposed to any initiatives that might be perceived as a dilution of the current requirements. They also believe that self-certification, at least in the form that was consulted on, is unworkable. Their views were widely shared by those groups representing the consumer interest and users and by those individuals who responded to the consultation.
- 2.5 The detailed conclusions that Ofcom draws from the consultation will be presented later on in this Statement. At a more general level, in knitting together the range of responses across different groups of stakeholders, one conclusion is that the Scheme is broadly accepted and that it is not so inherently flawed as to require radical surgery. There are many incremental improvements that have been suggested and these will be considered in detail in the analysis of responses to the individual questions that follows.

Question 1) Do you agree that it is right for Ofcom to continue to regulate the accuracy of metering and billing systems used by providers of publicly available telephone services?

- 2.6 The responses to this question represented a high degree of consensus around the twin propositions that it is right to regulate the accuracy of metering and billing

systems and that Ofcom should continue to play an active part in this process. Support for these propositions was most qualified in the providers' responses, some of whom believe that the current scheme, although aiming at the right general targets, is not cost-effective and that exacting levels of accuracy are achieved at too high a price. Some confidential material about the actual costs of compliance will be considered in the Impact Assessment at Annex 1.

- 2.7 Some providers believe that the customer benefits of the Scheme are not axiomatic and need to be demonstrated. A small minority believe that the Scheme, as it presently stands, should be abolished. These views are counter-balanced by a handful of providers who strongly endorse the Scheme and the benefits it brings. A partial consensus is that the Scheme is acceptable but would be improved by greater industry involvement in elaborating its detailed application.
- 2.8 Other respondents were uniformly supportive of the Scheme and Ofcom's role in it. The principle justification cited in favour of the Scheme is that customers are not able to verify the accuracy of their bills because the processes that lead to the billing for use of services have no visibility. Other comments presented the regulation of metering and billing systems as part of the more traditional 'weights and measures' audits.
- 2.9 A point made by two stakeholders was that there should be greater tariff transparency which could not be assured by a requirement to publish tariffs in the London Gazette or on the Internet. However, General Condition of Entitlement 10 on Transparency and Publication of Information requires PATS providers to supply clear and up to date information on applicable prices and tariffs in printed form, on reasonable request, in addition to publishing this information on any relevant website.

Ofcom's conclusions: Question 1

- 2.10 The conclusion we draw from the responses is that the reasons for regulating the accuracy of metering and billing systems continue to be valid. Many respondents pointed to the lack of visibility of metering processes, compared with, say, gas or electricity meters. Even more significantly, there is a widespread recognition that the Scheme establishes trust and serves to maintain a level of public confidence in the probity of charges for communications services that would risk being undermined if the Scheme were to be withdrawn.
- 2.11 Although the consumer research published in Annex 7 of the consultation revealed that customer awareness of the Scheme was limited to seven per cent of the sample questioned it is likely – subject to consumer research - that a far higher number of users simply assume that metering accuracy is subject to controls in the same way that supermarket scales and filling station pumps are, without having any specific knowledge of how that control is exercised. It is also a reasonable assumption that even if there is a low awareness of the Scheme, its abolition or significant dilution would attract more publicity than its maintenance. Communications providers may wish to consider the merits of drawing attention to their compliance with the Scheme on billing documents, thus raising its profile.
- 2.12 Ofcom believes that the Scheme serves a useful purpose and benefits both customers and providers by giving a basic degree of credibility to the charges levied for communications services. We intend to maintain its basic components although we believe there is scope for improving the Direction and the approval process in the light of the experience gathered since 2001.

Question 2) Do you agree that Ofcom should pursue the approach of seeking greater industry involvement in the revision and ownership of the Metering and Billing Direction?

- 2.13 This question elicited a range of responses. Perhaps surprisingly, communications providers were divided in their reactions. Although a majority supported the proposition of industry ownership there was also a more nuanced response from a significant minority of providers that can be summarised as wanting a greater involvement that stops somewhere short of ownership. Even the responses that thought industry ownership would be a good thing also thought that Ofcom would need to keep close to the process and provide direction. One provider commented that without Ofcom ownership the public might become sceptical about the value of the standard.
- 2.14 The Approval Bodies strongly supported Ofcom ownership but tended towards agreeing that there was scope for greater industry involvement as long as this was balanced by input from other stakeholders too. This theme was also picked up by consumer and user groups who felt that users should be as involved as suppliers are.

Ofcom's conclusions: Question 2

- 2.15 The range of responses suggests that there are different interpretations of what "ownership" might mean in the context of the Direction. It was never Ofcom's intention that Ofcom would yield its stewardship over the Direction completely. This is because any approval requirements that emerge from the standardisation process will need to be embodied in an Ofcom Direction under section 49 of the Communications Act 2003 in order for them to replace the existing Direction for the purposes of General Condition 11. Any revisions to the existing Direction will, of necessity, be subject to consultation.
- 2.16 This question was about the degree of Ofcom involvement in the process that leads up to a fresh Direction being adopted. In this sense the differences between the position adopted by, say, the Revenue Assurance Group on the one hand, and, say, O2 and Vodafone on the other may be more apparent than real. We still believe that the people who have lived with the existing Direction are best placed to bring their expertise and experience to the task of reviewing it. But this goes with a recognition that they will need to carry out their work with a clear lead from Ofcom on the shape the standard should take in order for it to be subsequently converted into a Direction.
- 2.17 In the review process it will also be necessary to seek advice from the Approval Bodies as to whether the technical requirements proposed are apt for the purposes of the audit process; in other words, how may compliance with them be transparently demonstrated.
- 2.18 Although we recognise that some stakeholder groups have expressed a wish to be involved in the standardisation process we believe that it is important to prevent any group working on a review of the Direction from becoming too large. Any revised standard will be subject to consultation as part of the Direction-making process and we believe this offers a key opportunity for stakeholder input.

