



Extending Premium Rate Services Regulation to 087 Numbers

Consultation

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Section 1

Summary

NTS calls combine the call routing features of non-geographic numbers with a payment mechanism

- 1.1 Number Translation Services ('NTS') calls are calls to 08 numbers ('NTS numbers'), though as explained later in the document, there are a few exceptions.
- 1.2 NTS numbers are examples of non-geographic numbers in that the number dialled does not relate to a specific geographic location, but instead relates to a particular service. At a technical level, the NTS number dialled by a caller is 'translated' by the network to a geographic number to deliver the call to its destination. Often, the translation is provided in conjunction with other call routing services that help businesses answer calls more efficiently. These include distribution of calls between multiple sites, routing calls according to the caller's location, recorded announcements and emergency call routing to an alternative location in event of a fire or flood etc.
- 1.3 Another important aspect of NTS calls is that they are generally charged at higher rates than ordinary calls and (with the exception of Freephone calls) the service provider who uses the number may receive a share of the call charge to help pay for the service supplied. Alternatively a share of the call charge may be used to pay for the call routing services mentioned above.

The combination of call routing services and the payment mechanism allow businesses to provide a wide range of services

- 1.4 NTS provides organisations and individuals with a combination of call routing services and an efficient mechanism to charge callers small sums. This allows them to provide a range of services to callers, including sales lines, customer service/enquiries and recorded information services. They are also widely used to provide dial-up pay-as-you-go internet services.
- 1.5 Some of the services are funded entirely from call charges such as pay-as-you-go internet services, fax-to-email services, information and entertainment services. Others such as sales and customer service lines are typically only partially funded by call charges.

Arrangement for Premium Rate Services regulation

- 1.6 Premium Rate Services ('PRS') are defined in section 120(7) of the Communications Act 2003 ('the Act'). Characteristically PRS are services that are provided via a fixed or mobile telecoms service and paid via the telecoms service (such as call charges). Services may be accessed via conventional telephony services or other services such as SMS text, PC (e-mail, internet and bulletin board), mobile phone or interactive digital TV.
- 1.7 Services operating on 09 numbers and most 08 number ranges are PRS because organisations use the numbers to receive a share of the call charges.
- 1.8 The regulatory arrangements for PRS are such that Ofcom has the primary responsibility and accountability for the regulation of PRS under the terms of the Act.

The primary role of consumer protection falls to PhonepayPlus. PhonepayPlus is the regulatory agency for all premium rate charged telecoms services and has responsibility for day to day regulation of content and promotion of services. Prior to 15 October 2007 PhonepayPlus was known as ICSTIS. The new name is used throughout this document.

- 1.9 Under section 120 of the Act Ofcom has the power to set conditions to ensure that PRS providers comply with PRS regulation. Ofcom may also approve a Code of Practice for the regulation of the provision and content of PRS and the facilities made available in the provision of PRS, subject to certain criteria being met, which is then administered by an enforcement authority.
- 1.10 PRS regulation is applied to a subset of PRS services that Ofcom considers warrant the additional consumer protection afforded by the Code¹. For example at present, services operating on 09 numbers (which are generally charged at more than 10p per minute) are subject to PRS regulation but services operating on 08 numbers (which are charged at up to 10p per minute) are not.
- 1.11 PhonepayPlus has regulated a subset of PRS in the UK since its inception in 1986. Ofcom approved the current PhonepayPlus Code of Practice (11th Edition) for Premium Rate Services (the 'Code') in November 2006 and amendments to the Code in March 2008 which came into force on 28 April 2008.

In April 2006 we decided to implement a package of measures to address consumer and industry concerns about Number Translation Services

- 1.12 In April 2006, Ofcom concluded a major review of our policy about NTS and announced a package of measures designed to improve consumer protection, pricing transparency and to address some industry problems that led to persistent disputes that Ofcom was called upon to resolve.
- 1.13 We decided to implement some of the changes immediately and others over the following two years in order to give Communications Providers ('CPs') that supply NTS and businesses that use them time to prepare.

We proposed to extend Premium Rate Services regulation to 087 Numbers

- 1.14 To improve consumer protection and pricing transparency for calls to the most expensive 08 numbers we proposed to extend PRS regulation to all the 08 ranges that are charged above 5p per minute for BT customers, except to the 0870 range. The relevant numbering ranges are the 0871 range which has been in use for some years and the 0872 and 0873 ranges which have recently been introduced to provide numbering capacity to meet future demand. We have excluded 0870 because other changes that we have proposed will reduce the need for the additional consumer protection measures provided by PRS regulation² (see paragraph 2.48 for details). For ease, we use the term '087 Numbers' to refer to 087 number ranges excluding the 0870 range (i.e. the 0871, 0872 and 0873 number ranges) in this consultation.
- 1.15 We proposed to make the 087 Numbers subject to PRS regulation, thereby bringing them within the remit of PhonepayPlus. We therefore asked PhonepayPlus to

¹ See paragraph 2.25 for further details.

² Ofcom has published a separate consultation setting out proposals for 0870 numbers: <http://www.ofcom.org.uk/consult/condocs/0870calls/>

develop a set of regulations suggesting that they take the form of a new Code of Practice which would apply to 087 Numbers.

PhonepayPlus has consulted stakeholders on the scope and type of regulation it should apply to services operating on 087 Numbers

- 1.16 Following the publication of the April 2006 NTS Statement, PhonepayPlus undertook research and consulted with stakeholders on the scope and type of regulation that should be applied to 087 Numbers.
- 1.17 Amongst other options, PhonepayPlus considered the suitability of the Code for 087 Numbers. The Code has evolved over several years and provides a high level of consumer protection for the types of services that PhonepayPlus currently regulates, which are typically services such as information, advice and entertainment services charged at rates above 10p per minute and which operate on 09 numbers and increasingly on mobile.
- 1.18 PhonepayPlus recognised that the types of service operating on 087 Numbers can be in part different from those it currently regulates. The predominant services on 087 Numbers are customer services applications such as sales and customer support services. PhonepayPlus also recognised that the potential for consumer harm may be lower partly because retail prices are lower. In addition, some of its service-specific rules would not apply to many 087 Numbers because those types of service are not normally provided on 087 Numbers.
- 1.19 PhonepayPlus therefore concluded that the current interpretation of the Code in the context of higher charged PRS may not be fully suitable for the types of services being provided on 087 numbers or proportionate to the consumer protection requirements for 087 Numbers. On this basis, PhonepayPlus concluded that the Code could be suitable for services operating on 087 Numbers, if it interpreted certain provisions of the Code in a different way for 087 Numbers to reflect their different characteristics and usage and if it used the flexibility provided within the Code to exempt some types of service from specific requirements when provided on 087 Numbers.
- 1.20 On 13 November 2007 PhonepayPlus published a policy statement concluding its public consultation (the 'PhonepayPlus 087 Statement')³. This contained a Statement of Application ('the SoA') setting out how PhonepayPlus would interpret the Code in relation to 087 Numbers.

PhonepayPlus interpretation of the Code for 087 Numbers

- 1.21 The SoA ensures that the most important features of the Code that offer protection or which promote pricing transparency would be applied to 087 Numbers, namely:
 - The individual or organisation using the NTS number in order to offer their services on 087 Numbers (known as Service Providers ('SPs')) would be required to ensure that their customers are made aware of the price of calls to their services (known as the Pricing Information Requirements). PhonepayPlus would expect SPs to discharge this obligation by any appropriate means, such as by stating call charges in advertising/promotional and other materials/media where their number is displayed or by placing a short message at the start of each call if callers are not likely to have seen the messages in promotional material;

³ http://www.phonepayplus.org.uk/pdfs_news/0871_Services_StatementOfApplication.pdf

- PhonepayPlus would have the power to consider complaints about excessive call queuing on 087 Numbers if consumers have been unable to reach a satisfactory resolution of their complaint directly with the SP;
- Various provisions of the Code give PhonepayPlus powers to address Code breaches quickly when they arise, thereby minimising harm to consumers. These provisions include an obligation for all SPs to register with PhonepayPlus, an obligation for CPs and SPs to assist PhonepayPlus as required and a requirement for revenue-share payments to be paid at least 30 days in arrears so that PhonepayPlus can instruct CPs to withhold payments when breaches of the Code are suspected.

1.22 The differences in interpretation are discussed in section 4 in more detail. In summary, the main differences are as follows:

- CPs that provide 087 Numbers would not be obliged to undertake due-diligence checks on the identity of their customers (i.e. the SPs that use the 087 Numbers). This applies both to new business and to existing customers;
- As an alternative to the requirement in the Code of providing a non-PRS number for complaints, SPs would be permitted to use an 087 Number, provided that they refunded callers' call charges;
- Unlike similar services operating on 09 numbers, SPs operating counselling, consumer credit and business conferencing services on 087 Numbers would not be required to obtain prior permission from PhonepayPlus before operating their services;
- The undue delay (call queuing) provisions of the Code would be applied to 087 Numbers. However, PhonepayPlus would expect SPs to handle these directly in the first instance as complaints of poor service. In cases where the SP and complainant are unable to reach agreement PhonepayPlus would then consider complaints;
- PhonepayPlus indicated that it would interpret narrowly the exemption from the Pricing Information Requirements of the Code that applies to services costing generally less than 50p. Thus, the SoA states that the word generally in this exemption should mean "virtually universally" and that if more than an occasional caller is charged above 50p, then pricing information should be provided;
- Business conference calling services operating on 087 Numbers would be exempted from the Live Services Requirements of the Code which apply to other services involving live conversations such as chat lines; and
- PhonepayPlus decided that for 087 Numbers the qualifying revenue for its levy used to fund its services under Annex I of the Code ('the Levy') should be a notional revenue share based on retail call charges since CPs often provide call-routing or other services to SPs instead of a revenue-share.

This is a more detailed consultation on our proposal to extend Premium Rate Services regulation

1.23 In this document we are taking the next steps to progress our proposal to extend PRS regulation to 087 Numbers. In order to do this we have:

- reviewed our proposals and updated the earlier impact assessment in the light of the rules that PhonepayPlus has decided to apply to 087 Numbers (i.e. the Code and the guidance in the SOA) and any other relevant information that has become available since the April 2006 NTS Statement; and
- proposed changes to the Premium Rate Services Condition⁴ ('the PRS Condition') to extend our PRS powers to encompass the 087 Number ranges. These powers allow us to take enforcement action in the event that a stakeholder does not comply with a PhonepayPlus ruling.

1.24 This document contains the draft legal notifications for the change to the PRS Condition, our initial assessment of the relevant legal tests and our regulatory impact assessment for this change (as required by section 7 of the Act).

We are seeking stakeholders comments on PhonepayPlus' interpretation of the Code in relation to 087 Numbers

1.25 Under section 121 of the Act Ofcom may approve modifications to the PhonepayPlus Code of Practice. Since the SoA provides guidance about how PhonepayPlus has decided to interpret the Code for 087 Numbers and does not alter the Code, we do not intend to formally approve the SoA under section 121 of the Act. However we think it is appropriate to consider stakeholder comments on the suitability of the SoA for 087 Numbers. This is because the proposed modification to the PRS Condition will in effect cause PhonepayPlus to start regulating 087 Numbers thus bringing the SoA into use. We therefore think stakeholder comments will help us decide whether we should confirm our proposal to modify the PRS condition and will also help with our consideration of the legal tests specified in the Act for changes to the PRS Condition.

1.26 We also recognise that the extension of PRS regulation to cover 087 Numbers is a significant development and that some stakeholders have raised concerns about some aspects of the rules that PhonepayPlus proposes to apply to 087 Numbers. We have therefore described those concerns and have given our initial view as others may have similar concerns.

Some services on 09 numbers would also be affected by the proposals

1.27 The PhonepayPlus Code currently requires SPs to provide a non-PRS number for customer service purposes (i.e. complaints). With the proposed extension of PRS regulation, SPs would no longer be permitted to use 087 Numbers for this purpose. As well as services on 087 Numbers, this requirement will therefore affect those SPs that offer services on 09 numbers and use 087 Numbers for customer service purposes.

1.28 PhonepayPlus has decided that, as an alternative to providing a non-PRS number, SPs should be allowed to use 087 Numbers for customer service purposes, provided they refund call charges. We think SPs would be most likely to choose this option if they already have or are able to quickly develop the capability to make credits against forthcoming bills.

1.29 We are also asking for stakeholders' views about the impact on SPs offering services on 09 numbers, particularly as our original proposals didn't envisage any significant impact on this stakeholder group.

⁴ http://www.ofcom.org.uk/telecoms/ioi/nwbnd/prsindex/PRSCondition_2_.pdf

We have revised our impact assessment now we know the rules that PhonepayPlus will apply

- 1.30 In our April 2006 policy statement (and the preceding consultation) we published our initial impact assessment for our proposals. In section 6 of this consultation document, we update our impact assessment in the light of the rules that PhonepayPlus has decided to apply to 087 Numbers.
- 1.31 The impact assessment confirms our earlier conclusion that extending PRS regulation to 087 Numbers should deliver substantial benefits, including:
- an improvement in pricing transparency for calls to 087 Numbers;
 - better protection for consumers from scams and abusive practices;
 - improved consumer confidence in 087 Numbers which should make consumers more confident in calling them and SPs more confident in using them.
- 1.32 Although we believe the benefits of our proposals would be substantial we found it difficult to quantify them in monetary terms. For example, we estimate that the value of calls that consumers avoid making because they over-estimate call charges for 087 Numbers to range from £49 million to £52 million per annum. Extending PRS regulation to 087 Numbers would not eliminate pricing misperceptions but we think it would contribute to a substantial reduction to the number of calls consumers avoid making, however we are unsure how great the improvement would be.
- 1.33 Against these benefits, the extension of PRS regulation would cause CPs and SPs to incur setup costs and additional ongoing costs. Because there are a very large number of CPs and SPs the setup costs would be significant.
- 1.34 We were not able quantify all of the setup costs that CPs and SPs may incur. We think that some of these costs would be significant and would be in addition to our estimates. For the setup costs that we can quantify, our estimates indicate they would be between £63m and £68m. We estimate that the ongoing costs to CPs and SPs of PRS regulation would be much smaller at approximately £600,000 p.a.
- 1.35 Our assessment is that the setup and ongoing costs associated with the extension of PRS regulation would be small for most SPs. However we think that some SPs may incur significant setup costs to update advertising/promotional materials and signage to include information about call charges.
- 1.36 Having assessed the impact in more detail, our overall conclusion is that the proposals are a proportionate response to the policy issues. We are therefore proposing to proceed with implementation subject to the outcome of this consultation. In reaching this conclusion Ofcom is also mindful that the incidence of scams on 087 numbers indicates that the revenues-shares available to SPs are sufficiently high to make 087 Numbers attractive to persons that operate scams. Ofcom also considers that the application of PRS regulation to other number ranges (such as the 09 range) would be likely to cause persons that operate scams to use number ranges that are not subject to PRS regulation such as 087 Numbers. Ofcom therefore considers it likely that the incidence of scams would increase in future. Ofcom is also mindful that previous experience has shown that level of scamming activity can grow very rapidly.

Next steps

- 1.37 We are asking for stakeholders' comments about our proposals. In particular we are seeking stakeholders' comments about:
- a) our proposal to extend PRS regulation to 087 numbers;
 - b) the suitability of the PhonepayPlus SoA for 087 Numbers;
 - c) the proposed modification to the PRS Condition;
 - d) the Impact Assessment for these proposals; and
 - e) the secondary impacts on 09 numbers associated with these proposals.
- 1.38 The closing date for responses is 16 June 2008. Guidance on how to respond is set out at Annex 1. Following receipt and consideration of responses we will publish a policy statement setting out our decision. We hope to publish our Policy Statement in August 2008.
- 1.39 Assuming we do not make any significant changes as a result of the responses to the consultation, we envisage adopting a policy statement which would contain the final notifications implementing the modification to the PRS Condition ('the Policy Statement').
- 1.40 We are proposing to give stakeholders three months' notice to allow them to make final preparations for the extension of PRS regulation to 087 numbers. So, subject to the outcome of the consultation, our intention is that the modification to the PRS Condition would take effect three months after publication of the final notification in the Policy Statement. On this basis, PhonepayPlus would be expected to commence regulating the 087 Number services from November 2008.

In conjunction with this consultation we have published a separate consultation setting out our proposals for 0870 numbers

- 1.41 In April 2006 we also decided that we should make certain changes to the way 0870 calls are charged. We decided to defer implementation of the changes to give stakeholders time to prepare.
- 1.42 In conjunction with this consultation we have published a separate consultation aimed at completing the implementation of these changes⁵.

⁵ <http://www.ofcom.org.uk/consult/condocs/0870calls/>

Section 2

Introduction

2.1 This section provides an introduction to NTS and PRS, the current regulatory regime and Ofcom's NTS policy review as it relates to the changes to the regulatory arrangements for 087 Numbers that this consultation seeks to introduce. For a full description of the NTS Review and the rationale for the changes that Ofcom is seeking to implement through this consultation, please see the 2006 NTS Statement⁶.

Number Translation Services

2.2 NTS calls are calls to numbers identified in the National Telephone Numbering Plan⁷ ('the Plan') as Special Services numbers (broadly, numbers that start with 08 or 09). In addition, NTS includes calls to the legacy 0500 Freephone numbers, which whilst still in use, are not listed in the Plan as they are no longer available for new allocations. Calls to 0844 04 numbers for Surftime internet access services and calls to 0808 99 numbers for Flat Rate Internet Access Call Origination ('FRIACO') are not included in the definition of NTS numbers.

2.3 NTS numbers are examples of non-geographic numbers in that the number dialled does not relate to a specific geographic location, but instead relates to a particular service. At a technical level, the NTS number dialled by a caller is 'translated' by the network to a geographic number to deliver the call to its destination.

2.4 For a given NTS call, there can be several different CPs involved in conveying the call from the caller to the organisation or individual receiving the call. This includes an Originating Communications Provider ('OCP'), on whose network the call commences, and a Terminating Communications Provider ('TCP'), on whose network the NTS number resides. The OCP and the TCP may be the same for some calls. There may also be a CP carrying the call between the OCP and the TCP (this is known as a 'transit' service).

2.5 A key feature of NTS is that the regulatory framework makes revenue sharing possible between the TCP and the organisation or individual receiving the call. In this way, the regulatory regime supports the use of NTS as a micro-payment mechanism for the various services which can be accessed via 08 and 09 numbers. The caller pays the OCP for the call. The OCP passes on a terminating payment to the TCP, who is then able (subject to commercial viability) to share some of this revenue with the SP.