Question 3) If so, which do you think would be the most appropriate industry body to carry out this task.

- 2.19 The consultation proposed a range of institutional options which might provide a suitable forum within which revisions to the Direction might be developed. As with the previous question, no clear consensus emerged. Amongst providers there was most support for the Operator Forum, a spin-off from the Revenue Assurance Group, but this option failed to carry a sufficiently broad industry consensus. A recurrent view was that the identity of the working group did not much matter as long as it was chaired by Ofcom, at least at its inception.
- 2.20 The Approval Bodies rejected any body which was seen to represent the providers' view and proposed the Metering and Billing Approval Body Forum (MABABF) as an alternative. The consumer and user stakeholders' response was not markedly enthusiastic about any of the proposed bodies and tended towards the establishment of a new body. There was also some support for BSI involvement.

Ofcom's conclusions: Question 3

- 2.21 The responses to this question suggest how difficult it is to achieve any degree of consensus over the future of the Direction. The inability of industry stakeholders to agree over the nature of the body that should revisit the standard suggests how much more demanding it will be to find a workable consensus when it comes to discussing changes to the standard itself. Although we originally hoped to find an already existing body to work on the standard we have reluctantly concluded that none of the options proposed carries broad enough support. Accordingly, we will enter into discussions with stakeholders to form a new experts' group that will be inclusive enough to muster support across the industry and with other stakeholders. Ofcom will issue directions to the experts' group and be actively involved in its deliberations.
- 2.22 We would expect to be able to subject a revised standard to a consultation process by the end of 2006.

Question 4) Do you agree with the suggested approach to the Direction that has been proposed here?

- 2.23 This question relates to a number of issues which were identified in the Consultation as being worth consideration and discussion with regard to reviewing the Direction. They included the following questions.
- 2.23.1 In what circumstances might the 1:50000 tolerance levels and the £500 limit be inappropriate?
- 2.23.2 Should undercharging be subject to the same accuracy levels as overcharging?
- 2.23.3 In what circumstances are the individual bill accuracy requirements as they apply to complaint handling appropriate?
- 2.23.4 What balance should the standard strike between a Quality Assurance model reliant on the documentation of procedures and a more metrically orientated model?
- 2.23.5 Where relevant metrics have been audited for an alternative regulatory requirement such as an annual financial audit or the disclosure

requirements of the Sarbanes Oxley Act, in what circumstances may they be accepted without further audit for the purposes of the Direction?

- 2.24 The responses to these questions revealed a wealth of detail about how the Direction is applied in practice and what the real issues are for experts involved in this field. We can only broadly summarise this detail here but believe that the full responses will be an essential input to the work on reviewing the Direction.

Tolerance levels

- 2.25 The responses about tolerance levels opened up a fascinating debate. Some experts believe that the 1:50000 tolerance is, in practice, unattainable even for services that involve high volume/low cost chargeable events. However there is an issue about how the attainment of the tolerance level meshes with the treatment of major failures and one-off events, such as a switch going down and losing data. Where major failures are ring-fenced and removed from the calculation, the tolerance level does become realisable. Some respondents believe that even a tolerance level as low as 1:100, applied without exception, would actually be tougher than the present level. Even if this is true, Ofcom would not find it possible to sanction a standard that allows for a 1:100 error rate as the public would perceive it to be an unacceptable dilution of the requirements. But there is a larger question about how exceptional events should be treated and in what circumstances ring-fencing is acceptable. This Statement does not propose to answer this question here as it requires further study. However we believe that there needs to be a greater degree of transparency and a common approach to the treatment of exceptional events.
- 2.26 Without wishing to specify appropriate tolerance levels for a range of scenarios in this Statement we firmly believe that the levels need to be adapted to the nature and volume of the service. Where the sample of chargeable events is numbered in the hundreds or the thousands, a 1:50000 limit effectively imposes an unattainable requirement for absolute billing accuracy. This is clearly unacceptable.
- 2.27 There also appears to be some lack of understanding about the application of the overcharging tolerance of £500 per calendar month set out in Table 1 of the standard which will need to be clarified.

Undercharging

- 2.28 There was a mixed set of responses to this question. Most, but not all, providers believe that undercharging limits should not be included in the standard. The case for including undercharging is that it denotes deficiencies in a metering and billing system that is delivering inaccurate outcomes. This may favour customers on occasion but work to their detriment on others. The counter-argument is that undercharging has no bearing on consumer protection and that there are circumstances in which there is a sound business case, on the grounds of cost-effectiveness, to write off small sums than chase them up.
- 2.29 Ofcom's conclusion is that although it is good practice – and in the providers' own interests – to adopt measures to limit undercharging, this is not a requirement that should carry the force of regulation. The purpose of regulating metering and billing accuracy is to limit the consumer detriment that would arise if customers were to be charged in excess of published tariffs for their consumption of communications services. It is hard to evaluate the consumer detriment caused by undercharging. Accordingly Ofcom will instruct that undercharging requirements are dropped from the standard.

Complaint handling

- 2.30 The standard currently requires providers to “have a documented process for identifying, investigating and dealing with billing complaints and creating appropriate records thereof” as well as requiring a “root cause analysis for each upheld billing complaint”.
- 2.31 Some providers responded that these obligations overlap with requirements to publish data on general and upheld billing complaints under Ofcom’s Direction on “Quality of Service Parameters”. However it is recognised that the latter does not require the implementation of any procedures other than publication and that mobile providers are excluded from its operation. One provider noted that there is some duplication with ISO 9001:2000 QMS accreditation.
- 2.32 Although it is clearly sensible for providers to adopt adequate complaints-handling procedures Ofcom believes that the current requirements do not take account of the diverse commercial scenarios within which complaints may arise. For a provider providing one element in an integrated services package, with no contractual link with end-users, the challenges of complaint handling will be markedly different from those that arise where a provider is contractually linked with residential users. We believe that the standard needs to acknowledge these differences and to reach a commonly agreed definition of what constitutes a complaint.

Quality Assurance v Metrics

- 2.33 Most responses took the position that, although there may be scope for arguing where the balance should lie, measurement and a more quality-orientated approach are both necessary. There was some sense that you cannot take figures at face value without knowing more about the circumstances of their collection – metrics alone will not tell the full story. One response argued that a Quality Assurance (QA) approach had been adopted to reduce the need for more expensive tests and measurements and that, paradoxically, an enhanced focus on metrics alone might prove more expensive.
- 2.34 Ofcom believes that this is an area best left to the experts’ group which will review the standard. Our main concern, which appears not to have been borne out by the responses, is that a QA approach is justified insofar as it is seen as a means to an end, i.e. it serves the wider objectives of the scheme, rather than being regarded as an intrinsic goal in its own right.

Use of alternative audit evidence

- 2.35 The question was intended to tease out what scope there was for relying on evidence gathered for alternative regulatory requirements for the purpose of demonstrating compliance with the standard. The most obvious is the auditing requirements of the Sarbanes Oxley Act (SOX) but the issue could equally well arise in the context of financial auditing for the annual report or certification against the ISO 9000 family of standards.
- 2.36 Although it is clearly desirable to reduce the overhead of compliance where this is feasible and avoid duplication the nuanced range of responses suggest that there is no easy win in simply applying the results of one audit to satisfy the requirements of another. There is some evidence to suggest that a degree of cross-audit acceptance is already practised under the scheme but that unless the standard was to be

mapped to fit with SOX requirements external audit figures will always require some level of interrogation.

- 2.37 Ofcom will look to a revised standard to set out more transparent criteria for the application of alternative audit evidence.

Ofcom's conclusions: Question 4

- 2.38 We believe that all of the above issues will need to be considered as the standard is revised. Our provisional conclusions, pending the formation of the experts' group, have been included with the comments on each proposal above.

Question 5) Ofcom welcomes your views on how you think the Direction can be improved

- 2.39 Responses to this question revealed an impressive array of thought-provoking proposals. They will all need to be taken account of as the standard is reviewed but in this section we will draw attention to the most significant.
- 2.39.1 A common view that the existing scheme is over-complex and needs to be simplified. One respondent commented that the current Direction looks straightforward but is not.
 - 2.39.2 The exclusion of fixed and recurring charges from the scheme.
 - 2.39.3 The exclusion of time restrictions on the timeliness of billing.
 - 2.39.4 The inclusion of unbilled services such as pre-pay and calling cards within the scheme.
 - 2.39.5 The inclusion of inventory control within the scheme.
 - 2.39.6 The inclusion of wholesale billing as applied to small resellers within the scheme.
 - 2.39.7 The formal adoption of the standard by a recognised standards body, to give it greater credibility.
 - 2.39.8 A proposal that a bill be deemed inaccurate at the point of payment, not at the point of issue. The idea is that if an inaccurate bill is rectified by adjusting the customer's direct debit payment at the time of collection, that bill should not be counted as inaccurate for the purposes of the tolerance levels.
 - 2.39.9 More transparency in distinguishing between systemic as opposed to one-off failures.
 - 2.39.10 A review of the existing materiality rule.
 - 2.39.11 A more systematic approach to dealing with usage bundles. The point here is that customers may inadvertently exceed their bundle limits through delays in applying a chargeable event to the expected time frame.
 - 2.39.12 A revision of the standard's current requirements for interworking where a customer's bill depends on inputs from more than one provider.

Ofcom conclusions: Question 5

- 2.40 Many of these issues are so technical that they are best dealt with by the experts' group.
- 2.40.1 However, to offer a preliminary indication on some of the apparently simpler issues, we are opposed to the exclusion of fixed and recurring charges. Although it is accepted that such charges are more comprehensible to the customer than usage-based charges they form an integral part of an overall bill whose accuracy and trustworthiness is underpinned by the approval scheme.
- 2.40.2 We are also inclined to oppose the exclusion of timeliness in billing requirements although we would like more clarification of what the proposers have in view. Presumably there needs to be some limit less than the six years of the Statute of Limitations. There must come a point at which the extra correspondence or explanation generated by the delayed billing of a chargeable event makes it worth writing off; alternatively, an extended billing period could be written into the terms and conditions.
- 2.40.3 With regard to the inclusion of prepay and calling card services we believe that they are arguably already included in the General Condition. However to remove any doubt we propose to amend the General Condition – in parallel with the consultation on the revised standard – to introduce a definition of “bill” and “billing” that applies to any commercial transaction where communications services are provided in exchange for consideration.
- 2.40.4 We are inclined to oppose the inclusion of wholesale billing into the scheme which would represent an enormous extension of regulation. However we feel that the point being made that resellers of Wholesale Line Rental products are entirely dependent on another provider's WLR wholesale billing system could be addressed in the consideration on interworking (see section 2.39.12 above)
- 2.40.5 There have been a number of proposals that the standard be formally adopted by a recognised standards body, such as BSI. Ofcom will explore this possibility.

Question 6) Do you agree that encouraging, but not mandating, the inclusion of selected data services in the Scheme represents the best way of protecting the users of those services from inaccurate billing?