2.6 Services offered using 087 Numbers are similar to those using the '09' number range except that prices range from free to caller up to a maximum of 10ppm (from a BT landline). Types of services offered on 087 Numbers include information services, technical help-lines, access to telephone banking, sales and customer service lines and dial-up pay-as-you-go internet services.

2.7 Because of the lower prices charged 087 Numbers, the scope for consumer detriment from making long calls and from fraudulent activity generally is considered to present less concerns. However, there is still potential for consumers to accrue

⁶ See paragraph 2.13 for the location of this document on our website.

⁷ A document published from time to time under section 56 of the Communications Act 2003

high phone bills over a billing cycle where there may be frequent or long-duration use of lower priced services.

The regulatory framework for NTS

- 2.8 Current regulatory policy for NTS calls was established in 1996 with the aim of encouraging the growth in the provision of access to new and cheaper, value added services via the telephone. This was achieved by transferring the retail profit from retail call charges from the OCP to the TCP, who in turn could choose to share some of this profit with their SP customers. The SPs could then use that revenue share in order to fund innovative services.
- 2.9 The key elements of this policy were retained following the introduction of a new regulatory regime for electronic communications networks and services on 25 July 2003, based on five new EU Communications Directives. Under the new regime, Ofcom (Ofcom's predecessor) carried out a series of market reviews. Among the markets and technical areas reviewed was that relating to wholesale services provided over fixed public narrowband networks. These services consist of wholesale exchange line services, call origination, local-tandem conveyance and transit, inter-tandem conveyance and transit, single transit and interconnection circuits. The review took the form of two consultations, in March and August 2003 and a Final Statement and Notification entitled "*Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets*", published in November 2003⁸ ('the 2003 Narrowband Market Review').
- 2.10 As a result of this review the Director General of Telecommunications concluded that BT has Significant Market Power ('SMP') in the market for 'call origination on public fixed narrowband networks' and imposed a range of SMP services conditions on BT, including the requirement to provide NTS Call Origination ('the NTS Condition').
- 2.11 A key feature of the NTS Condition is an obligation on BT both to originate and, crucially, to retail calls to NTS numbers on behalf of TCPs. This creates a mechanism for TCPs to collect micro payments from consumers and to share these payments with SPs (who use NTS numbers to provide content or other services) without TCPs or SPs having to bill consumers directly. BT is only permitted to make cost-related charges for originating and retailing NTS calls and must pass the remaining revenues over to the TCP.
- 2.12 Another relevant feature of the NTS regulatory regime is the Plan. As mentioned above, the various NTS number ranges have different designations for use. For example, the 080 range is designated as a range where no charges are made to customers unless those charges are notified to the customer at the beginning of the call. In selecting a particular NTS number block, a TCP takes on an obligation to use the numbers in accordance with the designations given in the Plan. In this sense, the TCP is restricted in its use of NTS numbers.
- 2.13 The current designation for 0871, 0872 and 0873 calls specifies that they should be charged at up to 10p per minute (before discounts and call packages) for BT customers inclusive of value added tax. The price charged by other OCPs may vary.

⁸ http://www.ofcom.org.uk/consult/condocs/narrowband_mkt_rvw/nwe/fixedenarrowbandstatement.pdf

The regulatory framework for Premium Rate Services

- 2.14 Premium Rate Services ('PRS') offer some form of content, product or service that is provided via fixed and mobile telecoms services and paid for via call or other telephony charges. These may be accessed as conventional voice services or by using SMS text, telephone line, PC (e-mail, internet, and bulletin board), mobile phone or interactive digital TV. Services include TV voting lines, competitions, scratch-cards, sexual entertainment, chat-lines, business information services, technical help-lines, customer service lines, mobile phone ring-tones and game downloads, horoscopes and interactive TV games.
- 2.15 PRS are defined in section 120(7) of the Act which provides that a service is a premium rate service, if:
- a) it is a service falling within subsection (8)⁹;
 - b) there is a charge for the provision of the service;
 - c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
 - d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.
- 2.16 This definition encompasses all services where payment is made via an electronic communications service such as a fixed or mobile phone service. Calls to services using 08 and 09 numbers fall within this definition as do directory enquiry services (on 118xxx numbers) and certain other services, such as mobile SMS short codes charged at a premium.
- 2.17 The regulatory regime for PRS allows Ofcom to provide additional protection for consumers. At present, these measures are applied to:
- 09 numbers and certain other numbers such as Personal Numbers (070 numbers) where calls (for BT customers) generally cost 10p per minute or more; and
 - certain types of services considered to present a higher risk to consumers even though they may be charged at rates below 10p per minute (such as internet diallers).

The role of PhonepayPlus and Ofcom in the regulation of PRS

- 2.18 The regulatory arrangements for PRS are such that Ofcom has the primary responsibility and accountability for the regulation of PRS under the terms of the Act. The primary role of consumer protection falls to PhonepayPlus¹⁰. PhonepayPlus is

⁹ A service falls within this section if its provision consists in:

- (a) the provision of the contents of communications transmitted by means of an electronic communications network; or
- (b) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to users of the electronic communications service.

¹⁰ Until October 2007, PhonepayPlus was called ICSTIS (Independent Committee for the Supervision of Standards of the Telephone Information Services).

the regulatory agency for all premium rate charged telecoms services and has responsibility for day to day regulation of content and promotion of services.

- 2.19 The relevant statutory provisions governing the regulation of PRS are set out under sections 120 to 124 of the Act. Under the Act, Ofcom has the power to set conditions that bind the persons to whom they are applied, for the purpose of regulating the provision, content, promotion and marketing of PRS (the 'PRS Condition'). Ofcom may also approve a Code of Practice for the regulation of PRS subject to certain criteria being met, which is then administered by an "enforcement authority". PhonepayPlus has regulated PRS in the UK since their inception in 1986.
- 2.20 Ofcom approved the current version of the PhonepayPlus Code of Practice (11th Edition) for Premium Rate Services¹¹ (the 'Code') in November 2006 and amendments to the Code in March 2008 which came into force on 28 April 2008.
- 2.21 On 28 March 2008 Ofcom published a statement approving certain amendments to the Code to reflect the revised governance arrangement for PhonepayPlus¹².

PhonepayPlus' Code of Practice

- 2.22 Under the Code, PhonepayPlus has a range of sanctions it can impose on SPs in respect of breaches of the Code. These include requiring the remedy of the breach, the imposition of financial penalties, barring access to some or all services and/or numbers and prohibiting named individuals from operating services for a set period.
- 2.23 The obligations imposed on CPs who provide services to SPs (described as Network Operators by PhonepayPlus) are more limited. Broadly speaking, those obligations require CPs to assist PhonepayPlus, for example by complying with its directions to provide information about particular services or SPs, withholding revenues from particular SPs, or suspending the provision of particular services.
- 2.24 As noted above, Ofcom has the power under section 120 of the Act to set conditions for the purpose of regulating the provision, content, promotion and marketing of PRS that bind the persons to whom they are applied. Section 1 of the current PRS Condition, which was published on 17 October 2006, obliges every person falling within the definition of 'Communications Provider' in the PRS Condition, to comply with:
 - "(a) directions given in accordance with an Approved Code by the Enforcement Authority¹³ and for the purposes of enforcing the provisions of the Approved Code; and*
 - (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act."*
- 2.25 The definition of 'Communications Provider' in the PRS Condition is confined to persons involved in the provision of a subset of PRS nominated within the Condition as 'Controlled Premium Rate Services' ('CPRS') (section 2(c) of the PRS Condition). Currently, CPRS are defined in section 2(e) of the PRS Condition to include a PRS only where:

¹¹ http://www.phonepayplus.org.uk/pdfs_code/11th_edition.pdf

¹² <http://www.ofcom.org.uk/consult/condocs/phonepayplus/statement/>

¹³ currently PhonepayPlus

- i) the charge or rate for the call is more than 10 pence per minute; or
 - ii) the service is a Chatline Service; or
 - iii) is Internet Dialler Software operated; or
 - iv) the service is a Sexual Entertainment Service.
- 2.26 On the basis of the above definition, unless a service falls within the definition of PRS under section 120 of the Act, it will not constitute a CPRS, irrespective of the cost of calling the service.
- 2.27 A failure by a CP to comply with a PhonepayPlus direction will normally amount to a contravention of the PRS Condition and may lead to PhonepayPlus referring the matter to Ofcom. Ofcom may then take enforcement action under the relevant procedures set out in sections 123 and 124 of the Act. The PRS Condition is sometimes referred to as Ofcom's 'backstop power' because that power performs the function of supporting the enforcement of PhonepayPlus' directions in circumstances where a CP fails to comply with directions that PhonepayPlus has given.

Ofcom's NTS Policy Review

- 2.28 This section provides an overview of our review to explain the context of the changes to the regulations that we are proposing. For a full explanation, you should refer to the consultation and statement documents¹⁴.
- 2.29 On 18 April 2006 Ofcom published a regulatory statement concluding a major review of the regulatory framework for NTS calls. During the course of the review, Ofcom published two consultations and a final policy statement:
- a) NTS: Options for the Future, first consultation published October 2004 ('the 2004 NTS Consultation')¹⁵
 - b) NTS: A Way Forward, second consultation published September 2005 ('the 2005 NTS Consultation')¹⁶
 - c) NTS: A Way Forward, final policy statement published April 2006 ('the 2006 NTS Statement')¹⁷

Our review looked at a range of problems with NTS against a background of declining consumer confidence in NTS

- 2.30 We think that NTS enables organisations to supply consumers with many useful services, some of which would not otherwise be available. However, we decided to carry out a review because there was a range of concerns about NTS, including consumer concerns, in relation to the following issues:
- Consumer protection: There were concerns about a rise in scams previously seen on 09 numbers that were beginning to affect 08 numbers and more general

¹⁴ See paragraph 2.13 for details of where to find these documents on our website.

¹⁵ <http://www.ofcom.org.uk/consult/condocs/ntsoptions/>

¹⁶ http://www.ofcom.org.uk/consult/condocs/nts_forward/

¹⁷ http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/

concerns that a lack of consumer protection measures might mean that businesses were using 08 numbers to overcharge consumers;

- Pricing transparency – Our research showed that consumers have a very low awareness of the price 08 calls which is likely to cost them. Thus, consumers often make inefficient purchasing decisions, such as avoiding calling 08 numbers because they over-estimate call charges or conversely making more calls because they under-estimate call charges;
- Adult services – Concerns were expressed that the Sexual Entertainment Services operating on 08 numbers are barred less easily than those operating on 09 numbers. Unlike Sexual Entertainment Services operating on 09 numbers, those operating on 08 numbers were not regulated by the premium rate services regulator PhonepayPlus;
- Call centre waiting times – Many consumers are annoyed by long call centre waiting times and some people are worried that when 08 numbers are used, waiting times may be deliberately extended to make extra money from callers;
- Provision of public services – There has been growing concern about the use of 08 numbers for the provision of public services. This problem has been exacerbated by the fact that NTS numbers cannot be accessed from all foreign networks, making it difficult for those overseas to access UK public services.

2.31 These concerns have contributed to a decline in consumer confidence in NTS.

2.32 There were also industry concerns about several aspects of the regulatory regime for NTS. Most notably, the residual linkage between 0845 and 0870 call charges and BT's local and national call charges means that the revenue that CPs receive for calls from BT customers is effectively beyond their control and subject to changes in BT's prices. This creates considerable uncertainty for CPs and businesses that use 0870 numbers who rely on a share of the call revenue to fund their services.

2.33 For a full description of the policy issues considered in the review, see section 4 of the 2005 NTS consultation.

2.34 We examined each of the concerns and undertook research to get a better understanding of the situation. For instance, we took a particularly close look at the concerns about call centre waiting times. We employed a market research agency to make calls to a representative selection of call centres and found no correlation between call charges and waiting times. This suggests that long holding times are a symptom of poor customer service rather than a deliberate attempt to make more money.

We decided to take steps to improve pricing transparency and consumer protection

2.35 We decided that it was important to address the problems that are undermining consumer confidence in NTS. We also thought that consumers benefit from many useful services provided on NTS. So we decided to implement a package of measures designed to address the problems whilst ensuring the availability of a wide range of services.

2.36 The measures we proposed were designed to provide additional protection for consumers and also to improve pricing transparency. The measures include:

- new rules to make it easier for consumers to obtain information about CPs' charges for NTS calls;
- repair of the linkage between 0870 call charges and charges for national calls to geographic numbers (see below for a more detailed explanation);
- better consumer protection by bringing the more expensive NTS calls (0871, 0872 and 0873) within PRS regulation;
- Sexual Entertainment Services currently operating on 08 numbers to move to the 09 number ranges designated for Sexual Entertainment Services;
- a further review of the 0845 range in two years' time, with a view to repairing the linkage between 0845 call charges and charges for local calls to geographic numbers; and
- advice to the public sector on use of 08 numbers for public services.

2.37 The measures were also designed to address the underlying causes of industry disputes that Ofcom is called upon to resolve.

2.38 Some of the measures would be disruptive for CPs and the businesses that use NTS. To minimise the disruption we decided that those measures should be implemented at a later stage in order to give all stakeholders time to prepare. We implemented the remaining measures which were less disruptive as soon as we were able to. We acknowledged that allowing for preparation time delays the consumer benefits which can be derived from the changes. However, we also need to consider the legitimate interests of the CPs and businesses. Moreover, if we were to implement the changes more quickly, some services valued by consumers may have been withdrawn and businesses and CPs might have incurred additional costs which might ultimately have been passed on to consumers.

We have already implemented some of the measures

2.39 In August 2006 we implemented new rules that require CPs to provide information about NTS call charges in their promotional material and also to make NTS calls as prominent as ordinary geographic calls in their price lists and on their websites.

2.40 In March 2007, we gave notice that by 9 November 2007 providers of Sexual Entertainment Services operating on 08 numbers would be required to move their services to the ranges set aside for Sexual Entertainment Services in the 09 range. At the same time we increased consumer protection by bringing Sexual Entertainment Services charged at less than 10p per minute within the remit of the premium rate services regulator PhonepayPlus.

In order to improve consumer protection and pricing transparency Ofcom proposed to extend PRS regulation to 087 Numbers

2.41 In order to address the concerns about pricing transparency and consumer protection discussed above, in the 2005 NTS Consultation we proposed that 087 Numbers should be brought within the current regulatory framework for PRS Services and therefore within the remit of the PhonepayPlus. Following consultation in the April 2006 NTS Statement we decided to proceed with this proposal.

- 2.42 The services that PhonepayPlus currently regulates are typically services such as information, advice and entertainment services charged at rates above 10p per minute for BT customers. By contrast customer service applications predominate on 087 Numbers. The scope for consumer detriment may also be lower as call charges are also lower (rates for BT customers up to 10p per minute).
- 2.43 Because of these differences we asked PhonepayPlus to develop a Code of Practice for 087 Numbers that would be suitable for the services using 087 Numbers and commensurate with the scope for consumer detriment.
- 2.44 In this consultation we are presenting the results of our assessment of the impact of this proposal and are seeking stakeholder comments on whether we should proceed and also on the necessary statutory notifications to implement the proposals.

PhonepayPlus has consulted on the scope and type of regulation it should apply to services operating on 087 Numbers

- 2.45 On 31 July 2006 PhonepayPlus, then known as ICSTIS, published a pre-consultation paper entitled “ICSTIS’ Regulation of 0871 (NTS) Services: A Pre-consultation Paper”¹⁸ seeking input into PhonepayPlus’ implementation of Ofcom’s objectives for regulation over 0871 services”. This document sought initial stakeholder input on the extension of PhonepayPlus regulation to 087 Numbers.
- 2.46 On 25 April 2007, PhonepayPlus published its consultation entitled “0871 Services: An ICSTIS Consultation”¹⁹ (‘the PhonepayPlus 087 Consultation’). The PhonepayPlus 087 Consultation sought stakeholder input on the scope and type of regulation that should apply to 087 Numbers. The consultation closed on 28 June 2007.
- 2.47 On 13 November 2007, PhonepayPlus published its policy statement entitled “0871, 0872 and 0873 Services: A Statement of Application” (‘the PhonepayPlus 087 Statement’). The PhonepayPlus 087 Statement reviewed stakeholder comments and contained the SoA which sets out how PhonepayPlus will interpret its Code in relation to 087 Numbers.

Related Work

We proposed that we should make changes to the way that 0870 calls are charged

- 2.48 When the 0870 range was introduced, calls were charged at BT’s national rate for geographic calls. Consequently, 0870 numbers were known as ‘national rate’ numbers. During the last few years, the linkage between 0870 charges and national geographic call charges has effectively broken down because geographic calls have been included in call packages and discounted much more than 0870 calls. Also a much larger proportion of consumers now use CPs other than BT who are not bound by the linkage. All this has resulted in most people paying much more for 0870 calls than for national calls to geographic numbers.

¹⁸ http://www.phonepayplus.org.uk/pdfs_consult/0871preconsultation.pdf

¹⁹ http://www.phonepayplus.org.uk/pdfs_consult/0871_services.pdf There is also an associated research report available at this address:
http://www.phonepayplus.org.uk/pdfs_research/research_0871.pdf

- 2.49 We have taken steps to stop CPs and businesses from referring to 0870 calls as national rate but this term is still widely used and may mislead callers.
- 2.50 Even though the linkage to BT's national geographic call charges is damaged, BT still sets the rate for 0870 calls that its customers make. This creates considerable uncertainty for other CPs operating 0870 numbers, because the payments they receive may be varied by BT at short notice. This uncertainty also has knock-on effects for businesses that rely on revenue-shares to fund the services they provide. This uncertainty is a contributory factor in a succession of disputes between BT and other CPs that Ofcom and its predecessor Oftel have been called upon to resolve.
- 2.51 To address the problems with 0870 calls, we proposed that we should make changes to the way 0870 calls are charged and also to remove the regulatory mechanism that supports revenue sharing.
- 2.52 In conjunction with this consultation we have published a separate consultation setting out our proposals for the final steps to implement these changes. Please see the consultation for further details²⁰.

Our Numbering Review considered how we could manage the future supply of numbers to improve pricing transparency and consumer confidence in NTS

- 2.53 In July 2006, we also completed a strategic review of our numbering policy. This review considered our long term policy for all types of numbers, not just 08 numbers. The review didn't reconsider the problems addressed by the NTS Review but considered how our wider numbering policy might help improve consumer confidence in NTS and how it might help improve pricing transparency. We made several proposals about NTS:
- a new long term approach for 08 numbers whereby services would be described at a two-digit level ignoring the leading 0 (e.g. 080, 084 and 087) rather than the three-digit level as at present (e.g. 0800, 0844, 0845, 0870 and 0871). The new approach means that new three-digit ranges can be introduced to accommodate demand without adding to the list of number ranges to remember;
 - introduction of a new type of number, beginning 03 for those businesses and public services that require a national presence and the call routing services associated with NTS but who do not wish to make an additional charge for consumers to contact them; and
 - exploring ways in which we could modify the definitions for 08 numbers so that they give useful information about prices given that retail prices vary by network.

03 numbers are now available for use

- 2.54 Calls to 03 numbers are charged at no more than the rate the caller pays for a geographic call. We felt that the introduction of a new range presented an opportunity to have slightly different arrangements to 0870 calls to help establish a trusted reputation for 03 numbers. Unlike 0870 calls, CPs do not have an option to charge higher rates and revenue-sharing is prohibited.

²⁰ <http://www.ofcom.org.uk/consult/condocs/0870calls/>

- 2.55 Ofcom has already begun to allocate 03 numbers to CPs and organisations are now beginning to use them. Ofcom has recently introduced 03 numbers for its main contact numbers.

We plan to undertake a further review of the 0845 range

- 2.56 We also announced our intention to undertake a further review of the 0845 range with a view to adopting similar measures as 0870. We scheduled the review for 2008 to allow time for pay-as-you-go internet services to decline since they accounted for a large proportion of the calls to 0845 numbers when we did our initial review. In the light of recent changes to the difference between some providers' 0845 and geographic prices Ofcom will consider the timing of the 0845 review when the 0870 consultation has been completed.

Section 3

PhonepayPlus' Code of Practice for 087 Regulation

PhonepayPlus has issued a Statement of Application specifying how it will interpret its existing Code of Practice for 087 Numbers

- 3.1 As discussed in section 2, PhonepayPlus regulates the content and promotion of PRS through the Code.
- 3.2 In the PhonepayPlus 087 Statement, PhonepayPlus concluded that the Code would provide a suitable framework to regulate 087 Numbers. However, PhonepayPlus noted that the current interpretation of the Code was made in the context of those services currently designated as CPRS (such as services operating on 09 numbers) which differ somewhat from the services commonly available on 087 Numbers. In particular, PhonepayPlus noted that:
 - services provided on 087 Numbers are charged at lower rates than most existing PRS services (5p to 10p per minute for BT customers whereas most existing PRS services are charged at rates above 10p per minute for BT customers);
 - because retail prices are lower, revenue shares paid to SPs are also lower than for existing PRS services. PhonepayPlus also noted that SPs often receive enhanced call routing and other network services in lieu of a revenue share;
 - the types of services provided on 087 Numbers differ from 'traditional' PRS services (such as information services, chat-lines and sexual entertainment services) with customer service applications predominating.
- 3.3 In light of these differences, PhonepayPlus concluded that it would be appropriate to interpret certain sections of the Code differently for 087 services in order to ensure that the application of the Code is both suitable for the services provided on those numbers and proportionate to the risk of consumer harm. PhonepayPlus, therefore, issued the SoA specifying its interpretation of the Code in relation to 087 services. The SoA was attached to the PhonepayPlus 087 Statement.
- 3.4 The SoA does not modify the existing code, but explains how PhonepayPlus would apply it to 087 Numbers. Thus, the SoA should be read in conjunction with and is subject to the Code and provides guidance for the application of the Code by PhonepayPlus when considering complaints or advice in relation to 087 Numbers. Unless stated in the SoA, there would be no change to PhonepayPlus' application of the Code to 087 Numbers.
- 3.5 It would therefore be necessary for all CPs and SPs using 087 Numbers to become familiar with both the SoA and the Code as PhonepayPlus' regulation for 087 Numbers is contained in these two separate though contingent documents.
- 3.6 When preparing the SoA, PhonepayPlus took into account the objectives for extending PRS regulation specified by Ofcom and also the consumer concerns about services using 087 Numbers, especially the concerns about long call queuing delays.

Phoneyplus believes the Statement of Application will provide regulatory certainty

- 3.7 The SoA is not a modification to the Code but rather it provides guidance on how Phoneyplus will interpret the application of the Code to 087 Numbers. Acting in a manner that does not comply with the SoA guidance will be investigated by Phoneyplus and may lead to a conclusion that the Code has been breached.
- 3.8 Phoneyplus believes that the SoA provides CPs and SPs with same level of certainty about their obligations on 087 Numbers, as the Code in relation to 09 numbers.
- 3.9 Phoneyplus has assured stakeholders that if it wishes to alter the SoA it will do so only after consulting with stakeholders.
- 3.10 Phoneyplus has also indicated that it plans to incorporate the guidance provided in the SoA into the Code, when the Code is next revised. Therefore, the SoA will have a limited lifespan.

We are seeking stakeholders comments on the Phoneyplus' interpretation of the Code in relation to 087 Numbers

- 3.11 Under section 121 of the Act Ofcom may approve modifications to the Phoneyplus Code of Practice. Since the SoA provides guidance about how Phoneyplus has decided to interpret the Code for 087 Numbers and does not alter the Code, we do not intend to formally approve the SoA. However we think it is appropriate to consider stakeholder comments on the suitability of the SoA for 087 Numbers. This is because the proposed modification to the PRS Condition will in effect cause Phoneyplus to start regulating 087 Numbers thus bringing the SoA into use. We therefore think stakeholder comments will help us decide whether we should confirm our proposal to modify the PRS condition and will also help with our consideration of the legal tests specified in the Act for changes to the PRS Condition.
- 3.12 We also recognise that the extension of PRS regulation to cover 087 Numbers is a significant development and that some stakeholders have raised concerns about some aspects of the rules that Phoneyplus proposes to apply to 087 Numbers. We have therefore described those concerns and have given our initial view as others may have similar concerns.

Summary of the Statement of Application

- 3.13 The SoA describes how Phoneyplus will interpret each of the 11 sections of the Code.

Section 1 (Introduction) of the Code

- 3.14 Section 1 of the Code is an introductory section describing *inter alia* Phoneyplus' principles of good regulation, the scope and geographical reach of the Code and the constitution and composition of the Code Compliance Panel. Phoneyplus concluded that it would not need to alter its interpretation of this section of the Code in relation to 087 Numbers.

Section 2 of the Code: Network Operators' obligations

- 3.15 Section 2 of the Code specifies the general responsibilities of Network Operators²¹ under the Code. These include obligations under paragraph 2.3 of the Code to collect certain information from SPs before allowing them to operate services (the 'Due Diligence Requirements' PhonepayPlus has the power under the Code to waive the Due Diligence Requirements).
- 3.16 PhonepayPlus concluded that the current interpretation of section 2 of the Code would be suitable for 087 Numbers in most respects. However it decided to waive the Due Diligence Requirements in sections 2.3.1 (a), (b) and (c) in respect of SPs operating only 087 Numbers²². Nevertheless, PhonepayPlus has retained the option to apply the Due Diligence requirements as a sanction to individual CPs, if PhonepayPlus decides that the CP's conduct would be likely to lead to breaches of the Code.
- 3.17 In the PhonepayPlus 087 Statement PhonepayPlus also noted that it could reintroduce the requirement for all CPs should the need arise, but committed to do so only after stakeholder consultation.

Section 3 of the Code: Service Provider obligations

- 3.18 Section 3 of the Code specifies the obligations of SPs under the Code. These include a requirement to register with PhonepayPlus before providing premium rate services and to provide PhonepayPlus with information on request.
- 3.19 PhonepayPlus concluded that the current interpretation of section 3 would be suitable for 087 Numbers in all but one respect. Section 3.3.5 of the Code requires SPs to provide a non-PRS number for customer services. In this context, customer services means queries/complaints about the service and PRS are those numbers regulated by PhonepayPlus (i.e. Controlled PRS). With the extension of PRS regulation to 087 Numbers, under the current interpretation of section 3.3.5, SPs would not be allowed to use 087 Numbers for complaints either for services provided on 087 Numbers or for services provided on existing PRS numbers such as 09 numbers.
- 3.20 PhonepayPlus retained the requirement for SPs to provide a non-PRS number, but decided that this requirement could also be satisfied by the use of a 087 number, provided call charges would be fully refunded. A notice to this effect was included in the PhonepayPlus 087 Statement.
- 3.21 A secondary effect of the proposed extension of PRS regulation would be that services operating on 09 numbers would no longer be permitted to use 087 Numbers for customer services purposes unless they refund call charges. We consider the impact in more detail in section 6.

Section 4 of the Code: Information Providers' obligations

- 3.22 PhonepayPlus regulates PRS mainly by applying obligations to CPs and SPs. However there are a small number of obligations that apply to Information Providers

²¹ This term is used in the Code to describe CPs offering PRS services to SPs.

²² SPs that also operate other types of PRS service regulated by PhonepayPlus (such as 09 numbers or premium SMS) will still be subject to the Due Diligence requirements in sections 2.3.1. of the Code

specified in section 2 of the Code. An Information Provider is an organisation or individual that provides the information of content part of a PRS service e.g. a meteorologist might provide a weather forecast for a recorded weather information service operated by an SP.

- 3.23 PhonepayPlus concluded that the current interpretation of section 4 would be suitable for 087 Numbers.

Section 5 of the Code: general provisions applicable to all Premium Rate Services

- 3.24 Section 5 of the Code specifies a set of general provisions that apply to all PRS services. PhonepayPlus concluded that the current interpretation of section 5 is appropriate for 087 Numbers in most respects. However, it decided that it should modify the list of services exempted from Prior Permission, adopt a different interpretation of the Undue Delay provisions and clarify its policy in relation to the Pricing Information requirements as described below.

Prior Permission

- 3.25 Under section 5.1 of the Code (Prior Permission), SPs are required to obtain permission from PhonepayPlus before operating certain types of services deemed to be associated with a higher level of risk of consumer harm. PhonepayPlus decided that advice, counselling and consumer credit services operating on 087 Numbers differed significantly from similar services being provided on 09 numbers at higher prices and should therefore be added to the list of services exempted from the prior permission requirement.
- 3.26 PhonepayPlus also decided that business conference calling services operating on 087 Numbers should be exempted from the Live Services requirements of the Code which also carries a Prior Permission requirement.

Undue Delay

- 3.27 Under section 5.4.2, SPs have an obligation generally to ensure that services are not unreasonably prolonged or delayed (known as the 'Undue Delay' provision). In relation to the 09 number range, PhonepayPlus generally considers that a delay in excess of 15 seconds constitutes an undue delay. This interpretation was made in the context of information services charged at high rates rather than in the context of customer service applications which are more typical on 087 Numbers.
- 3.28 PhonepayPlus concluded that the current interpretation of this provision was not completely suitable for services operating on 087 Numbers. It also noted that charges for calls to 087 Numbers are typically lower than for 09 numbers and that call revenues are rarely the core sources of revenue for service providers. PhonepayPlus considers that consumers calling 087 Numbers are more likely to experience delays due to unexpected fluctuations in demand at call centres rather than deliberate attempts to artificially lengthen calls in order to increase revenues.
- 3.29 PhonepayPlus recognised the high level of consumer concern about long call queuing times but also acknowledged that queues would occur from time to time with call centre type services which commonly use 087 Numbers. PhonepayPlus therefore specified how it would treat consumer complaints of Undue Delay on 087 Numbers, stating that:

“Complaints of undue delay will therefore primarily be treated as complaints of poor service, to be taken up directly with the service provider. If no resolution has been reached within 30 days, PhonepayPlus will consider the complaint on its merits and will have regard to the actions of the service provider in advising the caller about any likely call delays.”²³

Pricing Information

- 3.30 Under section 5.7 of the Code, SPs have an obligation to ensure that callers are informed about the price of the service before they call. In practice, this obligation requires SPs to place pricing information in advertising and promotional materials where the 087 Number is displayed. PhonepayPlus decided that it would maintain the current interpretation of section 5.7, according to which services are exempt from pricing information requirements if they do not generally cost more than 50p.
- 3.31 PhonepayPlus indicated that it would interpret narrowly the exemption from the Pricing Information Requirements of the Code that applies to services costing generally less than 50p. Thus, the SoA states that the word “generally” in this exemption should mean “virtually universally” and that if more than an occasional caller is charged above 50p, then pricing information should be provided;
- 3.32 PhonepayPlus acknowledged that some CPs would need time to modify their advertising and promotional materials to include pricing information. It has therefore requested Ofcom to allow a three month implementation period.

Section 6 of the Code: provisions relating specifically to Live Services

- 3.33 PhonepayPlus defines live services as services involving two way or multi-way live voice conversations²⁴ (‘Live Services’). Section 6 of the Code specifies SPs’ obligations for Live Services (the ‘Live Services Requirements’). These include a requirement for SPs to obtain prior permission before offering these services, stating hours of operation of promotions and compensation arrangements for unauthorised use for entertainment live services. PhonepayPlus has the power to exempt categories of Live Services from the Prior Permission Requirement.
- 3.34 PhonepayPlus concluded that, while a number of categories of Live Services are provided on 087 Numbers, the majority of these already fall within the current exemptions from prior permission granted by PhonepayPlus. PhonepayPlus decided to grant permission for nearly all Live Services operating on 087 Numbers to be exempt from section 6.3.1 of the Code.
- 3.35 PhonepayPlus decided that business conference calling services operating on 087 Numbers differed sufficiently from other Live Services to warrant being added to the list of services exempted from Live Services requirements.

Section 7: additional provisions relating to specific categories of service

- 3.36 Section 7 of the Code specifies the obligations that apply to specific categories of service including: advice services, virtual chat services, contact and dating services, children’s services and competitions. PhonepayPlus concluded the current

²³ Page 11 of the PhonepayPlus 087 Statement.

²⁴ section 11.3.23 of the Code

interpretation of these obligations would be suitable for services using 087 Numbers and very few services of these types are provided on 087 Numbers.

Sections 8 to 11 of the Code

- 3.37 Sections 8 to 11 of the Code specify the framework for PhonepayPlus powers of investigation, adjudication procedures and its terms of reference. PhonepayPlus concluded that the current interpretation of the Code is suitable for services using 087 Numbers.

Funding arrangements

- 3.38 The PhonepayPlus 087 Statement set out PhonepayPlus' decision to apply its current funding model (as specified in Annex 1 of the Code) to 087 services. Given that many services using 087 Numbers receive a benefit in kind (such as call routing services) rather than a revenue share, PhonepayPlus decided that it should exercise its power in paragraph 10 of Annex 1 of the Code to base its Levy for 087 services on a notional revenue-share rather than actual revenue-share payments.
- 3.39 PhonepayPlus decided to define the notional revenue-share as a proportion of the hypothetical call revenue generated by CPs obtained by applying BT's Deemed Retail Call Charges²⁵ to all traffic. PhonepayPlus used the Deemed Retail Call charges because termination payments for 087 calls originated or transited by BT are based on Deemed Retail Call charges. Actual retail call revenues would therefore overstate the revenues received by TCPs.
- 3.40 Based on information provided by CPs, PhonepayPlus concluded that the benefit received by SPs for 087 traffic amounted to 60% of deemed retail call revenue.
- 3.41 PhonepayPlus has concluded that it should apply its current Levy (0.39% of relevant revenues to 087 calls).

²⁵ Deemed Retail Call Charges are the effective net retail charges for NTS calls taking into account metered call charges, call setup fees and all discounts applied.

Section 4

Stakeholder Concerns about the PhonepayPlus Code of Practice for 087 Numbers

- 4.1 After PhonepayPlus published its consultation, a number of industry stakeholder raised concerns with Ofcom and PhonepayPlus about certain aspects of PhonepayPlus' proposals. PhonepayPlus has considered these concerns and has altered certain aspects of its proposals in response. We believe the changes made by PhonepayPlus will address many of the stakeholders' concerns. However we are aware there are some outstanding concerns so we think it would be useful to review them and give our initial view, particularly as others may have similar concerns.

Regulatory certainty provided by the PhonepayPlus Statement of Application

- 4.2 Some industry stakeholders are concerned that the SoA might allow PhonepayPlus to change the rules it applies to 087 Numbers at short notice without stakeholder consultation.

Ofcom's Comments

- 4.3 As discussed in paragraphs 3.8 to 3.10 the SoA provides guidance to the interpretation of the Code. PhonepayPlus has made clear that it intends to incorporate the guidance provided by the SoA into the Code when it is next revised and has given assurances that it would only modify the SoA following stakeholder consultation. Ofcom's initial view is that in the light of the assurances provided by PhonepayPlus the SoA provides an acceptable level of regulatory certainty particularly given the intention that it should have a limited lifespan.

Ofcom should formally approve the Statement of Application

- 4.4 Some industry stakeholders believe that the SoA constitutes a modification to the Code and consequently Ofcom should formally approve the SoA under section 121 of the Act.

Ofcom's comments

- 4.5 Our initial view is that the SoA simply provides guidance about how PhonepayPlus has decided to interpret the Code in relation to 087 Numbers and does not constitute a change to the Code. Therefore, we do not intend to formally approve the SoA under section 121 of the Act.
- 4.6 However, we think it is appropriate to consider stakeholder comments on the suitability of the SoA for 087 Numbers. This is because the proposed modification to the PRS Condition will in effect cause PhonepayPlus to start regulating 087 Numbers, thus bringing the SoA into use. We therefore think stakeholder comments will help us decide whether we should confirm our proposal to modify the PRS Condition and will also help with our consideration of the legal tests specified in the Act for changes to the PRS Condition.

Network Operator Due Diligence Requirements

- 4.7 Some CPs raised concerns about the Due Diligence Requirements in section 2.3 of the Code. Several related concerns were raised, namely that:
- there is insufficient evidence of consumer detriment to justify these obligations for 087 Numbers, particularly since other obligations such as the obligation for CPs to withhold payments to SPs for 30 days (section 2.3.3) limit the potential for consumer harm;
 - there is much less need for CPs to undertake such rigorous due diligence since 087 Numbers are typically used by established businesses operating mainly outside the PRS market and whose identity may be readily determined;
 - that the due diligence requirements would place a heavy administrative burden on CPs, particularly because they would need to undertake retrospectively due-diligence on all their existing customers;
 - that in some cases CPs would not be able to undertake due diligence as they do not know the identity for their customers (typically because they sold services via an internet based self service interface) or because they do not have up to date contact details for their customers (typically because the services are funded entirely from call charges and the CP therefore does not bill the SP).