- 2.41 In the original consultation Ofcom recognised that the question of whether to include selected data services in the scheme was finely balanced. Favouring inclusion is that data services represent a growing section of the telecommunications market and that there is an inconsistency in protecting consumers' consumption of voice services but not of data services.
- 2.42 The argument against inclusion is that there needs to be a proven consumer detriment to warrant an extension of the scheme; it is far from clear that this is the case. There is also a demarcation problem in determining which data services should be included in the scheme – all the components in a triple-play bill including TV services or only the broadband service?

- 2.43 The responses to the consultation on this question fell into the expected pattern. Most, but not all, providers favour the current arrangements whereby data services are offered for approval on a voluntary basis with Ofcom encouragement. One argument deployed was that most data services are tarified in a simpler way than voice, either at a fixed-rate or per event. Approval bodies tended towards the inclusion of all public electronic communications services including broadband, video and music downloads, ring tones, GPRS and VoIP. One made the point that the scheme risks becoming an anachronism as voice telephony becomes an ever-shrinking segment of the overall communications market. Consumer stakeholders and individual respondents also supported the inclusion of data services although some drew a distinction between flat-rate and usage-based charging.

Ofcom's conclusions: Question 6

- 2.44 All of the above arguments have some merit. For the present Ofcom believes that the current compromise represents the most practicable way of dealing with these issues. Data services will not be included in the scheme on a mandatory basis; however, Ofcom will strongly encourage providers to incorporate them in their applications for approval.
- 2.45 It also cannot be stated too emphatically that data services are not unregulated under the current arrangements. The General Condition of Entitlement 11.1 applies to all public electronic communications services provided by all providers of such services. Ofcom's powers of investigation and enforcement are far-reaching in respect of this provision and we shall not forbear from using them where appropriate.
- 2.46 Nonetheless we recognise that the speed of change in the market, including the growing volume of data services over multiple platforms, may make the current compromise less workable in future and undermine its effectiveness in protecting consumers. Accordingly we are committed to reviewing the current data requirements, as part of a review of developments in the communications market and its implications for the scheme. Our expectation is that this review would take place within three years but may be brought forward if market trends make this necessary.
- 2.47 One respondent made the point that General Condition 11 is drafted in such a way as not to explicitly exclude data services from the scope of approvals required to be sought by qualifying PATS providers. Ofcom will take the opportunity, when consulting on the revised Direction and consequent amendments to the General Condition, to make this exclusion explicit.

Question 7) Do you agree that the scope of the scheme should not be restricted to residential and SME customers, however these latter are defined?

- 2.48 Providers' responses were more or less equally divided for and against this proposition. Several thought that corporate customers should be incorporated in the scheme but only on a voluntary basis. One provider, arguing that corporate customers should be excluded also made the pragmatic observation that they were not aware of the sizes of their customers' workforce. This suggests that a cut-off point based on headcount, analogous to the exclusion of undertakings employing more than ten individuals derived from General Condition of Entitlement 14, would either be unworkable or unstable as companies fluctuated around wherever the threshold might ultimately be set.

- 2.49 Most users argued for the continuing inclusion of corporate customers. One reason cited was that ultimately their costs are passed on to consumers. Another response noted that inventory was the main issue for corporate customers and that the exclusion of providers who only supply corporates might in turn introduce market distortions because they will operate under a lighter regulatory regime than providers who serve residential customers.

Ofcom's conclusions: Question 7

- 2.50 Ofcom believes that it would be a mistake to seek to carve out a set of customers whose consumption of services was excluded from the scheme. Ultimately, the same billing processes are applied to customers of all sizes. However we strongly believe that the standard needs to take full account of differing business models and not impose a single model across the differing environments in which communications services are provided.

Question 8) Do you agree that the existing threshold should be retained?

- 2.51 The threshold at which providers of Publicly Available Telephone Services are required to submit their metering and billing systems for approval is £40 million of relevant (i.e. voice telephony) turnover. This question was intended to elicit stakeholders' views of whether the threshold was set at the right level.
- 2.52 There were mixed responses, even from communications providers. Broadly, most favoured maintaining the existing level but several believed it should be lowered to include smaller players, sometimes on the grounds that these companies may have less well-established procedures. One response made the interesting point that the 'materiality' clause of the Direction, which excludes products and services from approval where they either represent less than five per cent of a provider's turnover or aggregate customers, discriminates against smaller companies.
- 2.53 The approval bodies argued the threshold should be lowered to £20 million and this view was supported by the responses from user groups and individual consumers.

Ofcom's conclusions: Question 8

- 2.54 Ofcom is not persuaded by the case for reducing the threshold. Since the consultation was published in November 2005, when we thought a £20 million threshold would only bring in three or four additional providers, there has been a significant process of consolidation as smaller companies are absorbed by providers already subject to the scheme.
- 2.55 We also believe that although the costs of the scheme are almost entirely negligible in terms of individual consumers' bills there are significant costs associated with obtaining approval and these would bear more heavily on smaller companies. Moreover it should be remembered that all communications providers are under an obligation to bill accurately and that Ofcom has the powers to intervene where there are reasonable grounds to believe that this obligation is being breached. This provides a safeguard against the allegations that smaller companies may have less reliable metering and billing systems.

Question 9) Ofcom invites views on the feasibility of a self-declaration route to compliance with the Ofcom Direction?

Question 10) Ofcom invites views on the effectiveness of the proposed safeguard measures.