Ofcom's comments

- 4.8 Ofcom notes that PhonepayPlus has modified its proposals in response to the concerns raised and has decided to waive the Due Diligence Requirements for 087 Numbers generally, but may decide to apply the requirements to individual CPs as a sanction if there is evidence that their conduct has or would be likely to lead to breaches of the Code.
- 4.9 Ofcom believes some valid concerns have been raised and supports PhonepayPlus revised approach and also its commitment to consult with stakeholders before applying the Due Diligence Requirements to 087 Numbers, other than as a sanction to individual SPs.

Prior Permission Requirements

- 4.10 Some CPs were concerned that PhonepayPlus had decided to apply the Prior Permission requirements in section 5 of the Code. CPs felt that the risk to consumers from services operating on 087 Numbers was much lower than those operating on 09 numbers and it would therefore be disproportionate for PhonepayPlus to require SPs to gain permission from PhonepayPlus before offering services on 087 Numbers.

Ofcom's comments

- 4.11 Ofcom acknowledges the concern about the proportionality of applying the Prior Permission requirements to 087 Numbers. However our initial view is that in practice this would not result in a significant number of services being subject to the Prior Permission requirements because few services of the types subject to these requirements are provided on 087 Numbers. The notable exception being services such as diallers that have previously been identified as being of higher risk to consumers and which are already CPRS and subject to the Prior Permission requirements. On this basis Ofcom supports PhonepayPlus' approach.

- 4.12 Ofcom notes that in the light of stakeholder representations PhonepayPlus has concluded that advice, counselling and consumer credit services operating on 087 Numbers should not be subject to the Prior Permission requirements. PhonepayPlus has also committed to work with stakeholders during the next few months to identify any types of service operating on 087 Numbers that may inappropriately be subject to the Prior Permission requirements.
- 4.13 Ofcom expects that PhonepayPlus will ensure that the effective scope of the Prior Permission requirements on 087 Numbers are limited to those services where there is a heightened risk to consumers that can be mitigated by Prior Permission.

Business conference calling services

- 4.14 Some CPs were concerned that business conference calling services would fall within the definition of Live Services in the Code and would therefore be subject to the provisions in section 6 of the Code relating to Live Services which were designed primarily for chat type services. Given the apparently low risk of consumer harm CPs regarded this as disproportionate, especially as Live Services are subject to Prior Permission.

Ofcom's comments

- 4.15 Ofcom notes that in response to stakeholder concerns, PhonepayPlus has added business conference calling services to the list of Live Services that are exempted from the requirements of section 6 of the Code and therefore also the Prior Permission requirements.

Undue delay

- 4.16 Some CPs and SPs were concerned that the current interpretation of the Undue Delay provisions (in section 5.4.2 of the Code) as applied to 09 numbers would be unsuitable for call centre services that use 087 Numbers. They were concerned that PhonepayPlus would either ban call queuing or specify limits for queuing times. Their view was that in call centre environments, call queues are inevitable due to the unpredictable nature of calling patterns and SPs would not therefore be able to comply with such requirements. There was a widely held view that the current interpretation of the Undue Delay provisions would effectively prevent call centre services from using 087 Numbers, forcing those currently using them to move to other numbers.

Ofcom comments

- 4.17 As discussed in paragraph 3.29 PhonepayPlus has decided to treat the issue of call queuing times primarily as a customer service issue and not to place an arbitrary limit on call queuing times. PhonepayPlus has decided that complaints about excessive call queuing times should be handled by SPs in the first instance. In cases where callers feel that they have not received a satisfactory response, PhonepayPlus would consider their complaints. PhonepayPlus has also stated that when considering complaints, it would take into account what steps SP's have taken in advising callers of the potential delay.
- 4.18 Ofcom's initial view is that the PhonepayPlus approach achieves a good balance between SPs' concerns about intrusive regulation of call queuing times and consumers' legitimate concerns about overly long queuing times at call centres using 087 Numbers. By placing the onus on SPs to manage queuing times and customer

complaints, the PhonepayPlus approach avoids proscriptive regulation of call queuing times, whilst providing additional protection for consumers.

Pricing information

- 4.19 Some CPs and SPs were concerned that the pricing information requirements in section 5.7 of the Code would be a disproportionate burden on SPs given that prices for 087 Numbers are lower than for the 09 and other PRS numbers to which these requirements currently apply. There were also concerns that some SPs could incur very high costs for updating signage on their vehicles, shop fronts etc.
- 4.20 Some also argued that SPs could not be certain about the rules that would apply until Ofcom publishes its policy statement. They therefore believe that Ofcom or PhonepayPlus should provide a further lengthy implementation period following the extension of PhonepayPlus regulation to 087 Numbers.

Ofcom comments

- 4.21 Improving pricing transparency was a major objective of Ofcom's policy review, and one of the main reasons that Ofcom proposed to extend PRS regulation to 087 Numbers was to further this objective by applying the PhonepayPlus pricing information requirements to 087 calls. By selecting 087 Numbers, SPs have chosen to charge their customers a premium, and thus Ofcom considers that it is reasonable to require that SPs take steps to ensure their customers are informed about the additional charges.
- 4.22 Ofcom acknowledges that the costs incurred by SPs are likely to vary and that the costs of updating some durable media such as vehicle signage may be high. We have considered these costs in more detail in the Impact Assessment (see section 6). As discussed in section 6, Ofcom's initial view is that these costs are not disproportionate.
- 4.23 Ofcom acknowledges that until its consultation is concluded there is an element of uncertainty about the pricing information requirements that may apply to 087 calls and notes that PhonepayPlus has asked Ofcom to postpone the extension of PRS regulation by three months when it publishes its statement to give SPs further time to prepare. However, Ofcom's initial view is that the level of uncertainty about the pricing information requirements is low considering that:
- Ofcom stated in the 2006 NTS Statement that one of its main objectives in proposing to extend PRS regulation to 087 Numbers was to apply the pricing information requirements to 087 Numbers; and
 - PhonepayPlus did not propose making any changes to the pricing information requirements in its consultation and concluded that it should not make any changes in its statement published in November 2007.
- 4.24 Ofcom therefore considers that SPs could at a minimum have considered the likely impact of the pricing information requirements on their businesses and have drawn up plans to prepare for compliance. Ofcom also considers that SPs could have begun to prepare for compliance before the conclusion of Ofcom statement with minimal risk. Ofcom has borne these factors in mind when proposing to grant a three-month implementation period.
- 4.25 Ofcom also notes that PhonepayPlus would:

- permit SPs to provide pricing announcement at the start of calls if they are unable to update their advertising/promotional materials within the three month implementation period;
- not require any retrospective action in respect of materials that have already been printed and distributed, such as catalogues and directories;
- provide support to those who need advice about compliance or who are having difficulty complying.

Customer service lines

- 4.26 As discussed in paragraph 3.19 PhonepayPlus has decided that as an alternative to providing a non-PRS number for complaints, SPs may also meet the requirements of section 3.3.5 of the Code by using an 087 number, provided SPs refund callers' call charges.
- 4.27 Some CPs thought that neither of these options would be suitable for SPs using 087 Numbers in call centre environments and therefore PhonepayPlus should not apply them to 087 Numbers. The most substantive concern is that in a customer service environment it would not be easy to distinguish between complaints about the service provided on the 087 number and the service itself, particularly when the service involves reporting problems (e.g. fault reporting, warranty repairs or billing queries).
- 4.28 There were also several concerns about the practicality of the requirements:
- If SPs provide a non-PRS number, customers would phone it in preference to the main 087 number because it would be cheaper to call than the main 087 number;
 - It would be administratively complex to process refunds;
 - It would not be possible for SPs to determine how much callers paid for their calls to 087 Numbers given that charges vary between CPs;

Ofcom comments

- 4.29 Ofcom acknowledges that the new option may not be suitable for all SPs. However, Ofcom considers that it may be suitable for some SPs, particularly those with an ongoing billing relationship with their customers who are likely to have the capability to make adjustments to their customers' bills.
- 4.30 Ofcom also notes that the use of 087 Numbers for complaints is a recurrent theme in consumer complaints to Ofcom many of whom feel it is unjust that they should be charged a premium to complain about poor service provided by SPs.
- 4.31 Ofcom's initial view is that PhonepayPlus' interpretation of section 3.3.5 strikes a reasonable balance between the interests of consumers and SPs by effectively permitting SPs to use 087 Numbers for complaints only if they have the capability to refund call charges in case of a valid complaint. Ofcom believes that this approach places the onus on SPs to ensure they deal with customer service issues efficiently and promptly to avoid them escalating into complaints and associated requests for refunds.

Impact on consumer perceptions of PRS regulation and the brand applied to PhonepayPlus regulation of 087 Numbers

- 4.32 Some SPs argued that extending PRS regulation to 087 Numbers would have a negative effect on consumers' perceptions of the 087 ranges, and would make consumers more wary of using 087 services because of the association with premium rate services. Some are also concerned that PhonepayPlus has decided to retain a common brand or identity for all the services it regulates and will not give 087 regulation a separate identity as suggested by Ofcom in the April 2006 NTS Statement.

Ofcom's comments

- 4.33 Ofcom reviewed these concerns in the April 2006 NTS Statement and acknowledged their validity. Ofcom's research shows that consumers are more wary of calling premium rate services, primarily because they believe them to be very expensive. In the April 2006 NTS Statement, Ofcom suggested these concerns could be addressed by using a different brand for 087 regulation to avoid associations with other PRS regulation. Ofcom therefore asked PhonepayPlus to consider this issue when developing its proposals for 087 Numbers.
- 4.34 PhonepayPlus decided that the concerns were best addressed as part of a wider re-branding which resulted in it changing its name to PhonepayPlus from ICSTIS. This was designed to underline the fact that the scope of its regulation has widened over recent years beyond its original focus on 09 numbers to include a variety of different number ranges and other charging mechanisms such as premium SMS. Ofcom supports PhonepayPlus approach and believes that PhonepayPlus has a good chance of establishing a more trusted brand less closely associated with very high call charges than the ICSTIS brand.
- 4.35 Ofcom also believes that the requirement for SPs to specify call charges in advertisements and other promotional material should effectively mitigate the risk that consumers avoid making calls because of concerns that call charges may be very high as a result of the association with the more expensive premium rate services. In most cases, consumers should see the pricing information immediately prior to calling providing reassurance about call charges.

Basis of the PhonepayPlus levy

- 4.36 As discussed in paragraph 3.38 PhonepayPlus has decided that its Levy for 087 Numbers should be based on BT's Deemed Retail Price for 087 calls (see paragraph 3.38 for an explanation of BT's Deemed Retail Price).
- 4.37 Several CPs argued that PhonepayPlus had overestimated the benefit that SPs receive from 087 call charges citing information in a research report²⁶ published by PhonepayPlus as evidence that the benefit is less the PhonepayPlus' estimate of 60% of the Deemed Retail Price for 087 calls.

Ofcom's comments

- 4.38 Ofcom's initial view is that the approach proposed by PhonepayPlus is reasonable. Applying the Levy to a notional revenue share would ensure that the burden of

²⁶ Implications of Regulatory Changes in the 0871 Market, Final Report, 17 April 2007, Analysys Research Ltd. http://www.phonepayplus.org.uk/pdfs_research/research_0871.pdf

PhonepayPlus' costs is distributed fairly amongst stakeholders regardless of whether they receive a revenue share or other benefits from call charges.

- 4.39 Ofcom's view is that the Deemed Retail Price provides a useful reference because the vast majority of 087 calls are either originated or transited by BT and termination payments for such traffic are calculated by reference to the Deemed Retail Price.
- 4.40 Ofcom acknowledges that the discussion in section 2.3.1 of the PhonepayPlus research report does seem to imply that the benefit SPs receive from 087 call charges is less than the 60% of retail revenues estimated by PhonepayPlus. Ofcom believes that this discrepancy is explained by the fact that the report refers to actual retail revenues collected by OCPs rather than notional retail revenues based on Deemed Retail Prices. From its subsequent consultations with industry PhonepayPlus is confident that this figure is appropriate.
- 4.41 Ofcom is satisfied that PhonepayPlus has undertaken additional research to confirm its earlier view. Ofcom's own research also supports the view that the benefit that SPs receive from 087 calls may be around 60% of Deemed Retail Prices. Figure 1 below lists the current Deemed Retail Prices for 0871 calls, Termination payments and the notional revenue share proposed by PhonepayPlus.

Figure 1: Deemed Retail Prices, Termination Payments and Notional Revenue Share for 0871 Calls

Pence Per Minute (rates applicable from Aug 2007)	Day	Evening	Weekend
Deemed Retail Price	9.47p	9.44p	9.54p
Termination Payment (POLO, double tandem long)	8.12p	8.82p	9.06p
Notional Revenue Share (60% of Deemed Retail Prices)	5.68p	5.66p	5.73p

- 4.42 Ofcom notes the notional revenue share figures listed in Figure 1 above are consistent with rates offered by CPs on the internet and well below termination payments for 0871 calls.

Question 1: Do you have any comments about the proposed extension of PRS regulation to 0871, 0872 and 0873 numbers?

Question 2: Do you have any comments about the PhonepayPlus Statement of Application and Ofcom's comments about the concerns that have been raised by stakeholders?

Question 3: The proposed extension of PRS regulation would mean that service providers offering services on 09 numbers would not be permitted to use 0871, 0872 or 0873 numbers for complaints unless call charges are refunded. Ofcom would also welcome stakeholder comments about this secondary impact of the proposals.

Section 5

Proposed Changes to the PRS Condition

5.1 As discussed in section 2, we propose to extend PRS regulation to 087 Numbers. To do this we need to modify the PRS Condition. This section describes in detail the changes that we propose to make to achieve this aim.

Proposed modification of the PRS Condition

5.2 To extend PRS regulation to 087 Numbers (excluding the 0870 range), we propose to modify the definition of a Controlled Premium Rate Service within the PRS Condition to include 087 Numbers other than 0870 numbers.

5.3 The PRS Condition (including the proposed amendment) is reproduced in full in the Notification of the proposed change in Annex 6.

5.4 As discussed in section 2, Ofcom is proposing to make changes to the 0870 range designed to repair the linkage to geographic call charges. If these changes are implemented, 0870 calls would be outside the scope of the NTS Condition and therefore not subject to the regulatory mechanism that supports revenue-sharing. Ofcom considers that this change would mean that 0870 calls would no longer fall within the definition of a Premium Rate Service as defined in section 120(7) of the Act. To avoid any possibility that 0870 numbers are temporarily classified as Controlled Premium Rate Services, should the changes to 0870 be implemented after the proposed modification to the PRS Condition, Ofcom has explicitly excluded 0870 numbers from the proposed amendment to the PRS Condition.

5.5 The current definition of a Controlled Premium Rate Service (“CPRS”) in paragraph (e) of the PRS Condition is:

“(e) “Controlled Premium Rate Service” means a Premium Rate Service (other than a service which is only accessed via an International Call) in respect of which:

(i) 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 10 pence per minute; or

(ii) the service is a Chatline Service; or

(iii) is Internet Dialler Software operated; or

(iv) the service is a Sexual Entertainment Service;”

5.6 We propose to modify sub-paragraph (i) to specify that calls charged at rates exceeding 5p per minute, **except 0870 numbers**, should be defined as Controlled Premium Rate Services replacing the reference to calls charges at rates exceeding 10p per minute. The proposed definition is:

“(e) “Controlled Premium Rate Service” means a Premium Rate Service (other than a service which is only accessed via an International Call) in respect of which:

(i) 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, except 0870 numbers; or

(ii) the service is a Chatline Service; or

(iii) is Internet Dialler Software operated; or

(iv) the service is a Sexual Entertainment Service;”

5.7 In paragraph (e) (i) the reference to call charges relates to the charges from BT lines as specified in the designation in the Plan.

5.8 The proposed modification to paragraph (i) of the definition will reduce the minimum price threshold for Controlled Premium Rates services from 10p per minute to 5p per minute. This new threshold will apply to all PRS except those on 0870 numbers and will therefore include the 0871, 0872 and 0873 ranges and any new PRS ranges subsequently introduced by Ofcom that permit charges above 5p per minute from a BT line. The proposed modification will also include PRS services on other number ranges charged between 5p and 10p per minute that are currently not CPRS, notably those using 09 numbers. Ofcom has included these services in addition to those on 08 numbers to ensure that a consistent approach is applied to all PRS services. This avoids creating an opportunity for services charged between 5p and 10p per minute to avoid PRS regulation by using 09 numbers. Ofcom considers that including these other ranges will have a minimal impact on existing services since most are charged at rates of 10p per minute or above and are therefore already subject to PRS regulation. Calls to 087 Numbers charged at up to 5p per minute do not fall within the proposed definition of CPRS and would therefore not be subject to PRS regulation.

Question 4: Do you have any comments on the proposed modifications to the PRS Condition?

Section 6

Impact Assessment

Introduction

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

The September 2005 NTS Consultation

- 6.4 In the September 2005 NTS Consultation Ofcom described its research and the policy issues that it had identified. Ofcom defined its policy objectives for NTS, assessed a range of options to address those issues and proposed to implement a package of measures (selected from the options) over the following two years to address the policy issues.
- 6.5 The September 2005 NTS Consultation also contained Ofcom's Impact Assessment for the package of measures. Ofcom revised certain aspects of its proposals and its Impact Assessment in light of the responses to the consultation.
- 6.6 One of the measures proposed was the extension of PRS regulation to 087 Numbers, which this consultation now seeks to bring into effect.

Ofcom's policy objectives

- 6.7 In section 4 of the September 2005 NTS Consultation, Ofcom identified six policy objectives in relation to NTS services:
- Price transparency – consumers should know what they are paying for calls;
 - Range and choice of services – consumers should have access to a wide range of services and a choice of suppliers;
 - Consumer protection – the use of 08 numbers as a micro-payment system should be accompanied by measures which provide an adequate level of consumer protection, particularly for vulnerable consumers;

- Viability of pay-as-you-go dial-up internet access – given its continued importance in providing internet access to consumers throughout the UK, the viability of the market for dial-up internet services should not be undermined;
- Promotion of competition – regulation should promote competition between CPs and SPs, consistent with reasonable levels of cost recovery and revenue certainty.
- Reduced regulatory intervention – Ofcom should operate with a bias against regulatory intervention and should avoid imposing any unnecessary burden on consumers, suppliers or other stakeholders.

6.8 These objectives are rooted in Ofcom's statutory obligations under the Act, in particular, Ofcom's general duties in section 3 of the Communications Act 2003 ('the Act') and Ofcom's duties for the purposes of fulfilling the six European Community requirements as set out in section 4 of the Act.

6.9 The objectives may be broadly characterised as furthering the interests of citizen consumers, promoting competition and encouraging the provision of network access and service interoperability.

6.10 Ofcom considers these policy objectives are still valid.

Policy options

6.11 Section 6 of the September 2005 NTS Consultation, when read in conjunction with the rest of the document, formed an impact assessment. Ofcom considered a range of policy options to address each of the policy issues described in section 4 of the September 2005 Consultation. These are summarised in the table below.

Policy Issue	Options considered
A. Revenue sharing on 08 numbers	<p>A1: Maintain revenue sharing – revenue sharing would continue on 08 numbers.</p> <p>A2. Ending revenue sharing on 08 numbers – Revenue sharing would be restricted to 09 numbers.</p>
B. The retail pricing of 0845 and 0870 calls	<p>B1. The status quo - retaining the current pricing and interconnection arrangements for 084 and 087 Numbers.</p> <p>B2. Extended retail price competition – amend the Plan to enable TCPs to select the price points to be applied to number blocks, from within a specified range (i.e. the same arrangements as applied to the 0844 and 0871 ranges). This option was Option 2, Ofcom's preferred option in the October 2004 Consultation.</p> <p>B3. Retail prices set by Ofcom – This option has been proposed by some CPs and would involve Ofcom setting the retail prices for 0845 and 0870 calls for BT customers though retail price regulation</p> <p>B4. Restore the geographic linkage for 0845 and/or 0870 calls after an interim period– This option would involve Ofcom amending the Plan and the General Conditions of Entitlement to restore the linkage between 0845/0870 calls and the prices that consumers</p>

Policy Issue	Options considered
	<p>actually pay for geographic calls after an interim period. The designations would apply to all providers (including mobiles and payphones) not just BT.</p> <p>B5. Restore the geographic linkage for 0845 and/or 0870 calls and withdraw regulatory support for revenue sharing after an interim period – This option is a variation on Option B4 and would involve Ofcom removing the regulatory support for revenue sharing in conjunction with the reestablishment of the geographic linkage for 0845/0870 calls.</p>
<p>C. Price transparency on 084 and 087 numbers</p>	<p>C1. Status quo – This option would involve maintaining the current pricing transparency measures such as the ASA/CAP guidance for the advertising of 084 and 087 numbers.</p> <p>C2. Restore link to geographic tariffs for 0845/0870 – Evaluation of Option B4 to gauge its effectiveness as a measure to improve pricing transparency.</p> <p>C3. Extend pricing designations in the Plan – This option would consist of amending the General Conditions of Entitlement to extend the pricing designations of the Plan to all fixed providers (excluding public payphones) on the 0844 and 0871 number ranges.</p> <p>C4. Bringing some 08 numbers within the regulatory regime for PRS – This option would involve extending Ofcom’s and ICSTIS remit to cover some of the 08 number range so that SPs were subject to the provision of the ICSTIS code relating to price publication.</p> <p>C5. More stringent obligations on OCPs – This option would involve amending General Condition 14 which deals with consumer codes of practice and is the subject of a separate consultation document that will be published in the near future.</p> <p>C6. Call pre-announcements – This option would involve providing pre-announcements for calls on the 084 and 087 number ranges indicating to the caller the likely price of the call.</p> <p>C7. Signal price through number range – This option would consist of using the numbering range to signal the price of the call e.g. 0801 would cost 1ppm and 0802 would cost 2ppm etc.</p>
<p>D. Consumer protection on 084 and 087 numbers</p>	<p>D1. Status quo – No additional consumer protection measures.</p> <p>D2. Extending PRS regulation to 0871 numbers – This option would consist of extending the PRS regulatory regime to 0871 numbers to bring these numbers within ICSTIS remit thereby requiring SPs to operate under ICSTIS code provisions.</p> <p>D3. Extending PRS regulation to adult services currently provided on 08 numbers – This option would involve amending the Plan to</p>

Policy Issue	Options considered
	<p>clarify that adult services must only use the 0908 and 0909 ranges and secondly to extend the definition of Controlled PRS regulation to all adult services regardless of price.</p> <p>D4. No revenue sharing for locked-in calls to 084 and 087 numbers – This option would involve preventing calls to services classified as locked-in from revenue sharing on 08 number ranges to eliminate any potential for consumer detriment</p>
<p>E. Waiting times for call centre services provided on 084 and 087 numbers</p>	<p>E1. Status quo – This option would consist of maintaining the current regime, that is, call centres could continue to revenue share and there would be no requirements relating to call waiting times.</p> <p>E2. Stop call centres using 084/087 numbers – This option would involve preventing call centres from using the 084 or 087 number ranges which permit revenue sharing.</p> <p>E3. Regulate service levels for call centres using revenue sharing 08 numbers – This option would involve Ofcom regulating service levels for call centres using revenue sharing numbers.</p>
<p>F. Public services provided on 084 and 087 numbers</p>	<p>F1. Status quo – This option would involve retaining the current regulatory regime and providing the COI with best practice guidance on the use of 084 and 087 numbers for public services.</p> <p>F2. Stop public sector organisations using revenue-sharing 08 numbers – This option would involve the banning of public sector organisations from operating on revenue sharing 08 numbers.</p>

6.12 The options were also reviewed in the April 2006 NTS Statement in the light of stakeholder responses to the consultation.

Ofcom's conclusions

6.13 In the April 2006 NTS Statement, Ofcom concluded its analysis of the policy options and proposed to implement a package of measures to address the policy issues. The package included the extension of the regulatory framework for PRS to include to 087 Numbers (Option C4/Option D2) to improve pricing transparency (policy issue C) and consumer protection (policy issue D).

Scope of this impact assessment

6.14 The analysis presented in this section constitutes an addition to the impact assessment provided in the September 2005 NTS Consultation as modified in the April 2006 NTS Statement.

6.15 When the April 2006 NTS Statement was published, Ofcom was not able to make a complete assessment of the impact of extending PRS regulation because at that time, PhonepayPlus had not specified the Code it would apply to 087 Numbers. As previously discussed, PhonepayPlus has since undertaken its own consultation and

has published the SoA specifying how it will interpret the Code for calls to 087 Numbers.

- 6.16 Most of the potential costs for stakeholders would stem from the rules that PhonepayPlus requires CPs, and SPs to comply with. Ofcom has therefore reviewed the rules that PhonepayPlus proposes to apply to 087 Numbers and estimated the impact of those rules on stakeholders.
- 6.17 The analysis presented in this section considers the incremental impact associated with the extension of PhonepayPlus regulation to 087 numbers in addition to those assessed in the September 2005 Consultation.
- 6.18 In the September 2005 NTS Consultation Ofcom assessed the impact on stakeholders of its proposals for 0870 numbers, including the costs that SPs might incur if they decided to move their services from 0870 numbers to alternative number ranges as a result of Ofcom's proposals for the 0870 range. When moving their services to new numbers SPs would need to update or replace stationery, advertising/promotional material, advertising and signage to show their new telephone numbers. Ofcom has assumed that in most cases SPs that move their services to new numbers could also update their advertising/promotional materials to comply with the pricing information requirements of the Code at the same time (see paragraph 6.103). Ofcom has therefore assumed that the extension of PRS regulation to 087 numbers would not cause SPs that move their services from 0870 numbers to other 087 Numbers to incur incremental costs in addition to those associated with Ofcom's proposals for 0870 numbers.

Inputs to the impact assessment

- 6.19 The Impact Assessment relies on several input assumptions about traffic volumes and the number of stakeholders supplying or using 087 Numbers. These are discussed below.

Current traffic volumes

- 6.20 Figure 2 below shows Ofcom's most recent estimate of call traffic terminating on 0870 and 0871 numbers together with growth trends for the periods April 2004-March 2005 and April 2005 to March 2007²⁷.

Figure 2: Recent Traffic Trends for 087 Numbers

Number Range	Traffic Year Ending March 07 (Billions of minutes per annum)	Recent Traffic Trends	
		April 2004 to March 2005	April 2005 to March 2007
0870	5.7	11%	-9%
0871 ²⁸	1.2	104%	9%

²⁷ Traffic figures for April 2005- March 2006 were not available.

²⁸ There were no significant volumes of traffic on 0872 or 0873 at this time.

- 6.21 The traffic trends for the most recent period (March 2005 to March 2007) show a marked change on those of the earlier period (March 2004 to March 2005). It seems likely that the Ofcom's proposals for 0870 and 0871 numbers (first published in the September 2005 Consultation) are a significant factor behind this change.
- 6.22 Ofcom assumes that the decline in 0870 traffic to have been as a result of SPs moving their services to alternative number ranges in anticipation of the forthcoming changes to 0870. Ofcom therefore estimates that approximately 10% of 0870 traffic had already migrated as of March 2007.

Service migration from 0870 to 0871 numbers

- 6.23 In the September 2005 NTS Consultation, Ofcom assessed the potential impact of its proposal to repair the geographic linkage for 0870 calls and concluded that between 35% and 45% of SPs (representing 45% to 55% of traffic) might wish to move their services to alternative number ranges in order to continue to receive a revenue share, with the 084 and other 087 ranges being the most likely destinations. At that time, Ofcom did not take a view about the proportion likely to move to 0871 numbers.
- 6.24 When making their choices SPs would have to consider a number of factors, including competitive conditions in their primary markets and the differences between the available number ranges. 0871 numbers allow slightly higher retail prices (up to 10p per minute from a BT line) and therefore higher termination payments than daytime rates for 0870 numbers, whereas 084 numbers permit slightly lower retail prices (up to 5p per minute) and termination payments than daytime rates for 0870 numbers but would not be subject to PRS regulation if Ofcom's proposals are confirmed. In Ofcom's view, the choice seems fairly evenly balanced.
- 6.25 From the information available to Ofcom it is not possible to ascertain the pattern of movement of services between number ranges with precision. However, the information available does provide some indications:
- the growth in 0871 traffic between March 2005 and March 2007 (9%) equates to about 2% of 0870 traffic which suggests that about three quarters of the SPs that have already moved their services from 0870 numbers may have moved to ranges other than 0871;
 - there is anecdotal evidence from SPs of a small amount of movement of services away from 0871 numbers;
 - there is anecdotal evidence from SPs that some prefer to move from 0870 numbers to 084 numbers rather than raise prices for their services by moving to 087 Numbers; and
 - there is anecdotal evidence from CPs that there is currently little demand for 0871 numbers and that the bulk of the movement is from 0870 to 084 numbers.
- 6.26 Based on this information, Ofcom has concluded that it is most likely that most of the migration from 0870 that has occurred to date has been to number ranges other than 0871, 0872 or 0873.
- 6.27 Ofcom considers that on balance the evidence available indicates that a minority of SPs will move their services from 0870 numbers to other 087 Numbers as a result of Ofcom's proposals. Ofcom has therefore assessed the impact of these proposals on the assumption that 25% of the migration away from 0870 numbers would be to other

087 numbers. However, at this stage there is still some uncertainty about the final pattern of migration.

- 6.28 Ofcom previously estimated that 45% to 55% of 0870 traffic may ultimately migrate from 0870 numbers to other numbers as a result of Ofcom’s proposals for 0870 numbers (in the September 2005 NTS Consultation). Ofcom therefore estimates that approximately 11.25% to 13.75% of 0870 traffic may migrate to 087 Numbers (i.e. 25% of 45% to 55% of 0870 traffic).

Service migration away from 0871 numbers

- 6.29 In the absence of any firm information of significant movement of services away from 0871 numbers, Ofcom has assumed the movement to be minimal and has modelled a 2% migration to illustrate the associated costs.

Traffic forecast

- 6.30 Figure 3 below shows the Ofcom’s traffic forecasts for the scenarios described above based on the March 2007 traffic figures from Figure 2 above.

Figure 3: 087 Traffic Forecast

Number Range	(Billions of minutes per annum)
0870	3.1 to 3.7
0871, 0872 and 0873 Comprising	1.7 to 1.9
<i>Existing 0871 Services</i>	1.2
<i>Services migrating from 0870</i>	0.6 to 0.7

Number of TCPs and Resellers

- 6.31 Some of the costs of PhonepayPlus regulation would be driven by the number of TCPs and resellers offering services on 087 Numbers. Ofcom has therefore estimated the number of TCPs and resellers.
- 6.32 Ofcom has allocated 087 Numbers directly to 283 TCPs, but does not have a record of the TCPs that sub-allocate numbers to other TCPs or the number of resellers offering 087 Numbers.
- 6.33 From information gathered from TCPs in a formal information request for the September 2005 NTS Consultation, Ofcom estimates that 150 TCPs may now be using their allocations of 087 Numbers. Based on discussions with TCPs known to have significant businesses with resellers, Ofcom estimates there are about 150 sub-allocating TCPs and resellers offering 087 Numbers.

Number of 087 Numbers in use

- 6.34 Figure 4 shows Ofcom’s forecast of the number of 087 Numbers and SPs that would become subject to PhonepayPlus’ regulation taking into account the traffic forecast discussed above.

Figure 4: Forecast of 087 Numbers and Service Providers

Number Range	Forecast 087 Traffic
Numbers in use (thousands)	239 to 255
Number of Service Providers (thousands)	33 to 36

- 6.35 These estimates are based on information gathered for the September 2005 NTS Consultation. At that time, Ofcom issued formal information requests under section 135 of the Act to all TCPs that had been allocated 08 numbers. Ofcom gathered information about how many numbers were in use, the volume of traffic they carried and the names of the SPs using the numbers.
- 6.36 Ofcom considers that the information provided by TCPs may reasonably be considered to be a representative sample of the utilisation of 087 Numbers and that it is reasonable to assume that services using 087 Numbers after the proposed application of PRS regulation would have a similar profile after adjustment for the changes in traffic volumes.
- 6.37 Ofcom therefore considers this approach provides a reasonable estimate of the number of SPs and numbers that would be subject to PhonepayPlus regulation.

The citizen and/or consumer interest

- 6.38 The proposed extension of PRS regulation is expected to have the following benefits for consumers.
- 6.39 Better pricing transparency
- 6.40 In the Sept 2006 Consultation, Ofcom found that consumers have a very low awareness of the price of NTS calls and tend to overestimate prices by a considerable margin. Ofcom also found that a significant proportion of consumers are wary of calling NTS numbers mainly because of concerns about prices. These factors cause consumers to make inefficient purchasing decisions, typically to avoid making calls because they overestimate charges.
- 6.41 The extension of PRS regulation would make those SPs brought within the scope of PRS regulation subject to the Pricing Information Requirements in section 5.7 of the Code. This would require them to ensure their customers are informed about the price of calls. We would expect SPs to discharge this obligation by placing pricing information in advertising and promotional materials displaying telephone numbers for their services. Ofcom considers this would provide consumers with better and timelier information about the likely charges for calls to those numbers, thereby

reducing the instances of consumers avoiding making calls because they overestimate prices.

- 6.42 The extension of PRS regulation along with the other measures proposed in the April 2006 NTS Statement (some of which have been implemented and some of which Ofcom intends to implement) should contribute to an improvement in pricing transparency and a consequent improvement to consumer welfare associated with NTS calls. As discussed in more detail below, there are a number of difficulties associated with quantifying this type of detriment and also the improvement that better pricing transparency would deliver. In particular, it would be difficult to assess with any precision the contribution of each of the measures to any improvement in pricing transparency. However, Ofcom considers it likely that the extension of PRS regulation would make a stronger contribution than the other measures proposed because the pricing publication requirements in the Code should significantly increase the likelihood that consumers would see pricing information immediately before deciding to make calls.

Consumer detriment associated with lack of pricing transparency

- 6.43 Price misperceptions of the sort described above will have a negative impact on welfare because some potential callers who place a value on making these calls that is higher than the price that is actually charged will be deterred from dialling these numbers. Given the extent of the current disparity between caller perceptions and actual call charges, the detriment associated with this inefficiency may be very significant. There are, however, a number of difficulties associated with quantifying this type of detriment. In order to do this it is necessary to make assumptions regarding a number of key parameters, in particular regarding the sensitivity of callers to changes in (perceived) call prices.

Methodology

- 6.44 When customers incorrectly perceive that prices are above their true level, welfare outcomes will be somewhat similar to those that result from prices actually being set above a competitive level by a monopolist. As in the monopoly cases, levels of consumer surplus and consumption will be lower, but, unlike monopoly prices, consumer misperceptions will not lead to increased producer surplus, since sellers do not benefit from high *perceived* prices (and, in any case, price misperceptions on the scale of the ones described earlier mean that callers currently have a view of prices that suggests that they are well above the profit-maximising monopoly level).
- 6.45 Assuming that the (market) own price elasticity of demand for NTS calls is -0.327 at the current perceived price, and assuming a standard formulation for a nonlinear demand curve of $Q = Ae^{-\lambda p}$, we estimated the impact that correcting the price misperceptions outlined above would have on consumer surplus (assuming, for simplicity's sake, that the current actual prices for 0871 calls represents the – constant – marginal cost of retailing these call types). We assumed that these misperceptions apply to all the 0871 calls originated by all CPs.
- 6.46 There is a significant degree of uncertainty in these estimates due to the need to make a number of assumptions in the absence of detailed information about certain aspects of consumer behaviour. One of the most significant of these is that we have been unable to determine how often consumers decisions to call 0871 numbers are influenced by pricing messages that specify call charges or which incorrectly advertise them as “national rate”. Our survey results indicated that the way in which numbers are advertised contributes significantly to consumers' perceptions of the

price of NTS calls, but, for simplicity, Ofcom has assumed that all numbers are advertised without any additional pricing information. Ofcom has based the calculations on an *average* perceived price, i.e. it has not individually calculated the welfare loss associated with each type of caller (e.g. callers who think that 0871 calls are free, callers who think that 0871 calls cost £1/minute or more, and so on) as found in its survey data. Our calculations also assume that each type of caller (e.g. callers who think that 0871 calls are free, callers who think that 0871 calls cost £1/minute or more, and so on) makes the same number of calls per head on average, since we do not have detailed data upon which to base a more precise calculation.