- 2.56 The decision to consult on the feasibility of a self-declaration route to compliance was the most controversial proposal in the November consultation. What was surprising about the providers' responses is that a general although not unanimous welcome for this proposal tended towards the lukewarm. The support that was expressed was qualified.
- 2.57 The primary safeguard proposed was that a self-declaration route should be restricted to those providers who had already achieved approval, in other words as a way of maintaining compliance not achieving it.
- 2.58 Perhaps understandably, the Approval Bodies were opposed to this proposal. A significant point was that approval lapses after a year unless there has been a continuing audit process.
- 2.59 Users and consumer stakeholders were divided although largely opposed to the proposal. Amongst the points that were made was the argument that a properly managed self-declaration option would not offer significant cost reductions but would carry less consumer confidence. There were also fears that transparency would be lost under the self-declaration option and that it would be perceived as second rate. One individual respondent argued that self-declaration would be resource intensive but not carry public confidence.

Ofcom's conclusions – Questions 10 and 11

- 2.60 It is with some regret that we have decided not to pursue this option. Although it appears to offer the least intrusive way of achieving Ofcom's objectives, the responses to the consultation have exposed some significant drawbacks. The most attractive safeguard would have been to limit self-declaration to providers that had already achieved approval. However, given the pace of market and technical changes, the status of any approval would be called into question over a two to three year period without continuing certification.
- 2.61 Ofcom also believes that self-declaration may end up offering providers the worst of both worlds – as resource-intensive and demanding as third-party audit but culminating in an outcome that is widely perceived as inferior to a 'real' approval.
- 2.62 For Ofcom too, self-declaration raises a monitoring issue. If we were to run spot-checks or investigate allegations of non-compliance we would probably look to the existing approval bodies to carry these out because this is where the expertise resides. To some degree this might be perceived as more intrusive than the existing relationships between communications providers and the approval bodies, mediated through existing agreements.

Question 11) Ofcom invites providers to quantify the initial and ongoing costs associated with gaining approval under the Metering and Billing Direction. What is the likely impact of this cost on average consumer bills? Please note that responses to this question will be treated as confidential.

- 2.63 Ofcom's analysis of the responses to Question 11 appears in the Impact Assessment at Annex 1 of this Statement.

Section 3

Next steps

What follows the publication of this Statement

- 3.1 Immediately after the publication of this Statement Ofcom will convene a group of industry experts with a view to establishing a working group. The group will be requested to incorporate the recommendations made in this Statement to the existing standard and to make it simpler and more transparent where this is feasible. Ofcom will be fully engaged with the activities of the working group and will provide clear leadership.
- 3.2 The group will work within a timeframe whereby it will be possible to consult on a revised Direction before the end of the year.
- 3.3 There will be a parallel consultation on General Condition 11 which will set a transitional period for approvals against the existing Direction. The consultation will also propose amendments to the General Condition that explicitly exclude data services from the mandatory scope of approval and clarify that the definition of billing includes non-bill scenarios such as Calling Cards and pre-pay services.

Annex 1

Impact assessment

What is the issue and why is Ofcom involved

- A1.1 A key feature of telecommunication services is that consumers are not readily able to quantify their consumption or verify their bills with any degree of confidence or accuracy. Unlike in gas and electricity usage, for example, there is no domestic meter to enable consumers to monitor their volume of usage. Although some services such as mobile SMS or flat-rate broadband enjoy a greater degree of transparency than others, say voice telephony, the sheer volume of services consumed and the complexity of billing due to the nature of the bundled packages purchased by a consumer make it impossible for a consumer to check that their bill is correct.
- A1.2 As a result, although customers may be able to spot gross errors, to a large extent they have to take the bills they receive on trust. Given this it is important for Ofcom to ensure that such trust is justified, particularly as it seems likely that competition will not deliver consumer protection in this area.
- A1.3 Impact Assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. The Impact Assessment, outlined in this Annex, considers the different options presented in this consultation document, namely whether the existing level of regulation is justified or whether it should be extended or reduced. In addition the overarching principle of whether or not to maintain metering and billing regulation is considered under the section about Option 1, that of withdrawing regulation in this area.
- A1.4 The Annex first outlines Ofcom's policy objectives, along with the options for maintaining or removing regulation under consideration. Subsequent sections consider the likely costs and benefits to the key stakeholders from each option, in order to identify appropriate changes to the policy.

Ofcom's policy objectives

- A1.5 There is a general case for ensuring that customers are correctly charged for their consumption of communications services. In 2004 the weekly household spend on fixed and mobile telephony was £12.26 – equivalent to 2.5 per cent of total household expenditure. Although the price of electronic communication services continues to fall it still represents a significant proportion of customers' outgoings.
- A1.6 As has been argued above, the case for regulation is in part justified by the lack of transparency associated with the billing process. Customers are not able to oversee the metering process in action in the way that they can look at their utility meters and assess current consumption on a regular basis. For this reason, bill payers have had to take their bills on trust and have confidence that their consumption has been accurately recorded and charged for.
- A1.7 Even though itemised billing has improved the quality and range of information available to customers wishing to verify their bills, it is not sufficient as a stand-alone measure. Few residential subscribers are able to maintain detailed call logs in the same way that corporate users do. There are also some services – the obvious example is mobile pre-pay – which are not billed for at all in the conventional way.

In addition, taking into account call discounts and the effect of free minutes, associated with some telephony packages, makes verification almost impossible.

A1.8 As a result Ofcom has two objectives associated with the metering and billing approval scheme:

- to ensure that customers are not overcharged; and
- to maintain customer confidence in the accuracy of their bills.

A1.9 In accordance with Ofcom's regulatory principles, the review has sought the least intrusive regulatory mechanisms to achieve these objectives.

Policy options

A1.10 The underlying principle of metering and billing regulation is considered under the option to withdraw from regulation. In addition the key costs and benefits of the current scheme (i.e. the status quo) and variations on the current scheme are addressed. The four broad policy options considered are:

- withdraw existing regulation from this area;
- do nothing – maintain the existing level of intervention in this area;
- increase the level of intervention;
- decrease the level of intervention.

Option 1 – Ofcom withdraws from regulation in this area

A1.11 Under this option Ofcom could bring the Approval Scheme to a close by withdrawing the obligation on providers of publicly available telephone services with a relevant turnover in excess of £40m to seek approval for their metering and billing systems.

Option 2 – maintaining existing level of regulation

A1.12 This option would result in the retention of Ofcom's existing Metering and Billing Approval Scheme in its present form without change.

Option 3 – increasing the level of intervention

A1.13 This option offers the possibility of building on the existing scheme by extending it either vertically or horizontally, or both. Vertical extension would involve bringing more providers into the scheme by lowering the threshold from the present £40m. Horizontal extension would involve expanding the range of services to which the scheme applies by including selected data services.

Option 4 – decreasing the level of intervention

A1.14 This option is based on the existing scheme but seeks to make it less intrusive by restricting the scope of intervention. A number of sub-options fall within this category, such as:

- raising the £40 million threshold;

- restricting the scope of the scheme to residential and SME customers;
- a review of the standard making approval easier to obtain by simplifying the standard; and
- replacing third-party auditing by a self-declaration process.

Impact on stakeholders

Option 1: Remove existing metering and billing regulation

Costs

- A1.15 There are a number of ways that retail consumers can lose out as a result of errors in metering and billing systems. These may be expected to increase if metering and billing regulation were removed. For example consumers may be overcharged as a result of paying more than once for the same call, paying for a longer duration of call than was actually made, being charged an incorrect rate or not receiving the correct discounts for particular calls made. Obviously these will have an adverse impact on consumer welfare, although it is worth noting that errors may also lead to consumers being undercharged for calls made.
- A1.16 In theory if perfectly competitive markets existed there would be little need for consumer protection. Competition would ensure that market power was not abused and consumers would have complete information about quality, including the accuracy of metering and billing systems, ensuring that they were not misled. This would enable consumers to purchase services with a given quality on terms and prices that they were willing to pay. However consumers often do not have complete information, particularly about the quality of services they are purchasing. Economic theory suggests that imperfect information for consumers (e.g. incomplete, incomparable, dated, etc) will result in less than optimal trade and welfare losses.
- A1.17 Moreover in the absence of regulation consumers' imperfect information about billing accuracy may create incentives for opportunistic behaviour by providers. Providers may have an incentive to correct any errors which lead to undercharging whilst avoiding the correction of errors which result in overcharging. As a result regulation may be necessary to minimise the risk of overcharging, particularly since consumers are unable to gauge the accuracy of their bills themselves.
- A1.18 Although some large business users may be aware of the possible errors on their telephone bills and have the capacity to verify the accuracy of their bills, it seems likely that a substantial number of consumers are not aware of the potential for error. Moreover it would not be possible for consumers to identify all metering and billing errors anyway. In addition even if errors are visible to consumers but are small relative to the individual bill it is likely that consumers will not pick up on the error. However if the error is repeated over all calls it could represent a substantial cost to consumers as a whole.
- A1.19 As a result it seems likely that consumer pressure on providers will be limited, unless competition drives provider participation and marketing in order to attract consumers from other providers. It is also worth noting that if there is an increasing move towards unmetered billing e.g. in internet access the need for an Ofcom-driven metering and billing scheme will decline as it would be possible for consumers to check their own unmetered bill directly. However there may still be a

role for intervention in order to prevent fraud and given the unobservable nature of errors.

A1.20 To summarise, although commercial pressures and the need to develop a reputation for good quality may encourage providers to ensure that their metering and billing activities are accurate, and to provide consumers with guarantees to this effect, there are a number of reasons why regulation may be justified. These include:

- the inability of consumers to identify metering and billing errors and so to avoid over-billing by exercising choice;
- the inadequacy of alternative information sources, such as complaints data, as a proxy for quality of service and performance;
- even if adequate alternative information sources existed, there is an incentive for producers of low quality services (including inferior metering and billing systems) to mimic quality signals published by producers of high quality services. These could be confusing or misleading to consumers; and
- the incentive for providers to reduce quality without being observed by consumers.

A1.21 As a result the withdrawal of the scheme altogether could have a major impact on all stakeholders. Also even if Ofcom were to withdraw from regulation in this area it would not mean that our involvement would cease. Customers would continue to look towards Ofcom for protection and we would unavoidably be drawn into billing disputes, despite the role of the alternative dispute resolution procedures.

Benefits

A1.22 Since there is a commercial incentive for operators to ensure metering and billing accuracy, in order to minimise revenue loss and customer complaints and to improve efficiency, it is likely that providers would undertake some activity to ensure metering and billing accuracy even in the absence of the scheme. It may therefore be that Ofcom is displacing private sector activity. This problem of displacing private sector activity would be removed if regulation were removed.

A1.23 As a result providers may save the costs they currently face associated with approval costs by an approval body. These costs might include testing, auditing, implementation and so on. Moreover, consumers could gain in terms of a reduction in their bill, assuming these costs are currently passed on to consumers and that the savings would also be passed on to consumers. Although Ofcom does not have information about the size of these approval costs, Oftel's 1998 consultation document¹ estimated that the cost of the certification scheme amounted to a few extra pence per person per year. As a result the consumer savings are likely to be fairly low. Moreover although the costs of compliance would be reduced, if the result were more inaccurate bills and diminished consumer protection as outlined above, this would probably generate a higher volume of customer complaints, imposing costs on Ofcom and providers.

¹ Meeting customer needs for accurate telephone bills, Oftel 1998

- A1.24 Consequently the consultation proposed that the net benefit to providers from removing regulation, if any, would be expected to be negligible. In order to assess this Ofcom asked the following question of respondents.