- 6.47 Arriving at an exact estimate for this variable is necessarily subjective. We view an estimate of 0.3 as a conservative estimate (i.e. one that will tend to understate the detriment associated with price misperceptions). This view is supported by, for example, the following quote from Rappoport, P.N. and Taylor, L.D. (1997), "Toll Price Elasticities Estimated from a Sample of U.S. Residential Telephone Bills," *Information Economics and Policy*, Vol. 9, No. 1, pp. 51-70: *The conventional view in the literature is that the price elasticity is of the order of -0.3 to -0.4 for intralata calls and -0.7 for long-haul interstate calls.*
- 6.48 It is also worth noting that we have assessed the detriment associated with price misperceptions relative to a counterfactual in which there is complete price transparency. This is probably somewhat unrealistic - research carried out by Ofcom in the past shows that consumers also suffer from misperceptions in relation to the price charged for other call types such as geographic calls. None of the measures proposed in this document would entirely eradicate price misperceptions, meaning that the benefit associated with any proposal would be less than the entire detriment figure set out below.

Estimate of detriment

- 6.49 Using this approach Ofcom estimates that the detriment attributable to reduced 087 call volumes resulting from consumer misperceptions is in the region of £49m to £52m million p.a.
- 6.50 Given the importance of the caveats outlined above, we believe that these figures should be regarded as indicative only. In particular, these figures are extremely sensitive to the assumed price elasticity of demand for these call types, and, as explained above, we do not have a single reliable estimate of this parameter. For example, a slightly higher assumption of -0.4 would imply a welfare loss of about £67m to £71m p.a. and a slightly lower assumption of -0.2 would imply a corresponding range of £32m to £34m p.a.

Consumer protection

- 6.51 PRS regulation provides a high level of consumer protection for a subset of PRS services that Ofcom considers warrant the additional protection afforded by the Code. Ofcom considers PRS regulation to be an effective and proportionate response to the risks associated with the services that are subject to PRS regulation.
- 6.52 In the September 2005 NTS Consultation Ofcom reviewed a range of issues including:
- a small but rising number of scams affecting 087 numbers;

- concerns about excessively long call waiting times associated with call centre services; and
 - a low level of pricing transparency (as discussed above).
- 6.53 On the basis of this information Ofcom concluded that it would be proportionate to extend PRS regulation to 087 Numbers in order to address these concerns²⁹.
- 6.54 In reaching this conclusion Ofcom was mindful that the incidence of scams on 087 numbers indicated that the revenues-shares available to SPs are sufficiently high to make 087 Numbers attractive to persons that operate scams. Ofcom also considered that the application of PRS regulation to other number ranges (such as the 09 range) would be likely to cause persons that operate scams to use number ranges that are not subject to PRS regulation such as 087 Numbers. Ofcom therefore considered it likely that the incidence of scams would increase in future. Ofcom was also mindful that previous experience has shown that level of scamming activity can grow very rapidly.
- 6.55 Ofcom considers that the proposed extension of PRS regulation would lead to a substantial reduction in the level of consumer harm associated with 087 Numbers and would also effectively address future scamming activity. PRS regulation would also provide a new mechanism to address consumer complaints about poor customer service including complaints about excessively long call waiting times.
- 6.56 By improving consumer protection for 087 Numbers, the proposed extension of PRS regulation should improve consumer confidence in 087 Numbers which should in turn encourage:
- consumers to make more calls to services operating on 087 Numbers (increasing consumer welfare); and
 - SPs to offer more services on 087 Numbers (increasing consumer welfare).

Impact of the proposals on communications providers

- 6.57 The extension of PRS regulation would make CPs offering NTS numbers brought within with scope of PRS regulation subject to the PhoneyPayPlus Code.
- 6.58 Most of the obligations applicable to CPs are in section 2 of the Code. Ofcom considers the following obligations to be potentially the most significant or worthy of comment (in terms of the impact on CPs):
- the obligation to assist PhoneyPayPlus and to provide information to PhoneyPayPlus;
 - the obligation to include provisions specified by PhoneyPayPlus in contracts with SPs;

²⁹ Ofcom acknowledged that the services operating on 087 Numbers differed in some respects from the services that are currently subject to PRS regulation and therefore asked PhoneyPayPlus to develop a code of practice for regulation of services operating on 087 numbers. Subsequently PhoneyPayPlus concluded that the Code would be suitable provided it interpreted certain provisions of the Code in a different way. PhoneyPayPlus therefore issued the SoA specifying how it would interpret the Code for 087 Numbers.

- the obligation to make payments to SPs in arrears (the 30 day rule); and
- the obligation to pay the PhonepayPlus Levy.

6.59 Each of these is discussed in more detail below.

Preparation for extension of PRS regulation

6.60 Prior to the extension of PRS regulation, CPs would need to familiarise themselves with their obligations under the Code (and the associated SoA) and decide what actions would be necessary in order to comply with the Code. These activities are likely to be simpler for CPs that already offer PRS services (e.g. on 09 numbers) who would already be familiar with the Code and may have to make fewer preparations. These activities would involve some management and possibly administrative effort which would be likely to vary according to the size of the business and the types of services it offers to SPs. We have not therefore quantified the cost of these preparatory activities.

6.61 Ofcom considers that at a minimum, CPs would be likely to contact each of their SP customers to notify them that their services are due to become subject to PRS regulation. CPs may also take a commercial decision to provide SPs with further advice or other assistance.

6.62 We estimate the overall cost to all CPs associated with drafting and dispatching standards letters to SPs would be between £140,000 and £790,000 based on the following assumptions:

- drafting of standard letters would take no more than 1 working day per CP at an effective wage rate of £18 per hour³⁰;
- dispatching of standard letters at a rate of 12 letters per hour by an administrative resource with an effective wage rate of £18 per hour;

6.63 The range quoted relates to the uncertainty about how many letters CPs would need to send. This may range from one per SP to one for each live 087 number.

6.64 We believe that in most cases, CPs would be able avoid these additional costs by providing information as part of regular communications with customers.

Service provider contracts

6.65 Section 2.3.2 of the Code requires CPs to include certain provisions in their contracts with SPs, namely an obligation for the SP to comply with the Code and a provision to enable PhonepayPlus to directly enforce relevant terms of the contract.

6.66 CPs that already offer PRS services may already have the necessary clauses in their contracts. Others would need to add additional clauses to their contracts with SPs. Ofcom considers the necessary amendments to be straightforward and would expect that in most cases CPs would be able to add standardised additional clause(s) to their existing contracts, most likely as an addendum to their standard terms and conditions.

³⁰ Measuring Administrative Costs <http://www.berr.gov.uk/bre/policy/simplifying-existing-regulation/administrative-burdens/page44061.html>

- 6.67 Ofcom estimates the legal drafting should take no more than 7 hours and estimates the cost per CP to be £126 for internal legal resource and approximately £1200 for external legal resource³¹. Based on these assumptions Ofcom estimates the total costs to CPs of updating their contracts to be approximately £40,000 to £350,000.
- 6.68 If CPs choose to write to their customers specially to inform them of the modification to their contracts they would also incur additional printing and postal costs which Ofcom estimates to be approximately £100,000 to £750,000 using the assumptions described in paragraph 6.62. Since PhonepayPlus would allow CPs a year to modify their contracts, Ofcom considers that in most cases CPs would be able to avoid additional costs by notifying their customers as part of planned mailings or other routine client engagement. We therefore assume that the actual cost to CPs would be significantly lower than these estimates.

Obligation to assist PhonepayPlus

- 6.69 Under section 2.5 of the Code, CPs are obliged to provide PhonepayPlus with assistance in connection with complaints or investigations. This may include contact details or other information about SPs, call records and information about revenue-share payments to SPs. CPs are also obliged to terminate access to specific services on instruction from PhonepayPlus and also to withhold payments to SPs on instruction from PhonepayPlus. Ofcom considers that it would be straightforward for most CPs to comply with such requests and therefore the impact would be minimal for most CPs.
- 6.70 CPs may also need to undertake some preparatory work prior to the extension of PRS regulation to put in place processes/procedures to enable them to comply with PhonepayPlus requests. Ofcom considers that the information that PhonepayPlus may request to be information that CPs would routinely collect and would not therefore expect CPs to have to collect any additional information.

Obligation to undertake Due Diligence

- 6.71 As previously discussed, PhonepayPlus has waived the requirement in section 2.3 of the Code for CPs to undertake Due Diligence for SPs wishing to offer services on 087 Numbers. PhonepayPlus has also indicated that it would not apply this requirement without further stakeholder consultation except as a sanction against individual CPs.
- 6.72 Ofcom therefore considers the Due Diligence Requirements would not have any impact on CPs.

The 30 day rule

- 6.73 Section 2.3.3 of the Code requires CPs to withhold payments to SPs for 30 days after the use of the PRS to which the payment relates. Ofcom and PhonepayPlus believe that most network operators currently make payments in arrears, typically on a monthly basis and therefore this requirement should have a minimal impact on network operators or SPs.

³¹ Measuring Administrative Costs <http://www.berr.gov.uk/bre/policy/simplifying-existing-regulation/administrative-burdens/page44061.html>

The PhonepayPlus Levy

- 6.74 PhonepayPlus requires CPs to pay a Levy to ensure it receives adequate funding to carry out its activities. As discussed in more detail in paragraph 3.38 PhonepayPlus has decided the Levy should be a proportion of the notional retail revenues for calls to 087 Numbers. PhonepayPlus will continue to apply the standard arrangements for other PRS ranges including those services brought within the scope of PRS regulation by these proposals (i.e. those charged between 5p and 10p per minute (for BT customers)). For those services, the Levy will therefore apply to revenue-share payments.
- 6.75 Ofcom considers it likely that CPs will pass on the cost of the Levy to SPs either directly or indirectly (e.g. by lowering revenue-share payments or by increasing their charges for call-routing or other services provided to SPs). Therefore, for the purposes of this impact assessment, Ofcom has considered the impact of the Levy on CPs to be limited to the collection costs.
- 6.76 PhonepayPlus sets a standard monthly payment for each CP based on a forecast of the relevant traffic derived from traffic estimates supplied by each CP. Adjustments are then made in arrears to reflect actual traffic volumes. CPs therefore need to make regular traffic measurements, check PhonepayPlus bills, make adjustments to their payments as necessary and supply relevant information to PhonepayPlus.
- 6.77 Ofcom considers these activities are likely to incur a small administrative overhead for CPs not exceeding 11 hours per year.
- 6.78 Ofcom estimates the cost to each network provider to be approximately £200 per annum based on a wage of £18 per hour³². The overall cost to the CPs is estimated to be about £30,000.

Impact of the proposals on Service Providers

- 6.79 The extension of PRS regulation would make SPs offering NTS numbers brought within the scope of PRS regulation subject to the PhonepayPlus Code (as interpreted in the PhonepayPlus SoA).
- 6.80 Ofcom considers the following obligations to be potentially the most significant or worthy of comment (in terms of the impact on CPs):
- The PhonepayPlus Levy;
 - Understanding and applying the rules;
 - the obligation to obtain Prior Permission for some types of services;
 - the obligation to provide consumers with pricing information;
 - specific requirements relating to live services requirements
 - service specific requirements; and
 - requirements relating to the provision of a complaints line.

³² Measuring Administrative Costs <http://www.berr.gov.uk/bre/policy/simplifying-existing-regulation/administrative-burdens/page44061.html>

Registration with PhonepayPlus

- 6.81 Section 3.2.2 of the Code requires SPs to provide their contact details to PhonepayPlus. PhonepayPlus provide a web-interface for SPs to provide this information. Ofcom considers this a straightforward requirement that will cause SPs to incur a minimal one-off expense when the scope of PhonepayPlus regulation is extended.

Provision of information

- 6.82 Under section 3.2.2 of the Code, SPs are required to provide PhonepayPlus with information for any purpose relating to the Code. Ofcom considers that it would be straightforward for most SPs to comply with such requests and therefore the impact would be minimal for most SPs.

Provision of contact details in promotions

- 6.83 Section 5.8 requires SPs to provide their contact details in promotional materials. Ofcom considers that most SPs would routinely include this information and therefore this requirement would not cause SPs to incur significant additional expenses. Ofcom also notes that some SPs would need to modify their advertising and promotional material to comply with the pricing information requirements (see paragraph 6.103 for details) and would therefore be able to add their contact details at the same time if necessary at no additional cost.

Requirements relating to Information Providers

- 6.84 Section 3.3.4 of the Code requires SPs to bring the Code to the attention to Information Providers and to include provisions in their contracts with Information Providers requiring them to comply with the Code. Ofcom believes that very few Information Providers would be brought within the scope of PRS regulation by the proposed extension and therefore these provisions will have minimal impact.
- 6.85 However, where SPs do have contracts with Information Providers estimates the costs that CPs would incur per Information Provider to be similar to those for CPs to update their SP contracts i.e. £126 to £1200 per SP plus any postal costs incurred.

The PhonepayPlus Levy

- 6.86 As discussed in more detail in paragraph 3.38 PhonepayPlus has decided the Levy should be a proportion of the notional retail revenues for calls to 087 Numbers.
- 6.87 Ofcom considers it likely that CPs will pass on the cost of the Levy to SPs either directly or indirectly (e.g. by lowering revenue-share payments or by increasing their charges for call-routing or other services provided to SPs). Therefore, for the purposes of this impact assessment, Ofcom considers the Levy to affect SPs rather than CPs, though as previously discussed in paragraph 6.74, CPs are likely to incur administration costs associated with fee collection.
- 6.88 The Levy is subject to annual review by PhonepayPlus and is currently 0.39% for the year ending March 2009.
- 6.89 The overall size of the Levy that PhonepayPlus collects would be dependant on the volume of traffic terminating on 087 Numbers. Based on the traffic forecast previously

discussed Ofcom estimates Levy revenues to be approximately £390,000 to £420,000 p.a.

Customer complaints line

- 6.90 Section 3.3.5 of the Code requires SPs to provide a 'non premium rate' telephone number for customer service purposes. In this context 'non-premium rate' means a range not regulated by PhonepayPlus and customer services means complaints. As discussed in paragraph 3.19, in the light of the proposal to extend PRS regulation to 087 Numbers PhonepayPlus has issued a notice specifying an alternative way in which the requirements of section 3.3.5 of the Code may also be met.
- 6.91 The effect of this notice is that SPs may use an 087 number³³ for customer services if they refund call charges to the caller in full. PhonepayPlus has also made clear that services currently subject to PRS regulation would also be subject to these requirements (see paragraph 6.120 for further discussion).
- 6.92 Ofcom does not have detailed information about the extent to which SPs currently provide a non-PRS number for complaints. However, anecdotal evidence indicates this to be uncommon for services on 087 Numbers. Therefore, for the purposes of this impact assessment, Ofcom has assumed that most SPs would need to make changes in order to comply with section 3.3.5, either by providing a new non-PRS number for complaints or by refunding call charges for complaints calls.
- 6.93 The costs associated with providing a new non -PRS number might include:
- charges associated with obtaining a new number and renting it on an ongoing basis; and
 - costs associated with integrating new numbers into the call routing plans for contact centres.
- 6.94 Calls to non-PRS complaints numbers would also incur higher call routing and/or call delivery charges since termination payments would be lower than for 087 calls. We expect that SPs would recover these costs indirectly from consumers by increasing the price of goods or services in their primary market. Since these costs are currently recovered directly from consumers via call charges, the additional call charges are not considered to be an additional cost for the purpose of the impact assessment.
- 6.95 It is difficult to assess these costs with precision as they are likely to vary according to the individual circumstances of each SP. Taking each of these in turn, our assessment of the likely costs involved is as follows.
- 6.95.1 Readily available information indicates that NTS numbers may be obtained for nominal sums (e.g. free of charge up to £50) and that they may be rented for nominal amounts (e.g. free to £10 per month). We have assumed a connection charge of £35 and rental of £10 per month.
- 6.95.2 The cost of integrating new numbers into call centre routing plans are more difficult to estimate since they are likely to vary widely depending on a number of factors, including the complexity of the contact centre solution and whether the SP decides to deploy new routing rules for the new

³³ SPs would be able to use 0870 numbers for customer services purposes without refunding call charges as 0870 numbers will not be regulated by PhonepayPlus.

number (e.g. diverting such calls to a particular agent group). We have not estimated these costs which would be in addition to the figures stated below.

6.96 Figure 5 shows our estimate of the overall costs to SPs of complying with the requirements for customer complaints lines.

Figure 5: Estimate of costs of providing non PRS customer complaint lines for 087 Numbers

(millions)	
New Numbers	
Connection	£8 to £9
Recurring (p.a.)	£2 to £3
Integration	Not estimated, in addition to the total below
Total	
Recurring	£2 to £3
Non Recurring	£38 to £39

6.97 The estimates in Figure 5 assume that a non-PRS complaints number would be provided for each 087 number. In practice some SPs with multiple numbers may choose to use a common number for complaints and therefore the costs incurred may be significantly lower than quoted above.

6.98 Some SPs may choose to continue to use their existing PRS number for complaints and to refund callers call charges. We think that SPs would be most likely to choose this approach if they already have or can easily develop the capability to refund call charges in an efficient manner, most likely by making a credit against a forthcoming bill. The costs associated with this type of solution would therefore likely to be:

- potentially small incremental transaction costs for processing credits in existing systems;
- labour and associated overheads for the time spend by call centre agents agreeing the refund and processing it. In the absence of specific information, Ofcom estimates they would take between 2 and 4 minutes to process. We estimate the associated cost per transaction to be £36 to £72 assuming an effective labour rate of £18 per hour³⁴; and
- the call charges refunded to callers which may vary between 10p and approximately 40p per minute.

6.99 The overall cost to SPs or paying refunds would be strongly dependent on the volume of complaints and have not been estimated due to the uncertainty about complaint call volumes.

³⁴ Ref the source of the labour rate

Publication of customer service number

6.100 Section 5.8 of the Code requires SPs to publish their customer service number in promotions unless other reasonable steps have been taken to bring it to the customer's attention. As discussed in paragraph 6.103, SPs would need to modify their promotional material to include pricing information in order to comply with PhonepayPlus requirements. Ofcom considers that SPs could make both changes at the same time without any significant additional cost.

Prior Permission requirements

6.101 Section 5.1 of the Code requires SPs to obtain permission from PhonepayPlus before they offer certain types of service. Ofcom considers that very few services would be made subject to these requirements by the proposed extension of PRS regulation since services that would be subject to the prior permission requirements are not generally provided on the affected ranges.