Question 11) Ofcom invites providers to quantify the initial and ongoing costs associated with gaining approval under the Metering and Billing Direction. What is the likely impact of this cost on average consumer bills?

- A1.25 There was a range of responses to this question, although it is difficult to compare some of the responses given the different levels of detail provided by respondents. Some communication providers have provided total figures for the expected cost of the scheme, whereas others have converted this into an impact on average consumer bills or the cost in terms of personnel requirements to set up and operate the scheme.
- A1.26 There was a wide range of expected set-up costs associated with the scheme, ranging from one provider stating that there were no additional costs to those incurred as a result of providing accurate bills to another claiming that there are expected to be initial costs of more than £2 million. A number of providers acknowledged that some costs would be incurred in the absence of the scheme in order to provide accurate bills to consumers.
- A1.27 Of the eight communication providers which provided details of the likely impact on ongoing costs and customer bills, six suggested that there would be no impact or negligible impact on consumers. Two of these suggested that there may be a more material impact on billing in the first year due to the set up costs of the scheme, although these costs were expected to fall to a relatively minor impact on billing going forward.
- A1.28 Two providers suggested there may be more significant ongoing costs going forward. However it is difficult to put these into context since no details were given about the costs that would be incurred anyway in ensuring accurate bills for consumers (a point acknowledged by one of the providers).
- A1.29 Perhaps unsurprisingly, approval bodies argued that the costs of the scheme would be offset by savings made from reduced customer churn, fewer consumer complaints and less revenue leakage.

Ofcom's conclusions: Question 11

- A1.30 There appears to be general consensus from communication providers that over time there would be a negligible impact on customer bills as a result of the scheme, in line with the assumptions made by Ofcom in the consultation. Even where providers have argued that there are relatively high set up costs it is recognised by providers that some costs would be incurred in order to provide accurate bills anyway.
- A1.31 As a result there does not appear to be a strong argument that consumers would face substantially lower bills as a result of removing the existing metering and billing regulation.
- A1.32 In addition it is worth noting that on the whole respondents agreed with Ofcom's proposition that there continue to be valid arguments for regulating the accuracy of metering and billing systems (see responses to Question 1).

Option 2: Do nothing – maintain existing level of regulation

Costs

- A1.33 Providers continue to incur the cost of regulation, which may have an impact on consumer bills, although this is likely to be low on a per bill basis.
- A1.34 An unchanged standard will increasingly fall out of alignment with developing services and new modes of service provision. Customers may find, over time, that a shrinking proportion of the range of services they use and are billed for are subject to the scheme's protection.

Benefits

- A1.35 The maintenance of the existing scheme would, ostensibly, have the least impact on stakeholders. The option appears to offer regulatory continuity, does not impose additional burdens on providers and secures the current level of consumer protection and confidence.

Option 3: Increasing the level of intervention

- A1.36 The impact on stakeholders of option 3 depends on which vertical or horizontal options are selected. As the consultation made clear, halving or doubling the existing £40 million threshold would have a surprisingly small impact on providers, increasing or reducing participation in the scheme by two or three providers either way. Some respondents to Question 8 of the consultation argued in favour of lowering the threshold to include smaller players. However Ofcom does not believe that this would give a material benefit to consumers given the small number of additional providers that would be affected. In addition Ofcom believes that there would be a disproportionate cost of compliance imposed on smaller companies compared to larger providers.
- A1.37 Horizontal extension, to encompass a wider range of data services, could have a potentially enormous impact on providers, depending on where the line is drawn. A modest extension to data services already provided by voice telephony providers, such as SMS, MMS or GPRS would have the least impact as providers are voluntarily including such services in their approval processes. However including a wider range of data service providers in the scheme would expose broadcasting and Internet providers to regulation not previously experienced. It is worth noting Ofcom's conclusions to Question 6, in the consultation, that data services will not be included in the scheme on a mandatory basis, although Ofcom will encourage their inclusion by providers on a voluntary basis.

Costs

- A1.38 Depending on how the scheme were extended either more providers would face the costs of compliance with approval bodies or providers would face increased compliance costs, if the scheme were extended to include more services, which could be passed on to consumers.
- A1.39 Although we might not expect the overall impact on consumer bills to be significant, where providers are already in the scheme, extension of the scheme beyond basic voice services could impose significant costs on a different set of broadcasting and Internet providers who have been largely exempt from this area of regulation. This

could impact more substantially on consumer bills and could hinder the development of new services.

- A1.40 There are likely to be substantial regulatory costs facing Ofcom given the increased range of providers and services covered by the extended scheme.

Benefits

- A1.41 Consumers have limited ability to check the accuracy of their bills, regardless of their provider and which services are being used, although the charges and billing for many of the services which would be covered by an extended scheme would be more transparent than basic voice services. Hence extending coverage of the scheme is likely to have some positive benefits in terms of consumer confidence and welfare, although these benefits might be expected to be lower than for basic telephony services, since consumers should be more able to check the accuracy of their bills themselves.

Option 4: Decreasing the level of intervention

- A1.42 Option 4 offers the most nuanced range of sub-options. 'Decreasing the level of intervention' may be a misleading title for a range of options that seek to introduce flexibility and simplicity into the existing scheme without diluting its ability to protect bill payers.
- A1.43 As noted increasing the £40 million threshold would exclude no more than two or three providers. Although excluded providers would benefit from lower costs these are likely to be minimal on a per consumer basis and would be at the cost of potentially higher bills from increased inaccuracy (see responses to Question 8).
- A1.44 In addition the exclusion of services provided to business customers from the scheme has been considered. There are benefits from this because large corporate organisations are clearly well-placed to monitor and oversee the extent of their expenditure on communications services. However this would impose a cost on them (associated with verifying their bills) and it is not clear that their usage would easily translate into a verifiable bill; in other words businesses would still face the problem of checking that their free minutes and discounts and so on were accurately taken into account.
- A1.45 There is likely to be a substantial regulatory cost from this option since it adds a further layer of complexity to an already complex scheme. In broad terms, the same billing engines and processes are applied in generating bills for small and large customers and it might seem perverse to use regulation to create an artificial divide between them. Moreover, additional complexity would be introduced to the system by establishing the cut-off point between SMEs (whose bills would be subject to the scheme) and corporate organisations which would be excluded. The demarcation point between them is likely to be arbitrary and unstable and adds an additional factor to be weighed in the approval process. Most respondents to Question 7 argued for the continuing inclusion of corporate customers.
- A1.46 Another option recommended by the consultation is a review of the standard (the Ofcom Metering and Billing Direction) to be undertaken by an industry group working with Ofcom advice. There may be additional short-term costs imposed on providers if this option were to be adopted as the process of updating the standard is likely to be time-consuming and laborious. However it is unlikely that providers would be willing to undertake this exercise if they did not believe that it would bring

them long-term benefits in the shape of a more workable standard. Moreover it is likely to reduce the costs associated with Ofcom imposing an inappropriate standard. As a result there are likely to be net benefits of this if the review of the standard does not reduce the level of consumer protection. It is worth noting that there appears to be general support for the review of the standard, although no real consensus about appropriate changes to the Direction, and how the standard should be applied in practice (see responses to Questions 4 and 5).

- A1.47 The last option considered is where third-party auditing is replaced with a self declaration process (see responses to Question 9). Under this option providers would save the costs associated with approval under the current approval body scheme. However it is expected that providers would continue to incur costs of ensuring metering and billing accuracy. So the savings are not likely to be significant. Assuming there would be no impact in terms of overall accuracy of bills, it is not clear that there would be any major benefits for consumers. However the option is consistent with Ofcom's objective of seeking the least intrusive regulatory mechanism in order to protect consumers.

Summary

- A1.48 Although under the Metering and Billing Direction providers incur approval costs, it is likely that these additional costs are fairly low, particularly since billing complaints might be expected to increase in if the Direction were removed. Moreover there are a number of reasons why competition might not deliver consumer protection. As a result the costs of removing regulation are expected to outweigh the benefits.
- A1.49 Although maintaining the current system means that developing services and new modes of service provision and hence an increasing proportion of consumers' services, will not be covered by the Direction, the option appears to offer regulatory continuity, does not impose additional burdens on providers and secures the current level of consumer protection and confidence. Increasing the range of services to be covered by the Direction is likely to lead to significant costs for new providers of data and broadcasting services. Moreover many of the new services are more transparently priced so the impact on consumers, of these not being covered by the Direction, is likely to be less than if basic telephony services were omitted.
- A1.50 However there may be scope for adapting the Direction to enable simplification of the standard, which may result in reduced approval costs whilst ensuring an adequate level of consumer protection.

Section 3 and section 4 analysis

Option 1: Remove existing metering and billing regulation

- A1.51 Ofcom has considered its duties under section 3 of the Act and all the Community requirements set out in section 4. Ofcom does not believe that this option would further the interests of citizens in relation to communications matters or further the interests of consumers in relevant markets because it would not ensure that customers are not overcharged and would not maintain the confidence that customers have in the accuracy of their bills. This option would also fail to promote the interests of all persons who are citizens of the European Union because it would not ensure the accuracy of metering and billing systems in an appropriate manner.

Option 2: Do nothing – maintain existing level of regulation

A1.52 Ofcom has considered its duties under section 3 of the Act and all the Community requirements set out in section 4. Option 2 represents the maintenance of the existing regulatory arrangements which have already been subject to a section 3 and section 4 analysis on the adoption of General Condition of Entitlement 11 on 25 July 2003.

Option 3: Increasing the level of intervention

A1.53 Ofcom has considered its duties under section 3 of the Act and all the Community requirements set out in section 4. Ofcom's policy objectives in relation to metering and billing regulation may be broadly characterised as furthering the interests of citizens in relation to communications matters and of consumers in relevant markets. This option meets these objectives because it would ensure that customers are not overcharged and would maintain the confidence that customers have in the accuracy of their bills. The option would also promote the interests of all persons who are citizens of the European Union because it ensures the accuracy of metering and billing systems in an appropriate manner.

Option 4: Decreasing the level of intervention

A1.54 Ofcom has considered its duties under section 3 of the Act and all the Community requirements set out in section 4. Ofcom's policy objectives in relation to metering and billing regulation may be broadly characterised as furthering the interests of citizens in relation to communications matters and of consumers in relevant markets. This option does not entirely meet these objectives because it would not ensure that corporate customers are not overcharged and it is arguable that a self-declaration scheme would not maintain the confidence that customers have in the accuracy of their bills. The option would also fail to promote the interests of all persons who are citizens of the European Union because it would not ensure the accuracy of metering and billing systems in an appropriate manner.

Section 47 analysis

A1.55 Under section 47 of the Act, Ofcom must not modify a general condition unless it 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 the modification is intended to achieve and in relation to what it is intended to achieve, transparent.

A1.56 Ofcom believes that the proposals to improve the existing approval scheme are objectively justifiable because they will secure adequate protection for citizen consumers against overcharging.

A1.57 The proposals do not discriminate unduly against particular persons because they apply to an objectively defined class of communications providers.

A1.58 The proposals are proportionate because they tend to a decrease of the existing burden on providers while ensuring that end-users' interests are taken into account.

A1.59 The proposals are transparent because the reasons behind them are publicised by means of this consultation, and if implemented, will be implemented through amendments to the General Conditions.