6.102 SPs that offer services requiring prior permission would need to obtain permission prior from PhonepayPlus during the proposed implementation period. Ofcom considers that SPs would incur modest one-off costs associated with submitting their applications and liaising with PhonepayPlus as required.

Provision of pricing information

6.103 Section 5.7 of the Code requires that SPs ensure that consumers are made aware of the price of a call before they make the decision to call. Most SPs are likely to discharge this obligation by adding pricing information wherever their numbers are published in business to consumer communications collateral. SPs might therefore incur costs to update or replace stationery, promotional materials, print and other media advertising, websites and signage. Ofcom has reviewed the potential costs that SPs might incur in Annex 5.

6.104 Ofcom notes that PhonepayPlus permits SPs to use announcements at the start of calls to inform callers about call charges as an alternative to publishing pricing information alongside their numbers. This option may be attractive for some SPs, particularly those that may incur relatively high costs to update their stationery, advertising/promotional material and signage. It may also be particularly suitable for those SPs that already have the capability to play recorded messages at the start of calls.

6.105 For the purposes of this Impact Assessment, Ofcom has assumed that SPs would only use announcements if they are more cost effective than adding pricing information to stationery, advertising/promotional material etc and has therefore assumed that announcements would reduce the costs incurred by SPs.

6.106 Ofcom's approach to estimating the costs of complying with the pricing information requirements is described in more detail in Annex 5. Ofcom notes that in many cases SPs could take further steps to reduce the incremental expense of complying with the pricing information requirements such as printing pricing information directly onto existing stationery at the time each letter is written.

6.107 As previously discussed in paragraph 6.17 Ofcom has considered only the incremental costs associated with the extension of PhonepayPlus regulation to 087 numbers. Ofcom has therefore estimated the costs incurred by SPs currently using

087 numbers and not those migrating from 0870 numbers that would need to update these materials when changing their numbers.

6.108 Ofcom's estimates the costs associated with replacing stationery and updating websites to be approximately £36m.

6.109 As discussed in more detail in Annex 6, Ofcom has not been able to estimate the costs associated with updating advertising/promotional materials, print and other media advertising and signage. These would be in addition to the amounts quoted above and in some cases may be significant.

Live Services requirements

6.110 As discussed in paragraph 3.34 Ofcom considers that few additional services brought within the scope of PRS regulation by these proposals would be subject to the live services requirements in section 6 of the Code. Ofcom therefore considers these provisions of the Code would have minimal impact.

Service specific requirements

6.111 Section 7 of the 11th Code specifies rules that apply to twelve specific types of service, namely:

- advice services;
- betting tipster services;
- virtual chat services;
- contact and dating services;
- children's services;
- competitions and other games with prizes;
- consumer credit services;
- directory Enquiry Services;
- fundraising and charitable promotions;
- pay for product services;
- sexual entertainment services; and
- subscription services.

6.112 As previously discussed PhonepayPlus have waived the requirement in section 7.1 for consumer credit services using 087 Numbers to apply for prior permission. Ofcom also notes that sexual entertainment services and directory enquiry services are already Controlled PRS and therefore already subject to the relevant service specific requirements for those services.

- 6.113 Ofcom considers that only a small minority of the services that would be brought within the scope of PRS regulation as a result of these proposals would fall within one of the categories subject to service specific requirements under section 7 of the Code. Ofcom therefore considers that the service specific requirements would have a minimal impact.
- 6.114 A minority of services would however be subject to service specific requirements. Ofcom considers that the rules specified in section 7 for those services are consistent with good practice for those types of services and not onerous to comply with. However, SPs providing such services would have to familiarise themselves with the requirements and potentially make adjustments to their services and/or procedures to become compliant. Ofcom therefore considers that some SPs may have to incur modest costs to comply with these requirements. Due to the uncertainty about the number of SPs involved, Ofcom has not estimated these costs.

Migration away from 0871 numbers

- 6.115 As discussed in paragraph 6.29 Ofcom has not found any evidence that the proposed extension of PRS regulation to 0871 numbers has led SPs to move their services away from 087 Numbers in significant numbers. However, Ofcom is aware of a few SPs that have moved their services and it seems reasonable to assume that others will also move. Ofcom has therefore estimated the potential cost associated with an illustrative migration of 2% of 0871 traffic.
- 6.116 To make the estimates Ofcom followed the methodology set out in the September 2005 NTS Consultation (as amended in the April 2006 NTS Statement). The estimates include the costs associated with updating/replacing stationery, websites and provision of changed number announcements. On this basis we estimate the migration costs would be approximately £2.4 million.
- 6.117 SPs may also need to update advertising/promotional materials and signage which would be in addition to the figures quoted above.

Impact on services on other ranges

- 6.118 Ofcom's proposals are intended to bring services on 0871, 0872 and 0873 within the scope of PRS regulation. Services on these numbers may be charged above 5p per minute and up to 10p per minute from a BT line. For consistency we have drafted the modification to the PRS Condition so that services charged at these rates that operate on the 09 range are also brought within the scope of PhonepayPlus regulation.
- 6.119 We believe there are very few services charged at these rates operating on 09 numbers that are not already Controlled PRS (for example because they are Sexual Entertainment Services). We therefore believe that the inclusion of these services will not increase the overall impact of our proposals significantly.

Requirement to offer a non-PRS customer service number

- 6.120 As discussed in paragraph 6.90 PhonepayPlus has issued a notice specifying an alternative way in which the requirements of section 3.3.5 of the Code (to provide a 'non premium rate' telephone number for customer service purposes (meaning complaints in this context)) may also be met.

- 6.121 If PRS regulation is extended to 087 Numbers as proposed, the effect of this requirement is that SPs using 09 numbers would only be permitted to use an 087 number (other than 0870) for customer services if they refund call charges to the caller in full.
- 6.122 To get an understanding of how common it is for services operating on 09 numbers to use an 087 Number for customer services, Ofcom undertook an ad-hoc review of advertisements for Sexual Entertainment Services in national newspapers. The vast majority (approximately 95%) of advertisements that published a customer service number published an 0871 number. Based on this finding Ofcom believes that it is reasonable to assume that most services operating on 09 numbers use a 0871 number for customer services. Applying the methodology discussed in paragraph 6.90 et seq. Ofcom estimates that it would cost SPs offering services on 09 numbers approximately £19m to provide an alternative number for customer services purposes. In addition SPs would need to be likely to incur additional costs associated with integrating their new numbers into their call centres which would be in addition to those quoted.

PhonepayPlus setup and operational costs

- 6.123 Preparing for the extension of PRS regulation to 087 Numbers has caused PhonepayPlus to incur incremental costs relating to preparatory research, stakeholder engagement, consultation and preparing PhonepayPlus to regulate 087 Numbers. PhonepayPlus has met these costs from within existing budgets. These preparatory costs will be recovered over time from the levy on 087 numbers.
- 6.124 PhonepayPlus believes that Levy revenues from 087 Numbers will be sufficient to cover the incremental operational cost of regulating 087 Numbers as well as the recovery of preparatory costs.

Summary of impact assessment

Benefits

- 6.125 Ofcom considers that the benefits associated with the extension of PRS regulation to 087 numbers would be substantial and would be likely to deliver several benefits:
- an improvement in pricing transparency for calls to 087 Numbers which would reduce the consumer detriment associated with poor pricing transparency;
 - better consumer protection which would reduce the level of consumer harm associated with scams and other abusive practices on 087 Numbers and would also effectively address future scamming activity;
 - improved consumer confidence stemming from a reduction in the incidence of scams and the extension of PRS regulation to 087 numbers;
 - improved consumer confidence in 087 Numbers should reduce the consumer detriment associated with calls that consumers avoid making because of concerns about scams etc. It should also encourage more SPs to offer services on 087 Numbers.
- 6.126 The extension of PRS regulation would be unlikely to completely eliminate consumer harm from scams or completely eliminate pricing misperceptions; however, Ofcom

would expect it to bring about a substantial improvement in each of these areas on an ongoing basis (i.e. year on year).

- 6.127 As previously discussed, it is difficult to quantify these benefits in monetary terms particularly as there is considerable uncertainty about the size of the consumer detriment associated with poor pricing transparency and Ofcom is unable to estimate the consumer detriment associated with poor consumer confidence and the level of consumer harm associated with scams and other abusive practices on 087 Numbers.

Costs

- 6.128 Against the benefits, PhonepayPlus, CPs and SPs would incur costs to implementation and operational costs. Figure 6 below summarises the main cost elements identified in the Impact Assessment and Ofcom's estimates of the costs. Ofcom has not been able to quantify all of the costs involved, some of which may be significant either in terms of the overall cost of extending PRS regulation or in terms of their impact on individual stakeholders.

Figure 6: Summary of Costs

Communications Providers (TCPs and Resellers) (all figures £ thousands)	Costs	
	From	To
One-Off Costs		
Preparations for PRS Regulation	Not quantified	
Notifications to SPs	£340	£2,500
SP contract modifications	£340	£2,500
Total	£680	£5,000
Recurring Costs per annum		
PhonepayPlus Levy Administration	£200	£200
Assisting PhonepayPlus	Not quantified	
Total	£200	£200

Service Providers (all figures £ thousands)	Costs	
	From	To
One-Off Costs		
Preparations for PRS Regulation	Not quantified	
Providing non-PRS complaints numbers	£8,378	£8,941
Associated call centre integration	Not quantified	
Pricing Information Requirements	£35,550	£35,550
Total	£43,929	£44,491
Recurring Costs per annum		
Assisting PhonepayPlus	Not quantified	
PhonepayPlus Levy	£386	£421
Total	£386	£421

Secondary Effects on 09 Numbers

(all figures £ thousands)	Costs	
One-Off Costs		
Providing non-PRS complaints numbers	£19,055	
Associated call centre integration	Not quantified	
Total	£19,055	

Total All Stakeholders

(all figures £ thousands)	From	To
One-Off Costs	£63,664	£68,546
Recurring Costs	£586	£621

6.129 Figure 6 shows that the incremental cost to stakeholders associated with extension of PRS regulation to 087 Numbers would be significant. The bulk of these relate to preparatory activities and would be incurred by SPs which are the largest group of stakeholders that would be regulated by PhonepayPlus. Once implemented, our

analysis shows that PhonepayPlus regulation would be likely to impose a small ongoing overhead on CPs and SPs.

- 6.130 The overall costs of the preparatory activities are driven by the costs SPs might incur to comply with the Pricing Information Requirements in the Code and to a lesser extent the requirement to offer a non-PRS complaints number. Our estimates of these costs are £63 to £68 million (depending on the extent of migration from 0870). However, we have not been able to estimate all of the setup costs, notably the costs associated with modifying signage (e.g. on vehicles and property) to comply with the Pricing Information Requirements or the costs of integrating non-PRS complaints numbers at call centres. The costs of both these activities may be significant for some SPs and may add significantly to the overall cost of extending PRS regulation.

Sensitivity of pricing information costs to SP preparations

- 6.131 Ofcom gave an extended notice period (from April 2006) to give SPs the opportunity to avoid additional costs by updating their stationery, advertising/promotional material and signage to comply with the Pricing Information requirements as part of their normal replacement cycle.
- 6.132 Ofcom's estimates assume that during this period half of SPs would have replaced their stationery, advertising/promotional material and would therefore have added pricing information in preparation for the extension of PRS regulation.
- 6.133 If a significant proportion of SPs services chose to wait until the conclusion of this consultation (modifying the PRS Condition) rather than update materials as part of the normal replacement cycle then additional incremental costs would be incurred. We estimate these to be approximately £28m.

Impact on individual CPs

- 6.134 Based on the information presented in this section, Ofcom's initial view is that the extension of PRS regulation would place a modest additional burden on individual CPs. The most significant element of which would be management resource that would need to be committed to the necessary preparatory activities for PRS regulation. Once PRS regulation has been extended there would be a small ongoing administrative burden associated with calculating the PRS Levy and providing assistance to PhonepayPlus as required.

Impact on individual SPs

- 6.135 Based on the information presented in this section, Ofcom's initial view is that the setup costs associated with the extension of PRS regulation would be small for most SPs. However, as noted above Ofcom has not been able to quantify all of the setup costs, including notably the potential costs associated with updating advertising/promotional material and/or signage which may be significant for some SPs. Ofcom's initial view is that once implemented, PRS regulation would place only a small additional burden on individual SPs.

Performance against policy objectives

- 6.136 Ofcom has reviewed the proposed extension of PRS regulation against the policy objectives identified in the September 2005 NTS Consultation (see paragraph) in the light of the addition to the impact assessment presented in this section.

6.137 Ofcom's initial view is that the extension of PRS regulation performs well against the majority of these objectives.

- **Consumer Protection:** extending PhonepayPlus' remit to 087 Numbers would mean that services operating on 087 Numbers would become subject to the Code, increasing the level of consumer protection and reducing the potential for detriment. We therefore consider that the proposed extension of PRS regulation performs well against the consumer protection objective.
- **Viability of Pay-as-you-go Internet Services:** As pay-as-you-go internet services are not generally provided on 087 Numbers, we consider the proposals would have little impact on this objective.
- **Range and Choice of Services:** by improving consumer protection for services operating on 087 Numbers the proposed extension of PRS regulation should encourage SPs to offer services on it. We therefore consider that the proposed extension of PRS regulation performs well against the Range and Choice of Services objective.
- **Promotion of Competition:** By making services operating on 087 Numbers subject to the Pricing Information requirements, the proposed extension of PRS regulation should help to further promote competition between in service provision as consumers would be better able to choose between services according to their price. We therefore consider the proposed extension of PRS regulation performs well against this policy objective.
- **Reduced Regulatory Intervention:** The proposals involve the extension of PRS regulation to a large group of stakeholders (CPs and SPs) and therefore do not perform well against the objective of reducing regulatory intervention.

6.138 Our overall assessment is that the proposals are a proportionate response to the policy issues. The proposals will add to the regulatory burden on CPs and SPs and will cause them to incur additional setup and ongoing costs. Given the large number of stakeholders involved, the overall costs are inevitably significant, however we believe that the proposals are proportionate given the potential benefits.

Question 5: Do you have any comments about the Impact Assessment for these proposals?

Question 6: Do you have any other comments?

Section 7

Legal Tests for Proposed Changes

7.1 Ofcom regulates the communications sector under the framework established by the Act. The Act grants OFCOM the power, for the purpose of regulating the provision, content, promotion and marketing of PRS, to set conditions that bind the persons to whom they are applied (section 120). Under section 120(5) of the Act, the tests that apply to the setting, modification and revocation of a PRS condition are those set out in section 47(2) of the Act and the procedure for modifying PRS conditions is that set out in section 48 of the Act. In this section, we list the legal tests that apply to each of the changes we are proposing to make. We then describe how we think the proposed changes satisfy the tests.

Purpose of this consultation

- 7.2 Under section 48 of the Act, Ofcom is required to publish a notification:
- a) stating that OFCOM is proposing to set, modify or revoke the conditions that are specified in the notification;
 - b) setting out the effects of those conditions, modifications or revocations;
 - c) giving out the reasons for making this proposal; and
 - d) specifying the period within which interested parties will have an opportunity to comment on its proposals. The consultation period must be not less than one month after the day of publication of the notifications.
- 7.3 The Consultation, in conjunction with the Impact Assessment, sets out in detail the effects of the modification and the reasons for proposing to extend the PRS Condition.
- 7.4 Annex 6 contains the notification of the proposed modification of the PRS Condition.
- 7.5 Ofcom is inviting written views and comments by **5pm on 16 June 2008** on the proposed modifications.
- 7.6 Details of how to respond can be found at Annexes 1, 2 and 3.
- 7.7 Ofcom will give careful consideration to all comments received during the consultation period and in light of the comments received may give effect to the proposals set out in this document, with or without modification, by publication of a Notification and explanatory statement. Ofcom aims to publish this document in August 2008

Impact assessment

7.8 Under section 7 of the Act, Ofcom has a duty to undertake impact assessments when it proposes to do anything in connection with carrying out its functions and it considers that its proposals are important. The Impact Assessment is in section 6 of this document.

Section 3 – Ofcom’s general duties

- 7.9 Section 3(1) of the Act sets out the principal duty of Ofcom. That duty is to:
- a) further the interests of citizens in relation to communications matters; and
 - b) further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 7.10 Ofcom is required by section 3 (1) to carry out its functions in accordance with this duty.
- 7.11 Section 3 (2) of the Act further states that in fulfilling the principal duty specified in section 3 (1) Ofcom is required to secure the availability throughout the UK of a wide range of electronic communications services.
- 7.12 Section 3(3) of the Act requires Ofcom, when performing its duties, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and any other principles appearing to Ofcom to represent the best regulatory practice.
- 7.13 Ofcom considers that extending PRS regulation to 087 Numbers would be in accordance with these duties and principles because:
- it would improve consumer protection and pricing transparency for calls to 087 Numbers;
 - better pricing transparency would encourage competition between SPs;
 - it would improve consumer confidence in 087 Numbers which should in turn encourage the provision of a wide range of services on 087 Numbers by SPs;
 - proportionate in that Ofcom’s impact assessment demonstrates that the proposed extension of PRS regulation to 087 numbers would deliver the minimum necessary additional regulation to achieve the policy objectives; and
 - proportionate in that Ofcom’s impact assessment demonstrates that the proposed extension of PRS regulation to 087 numbers would deliver a significant net benefit to stakeholders over and above the associated costs.
- 7.14 Section 3 (4) of the Act lists further factors that Ofcom must take into account to the extent they are relevant in each particular case when fulfilling its functions. Ofcom considers that the following are relevant to these proposals:
- the desirability of promoting competition in relevant markets;
 - the desirability of encouraging investment and innovation in relevant markets;
 - the needs of persons with disabilities, of the elderly and of those on low incomes; and
 - the opinions of consumers in relevant markets and of members of the public generally;

7.15 Ofcom has taken these factors into account in developing its proposals and considers they are consistent with these considerations. Taking each in turn:

- **Promoting competition:** By making all services operating on 087 Numbers subject to the Pricing Information requirements of the Code, Ofcom considers the proposals should further this objective as consumers would be better able to choose between services according to their price;
- **Encouraging investment and innovation in markets:** Ofcom considers that the proposals further this objective by improving consumer confidence in 087 Numbers which should in turn make SPs more confident about providing services on 087 Numbers;
- **Need of persons with disabilities, of the elderly and those on low incomes:** Ofcom considers that in this context the needs of persons with disabilities and the elderly are not discernibly different from the generality of consumers. As discussed above, Ofcom considers that improved pricing transparency should help improve price competition for services which should benefit particularly those with low incomes who may spend a proportionately greater proportion of their incomes on call charges than consumers in general;
- **Opinions of consumers and members of the public:** The proposals have been designed to address consumer concerns about pricing transparency and consumer protection. PhonepayPlus has also taken consumer concerns into account when developing its interpretation of the Code in relation to the regulation of 087 services and elements of its proposals were designed to address particular concerns, such as call centre waiting times.

Section 4 – European Community requirements for regulation

7.16 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation, including the requirement to promote the interests of all persons who are citizens of the European Union. In summary, these requirements are to:

- a) promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- b) contribute to the development of the European internal market;
- c) promote the interests of all persons who are citizens of the European Union;
- d) not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
- e) encourage the provision of network access and service interoperability for the purpose of securing:
 - i) efficient and sustainable competition; and
 - ii) the maximum benefit for customers of CPs; and
- f) encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of CPs.

- 7.17 In doing so, Ofcom has to read these requirements in accordance with the requirements of article 8 of the Framework Directive (Directive 2002/21/EC). These include, in particular, the obligation to
- a) ensure that users, including disabled users, derive maximum benefit in terms of choice, price and quality (Article 8(2)(a));
 - b) ensure a high level of protection for consumers in their dealings with suppliers (Article 8(4)(b)); and
 - c) promote the provision of clear information, in particular requiring transparency on tariffs and conditions for using publicly available electronic communications services.
- 7.18 Ofcom considers that the measures described in this document promote the interests of all persons who are citizens of the European Union by promoting better pricing transparency, improving consumer confidence, promoting competition and encouraging innovation and investment as discussed in more detail above.

Section 47 – Test for setting or modifying conditions

- 7.19 As set out under section 47(1) of the Act, when modifying a condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - b) not unduly discriminatory against particular persons or against a particular description of persons;
 - c) proportionate to what it is intended to achieve; and
 - d) transparent in relation to what it is intended to achieve.
- 7.20 Ofcom considers that the proposed modification meets the test set out in section 47 being:
- 7.20.1 **Objectively justifiable:** Ofcom considers that the proposed wording to extend PRS regulation to all calls charged above 5p per minute for BT customers (excluding 0870 numbers) is objectively justifiable in relation networks and services affected in that it brings 087 Numbers into the regulatory scope of PhoneyPayPlus to further Ofcom’s policy objectives of increasing pricing transparency and consumer protection for calls to those numbers;
 - 7.20.2 **Not unduly discriminatory** in that the proposed modification does not benefit particular undertakings and the resulting regulatory framework will be applied to all CPs and SPs using 087 Numbers charged above 5p per minute for BT customers;
 - 7.20.3 **Proportionate** in that :

- i) the proposed extension of PRS regulation to 087 Numbers would introduce the minimum necessary additional regulation in order to achieve the desired objectives; and
 - a) Ofcom's impact assessment demonstrates that the proposed extension of PRS regulation to 087 Numbers would deliver a significant net benefit to stakeholders over and above the associated costs.
- 7.20.4 **Transparent** insofar as the nature and obligations of proposed modification to the PRS Condition as well as the reason and effects of the proposal are clearly set out in this consultation document.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 16 June 2008**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/087prs/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response coversheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email nts@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Clive Hillier
4th Floor
Competition Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4103
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Clive Hillier on 020 7783 4674.

Confidentiality

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

all of your response should be kept confidential, and specify why. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

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

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in August 2008.
- A1.12 Please note that you can register to receive free mail updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

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

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

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

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

Before the consultation

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

During the consultation

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

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

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

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

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

After the consultation

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

Annex 3

Consultation response cover sheet

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

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact): Clive Hillier

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

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

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

DECLARATION

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

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

Name

Signed (if hard copy)

Annex 4

Summary of consultation questions

Question 1: Do you have any comments about the proposed extension of PRS regulation to 0871, 0872 and 0873 numbers?

Question 2: Do you have any comments about the PhonepayPlus Statement of Application and Ofcom's comments about the concerns that have been raised by stakeholders?

Question 3: The proposed extension of PRS regulation would mean that service providers offering services on 09 numbers would not be permitted to use 0871, 0872 or 0873 numbers for complaints unless call charges are refunded. Ofcom would also welcome stakeholder comments about this secondary impact of the proposals.

Question 4: Do you have any comments on the proposed modifications to the PRS Condition?

Question 5: Do you have any comments about the Impact Assessment for these proposals?

Question 6: Do you have any other comments?

Annex 5

Analysis of Pricing Information Costs

Introduction

- A5.1 As discussed in section 3 of this document, section 5.7 of the Code requires SPs to ensure that all their consumer customers are fully informed about the price of the call before they call. In practice, most SPs are likely to discharge this obligation by specifying call charges in advertising and promotional material where their 087 number is displayed. In this annex, we estimate the costs that SPs would be likely to incur to comply with this obligation.
- A5.2 SPs might therefore incur costs for replacement or updating of stationery, business cards, websites, marketing material and signage.
- A5.3 Estimating the costs incurred by SPs is a very complex task as there are a number of factors which will affect the overall cost to each organisation. These include the decisions made by companies about their approach to compliance with the pricing information requirements of the Code. These issues are considered below under each group of costs.

Implementation period

- A5.4 When assessing the costs, Ofcom has assumed (as is proposed in this consultation) that SPs would be given a three month implementation period to prepare for compliance following publication of Ofcom's statement. Ofcom considers it likely that some SPs would commence their preparations earlier in order to reduce the implementation costs (for example by adding pricing information to orders for stationery or promotional materials made before the implementation period commences) and notes that PhonepayPlus has encouraged SPs to do so and has offered advice to SPs on the pricing publication requirements in the Code. Ofcom has not taken into account savings relating to earlier preparation. Consequently the figures given in this section may be an overestimate.

Stationery costs

- A5.5 To estimate the one-off costs associated with replacing stationery, Ofcom first assessed what proportion of businesses that would require new stationery and then estimate the printing costs and associated design/artwork costs to update letterheads, compliments slips and business cards with call pricing information.
- A5.6 The number of SPs that would incur these costs would be dependent on a number of factors such as:
- how many SPs use their 087 Numbers as their primary contact number for business to consumer communications and also include them on their business stationery;
 - the number of SPs that would replace their stationery anyway during the implementation period (thereby not incurring additional costs for replacement stationery);

- the number of SPs that choose to avoid replacing their stationery by printing pricing information as a footer on letters;
- the proportion of SPs use pre-printed headed paper versus those that print their company letterhead on to plain paper;
- the proportion of SPs that make extensive use of business cards for business to consumer purposes and the proportion of their employees requiring business cards.

A5.7 In the September 2005 NTS Consultation, Ofcom reported that in responses to an information request to SPs, 50% of respondents stated that they used their NTS number as a general contact point for their organisation³⁵. In the absence of any more specific information, Ofcom has assumed that a maximum of 50% of 087 telephone numbers may be printed on letterheads, compliments slips and potentially on business cards. These organisations may incur some stationery costs to update their stationery.

A5.8 During the interim period, Ofcom has assumed that 12.5% of SPs would reorder or replace their business stationery anyway and has therefore assumed those SPs would not incur any additional costs.

A5.9 Ofcom is aware that some companies print their letterheads on to plain paper as an alternative to using letter headed paper. As it is difficult to assess the percentage of companies that may do this, it has been assumed that all organisations would require new stationery. Ofcom is aware however that this is likely to overstate the stationery costs.

A5.10 Ofcom has assumed that SPs that use 087 Numbers as a general contact point would also publish their 087 Numbers on their business cards. Therefore it has been assumed that 50% of SPs would require new business cards. Ofcom has assumed that not all employees would need new business cards either because they perform roles such as administration or support and do not make use of businesses cards or because their roles are restricted to business to business contacts and therefore not subject to the price publication requirements. Further Ofcom has assumed that 5% would anyway reorder business cards during the implementation period thereby avoiding any extra expense associated with replacing business cards.

A5.11 Ofcom used the business directory data reviewed in the 2004 NTS Consultation (Annex 6) detailing the different sizes of business sites that use NTS numbers, in order to estimate how much an organisation might spend on new letterheads and business cards. This was because it has been assumed that larger SPs might choose to employ larger, more costly design consultants, whereas smaller businesses may choose to employ lower cost business stationery suppliers.

A5.12 The research indicated that 24% of NTS numbers were used by sites with more than 100 employees, 29% had 10 to 99 staff and 47% had less than 10 employees.

A5.13 Ofcom undertook desk research to estimate the costs associated with designing new stationery. The research indicated that design costs associated with letterheads and compliments slips would be in the region of £25-£60 per hour for a standard designer. For business cards, Ofcom conducted further desk research

³⁵ See paragraph A14.7 of the September 2005 NTS Consultation

which indicated that their costs could vary significantly. Costs ranged from £9 to over £200 depending on the quality and quantity ordered. Ofcom has assumed that SPs use a common design for their business cards and would therefore incur design costs once only.

- A5.14 Ofcom has assumed that small businesses, i.e. with less than 10 employees would incur £50 per NTS number to update their letterheads and compliments slips and £45 for business cards. For medium sized and larger organisations, it has been assumed that £100 and £250 respectively would be incurred for letterheads and compliments slips per NTS number changed, and £400 and £675 respectively for business cards.
- A5.15 Ofcom has assumed a modest administrative overhead associated with reordering stationery and business cards. This is estimated to amount on average to one half day per number at an effective labour rate of £17 per hour³⁶.
- A5.16 Ofcom notes there is a degree of uncertainty associated with these estimates since there is some uncertainty about most of the factors driving the costs that have been taken into account. Ofcom notes that the costs are particularly sensitive to the proportion of SPs that publish 087 Numbers on stationery and business cards and that the costs are also dependent on the purchasing decisions made by SPs and how quickly SPs run down their current supplies.

Websites

- A5.17 SPs that display their telephone numbers on their websites would need to update them to display the pricing information required by PhonepayPlus. Ofcom considers that in most cases the changes would be straightforward, involving the addition of the pricing information and perhaps a minor adjustment to page layout. Ofcom therefore assumes that SPs would incur minimal expense.

Advertising and promotional material

- A5.18 By the end of the implementation period, SPs will need to ensure that any marketing or promotional material they distribute that displays their telephone number also contains the pricing information required by PhonepayPlus.
- A5.19 Ofcom considers that most SPs would be likely to replace or reorder advertising/promotional materials at least on an annual basis. Ofcom would therefore expect that during the implementation period approximately 10-15% of SPs to be able to add the necessary pricing information as part of the normal replacement cycle for advertising / promotional material, thereby avoiding any wastage of advertising/promotional materials. Some SPs may also be able to avoid wastage by using stickers or additional insert sheets to add the necessary pricing information to existing materials.
- A5.20 SPs may incur costs associated with modifying artwork to include the pricing information required by PhonepayPlus. It is difficult to estimate these costs with any precision due to the wide range of materials involved. However, Ofcom notes that the additions are textual and should therefore be straightforward and therefore not expensive. Ofcom therefore notes that any costs associated with advertising and promotional material would be in addition to the estimates listed at the end of this annex.

³⁶ Ref source of the labour rate

Print and other media advertising

- A5.21 Ofcom assumes that SPs would be able to update most newspaper/magazine advertisements at minimal expense since such media is typically commissioned and produced over a fairly short term cycle.
- A5.22 SPs may incur costs associated with modifying artwork to include the pricing information required by PhonepayPlus. It is difficult to estimate these costs with any precision due to the wide range of media involved. Ofcom has not calculated the amount that might be incurred and notes that any costs associated could be in addition to the total costs of migration listed at the end of this annex. However, Ofcom notes that the additions are textual and should therefore be straightforward unless more extensive changes to layout and other artwork are required as a result.

Signage

- A5.23 Some businesses would need to update signage on buildings or vehicles. However Ofcom has not been able to estimate the costs due to the uncertainty about how many sites or vehicles might need to be updated and the likely costs that would be incurred. Ofcom therefore notes that any costs associated with signage would be in addition to the estimates listed at the end of this annex.
- A5.24 One major uncertainty is the extent to which 0871, 0872 and 0873 numbers are currently advertised on buildings or vehicles. Anecdotal evidence suggests the incidence is low.
- A5.25 Ofcom notes that some stakeholders have raised concerns that the cost of updating vehicle signage might be very high. Ofcom’s own research indicates that vehicle signage suppliers can supply custom made stickers for vehicles for around £80. However, Ofcom acknowledges that some SPs may consider additional stickers unsuitable for vehicles with elaborate designs (such as ‘full vehicle wraps’) and may therefore choose a more expensive solution. SPs may also incur additional costs associated with vehicle downtime if the signage can not be updated during routine vehicle maintenance.
- A5.26 Ofcom notes that whilst the evidence available suggests that the costs of updating signage may generally be low, for some SPs they may be significant.

Summary

- A5.27 Figure 7 shows Ofcom’s estimate of the costs that SPs would incur to comply with the pricing information requirements of the PhonepayPlus Code. As discussed above the estimates include the costs of replacing stationery, business cards and updating websites but exclude the costs associated with updating advertising/promotional material, print and other media advertising and signage.

Figure 7: Stationery and Website Costs

(millions)	Scenario A – 25% of 0870 Migration to 0871	Scenario B – 75% of 0870 Migration to 0871
SPs with pre-existing services on 0871	£59	

SPs moving from 0870 to 0871, 0872 or 0873 numbers	£13 to £18	£34 to £48
Total	£63 to £68	£86 to £100

- A5.28 These figures are based on the assumption that SPs have not made any preparatory changes since Ofcom announced its proposals to extend PRS regulation to 087 Numbers in April 2006 or since PhonepayPlus published its policy statement in October 2007 confirming the requirements for pricing information. In practice some SPs may have modified their stationery, promotional materials and signage etc as part of the normal replacement cycle reducing the incremental cost of the pricing information requirements.
- A5.29 We also note that SPs moving services from 0870 numbers to 0871, 0872 or 0873 numbers would also need to update stationery, promotional material and signage etc. The costs associated with services moving from 0870 numbers have already been considered as part of the impact assessment for Ofcom's 0870 proposals so there is a large degree of overlap with the figures quoted in the impact assessment for those proposals.

Annex 6

Notification of a Proposed Modification to the PRS Condition

NOTES

Notification of a proposed modification under section 48(2) of the Act

Proposal for modification of a condition under section 120 of the Act which is set out in the Notification under section 48(1) of the Act published by OFCOM on 2 May 2008 *The Conditions Regulating Premium Rate Services*

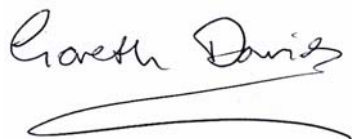
1. OFCOM in accordance with section 48(2) of the Act hereby makes the following proposal for the modification of the PRS Condition.
2. The draft modification is set out in the Schedule to this Notification.
3. The effect of, and OFCOM's reasons for making, the proposal referred to in paragraph 1 above is set out at sections 2 to 7 of the accompanying explanatory statement.
4. OFCOM considers that the proposed modification referred to in paragraph 1 above complies with the requirements of section 120(5) of the Act, as appropriate and relevant to each of the proposals.
5. In making the proposal set out in this Notification, OFCOM has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
6. Representations may be made to OFCOM about the proposal set out in this Notification and the accompanying statement by 16 June 2008.
7. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6) of the Act.
8. In this Notification:
 - (i) "the Act" means the Communications Act 2003;
 - (ii) "the Director General" means the Director General of Telecommunications;
 - (iii) "OFCOM" means the Office of Communications;
 - (iv) "the PRS Condition" means a condition under section 120 of the Act which is set out in the Notification under section 48(1) and 120(5) of the Act published by the Director General on 23 December 2003"
9. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
10. For the purpose of interpreting this Notification:

- (i) headings and titles shall be disregarded; and
- (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

11. The Schedule to this Notification shall form part of this Notification.

12. The modification set out in the Schedule to this Notification shall take effect immediately with publication of the Notification of the modification under section 48(1) of the Act.

Signed by

A handwritten signature in black ink that reads "Gareth Davies". The signature is written in a cursive style and is positioned above a long, horizontal, slightly wavy line that serves as a decorative underline.

Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the
Office of Communications Act 2003

2 May 2008

Schedule

The modification of a condition under section 120 of the Act which is set out in the Notification under Section 48(1) of the Act published by OFCOM on xxxx 2008

The PRS Condition shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference):

1. The Communications Provider shall comply with:

- (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and
- (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.

2. In this Condition,

- (a) "Act" means the Communications Act 2003;
- (b) "Approved Code" means a code approved for the time being under section 121 of the Act;
- (c) "Communications Provider" means either:
 - (i) a person who:
 - (A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;
 - (ii) a person who:
 - (A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and
 - (B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service;
- or
- (iii) a person who:
 - (A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled Premium Rate Service with a Controlled Premium Rate Service Provider;

- (d) "Chatline Service" means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:
- (i) each of them having agreed with each other; or
 - (ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;
- (e) "Controlled Premium Rate Service" means a Premium Rate Service (other than a service which is only accessed via an International Call) in respect of which:
- (i) 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, except 0870 numbers; or
 - (ii) the service is a Chatline Service; or
 - (iii) is Internet Dialler Software operated; or
 - (iv) the service is a Sexual Entertainment Service;
- (f) "Controlled Premium Rate Service Provider" means a person who:
- (i) provides the contents of a Controlled Premium Rate Service;
 - (ii) exercises editorial control over the contents of a Controlled Premium Rate Service;
 - (iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or
 - (iv) makes available a facility comprised in a Controlled Premium Rate Service;
- (g) "Dial-up Telephone Number" means the telephone number used by an end user's computer that connects it to the Internet
- (h) "Enforcement Authority" means, in relation to an Approved Code, the person who under the code has the function of enforcing it;
- (i) "Facility" includes reference to those things set out in section 120(14) of the Act;
- (j) "International Call" means a call which terminates on an Electronic Communications Network outside the United Kingdom;
- (k) "Internet Dialler Software" is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number;

other than where it is used so that:

- a) an end-user's existing Internet Service Provider replaces the Dial-up Telephone Number;
 - b) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent.
- (l) "Internet Service Provider" means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business.
- (m) "National Telephone Numbering Plan" means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;
- (n) "Premium Rate Service" shall have the meaning ascribed to it by section 120(7) of the Act;
- (o) "Sexual Entertainment Service" means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;
3. For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.