Proposal to discontinue charge control for non conveyance elements of a Public Emergency Call Service

Consultation

Publication date: 08 April 2004
Closing Date for Responses: 06 May 2004
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Section 1

The consultation

1.1 The Director General of Telecommunications said in his statement “Continuing Licence Conditions after 25 July 2003” that, in the majority of cases, before discontinuing any provisions of any Continuation Notice, he would consult on the matter for at least 14 days. On this occasion, Ofcom is allowing 28 days so that interested parties can more fully consider the implications of the proposal. Representations should arrive at Ofcom no later than 6 May 2004. After considering any such representations, Ofcom will, if appropriate, issue the notice of discontinuation.

1.2 Where possible, comments should be made in writing and sent by email to michael.richardson@ofcom.org.uk. However, copies may also be posted or faxed to the address below. If any parties are unable to respond in one of these ways, they should discuss alternatives with:

Michael Richardson
Ofcom
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Tel: 020 7783 4157, Fax: 020 7783 4109

Or by email to michael.richardson@ofcom.org.uk

1.3 If possible please can responses be sent as email attachments, as this makes it easier to process them. If you have any queries about the issues raised in this consultation, or need guidance on the appropriate form of response, please contact us using the details above.

1.4 Also note that Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow. If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003. Alternatively you can contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom’s consultation champion, with any concerns or comments about consultation processes:

Philip Rutnam
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
Tel: 020 7981 3585
Fax: 020 7981 3333
Email: philip.rutnam@ofcom.org.uk
Further copies of this document

1.5 This document can be viewed on Ofcom's website, www.ofcom.org.uk. Paper copies can be made available on request.

Publication of representations

1.6 On this occasion, Ofcom will not be inviting interested parties to comment on the representations made by others. However, in the interests of transparency, all representations will be published, except where respondents indicate that a response, or part of it, is confidential. Respondents are therefore asked to separate out any confidential material into a confidential annex which is clearly identified as containing confidential material. Ofcom will take steps to protect the confidentiality of all such material from the moment that it is received at Ofcom's offices. In the interests of transparency, respondents should avoid applying confidential markings wherever possible.

1.7 Non-confidential representations can be viewed on Ofcom's website.
Summary

The Public Emergency Call Service

This consultation concerns the discontinuation of the control on British Telecommunications plc (“BT”)’s wholesale charges for handling calls to 999 and 112.

The service known as the Public Emergency Call Service (“PECS”) is provided to other providers of electronic communications services. All providers of publicly available telephone services are obliged to offer their retail customers access to the emergency services at no charge, and most rely on BT’s PECS to answer and deliver these calls. The PECS includes call answering by trained operators (the “non conveyance element”), conveyance of the call from a point of Interconnection with the originating operator to the call answering centre and onward conveyance of the call to the appropriate emergency authority (the “conveyance elements”). Although retail calls to 999 and 112 are free of charge, providers of communications services must pay for the underlying wholesale service.

Continuation of licence conditions and Condition 69.23

Although individual licences granted under section 7 of the Telecommunications Act 1984 have now been replaced in part by General Conditions made under the Communications Act 2003 (the “Act”), there were a number of specific conditions included in some individual licences which cannot be replaced by new conditions under the powers contained in the Act until the relevant market reviews have been completed and implemented. Schedule 18, paragraph 9 of the Act allows Ofcom to issue Notices to continue provisions in Licence Conditions until such time as it has reviewed the relevant market (these powers were previously exercised by the Director-General of Telecommunications (the “Director”) until Ofcom assumed its powers on 29 December 2003). BT’s Condition 69.23 (“continued provision Condition 69.23”) was made to continue in force by such a continuation notice (“Continuation Notice”) issued to BT by the Director on 23 July 2003.

Continued provision Condition 69.23 requires BT to ensure that each discrete charge for the non-conveyance element of a PECS does not increase by more than RPI, as specified in BT’s Condition 69.22(e) (“continued provision Condition 69.22(e)”) unless Ofcom agrees otherwise on grounds that the quality and security of the service would be endangered.

Market Reviews

The European Commission (“the Commission”) has adopted a Recommendation on Relevant Products and Services Markets (the “Recommendation”) which lists a set of markets in which ex ante regulation may be warranted. However, National Regulatory Authorities (“NRAs”) are able to regulate markets that differ from those identified in the Recommendation where this is justified by national circumstances. The Director is obliged to take the utmost account of this Recommendation when defining markets appropriate to national circumstances. In some instances the Director has exercised his discretion to define markets other than those included in the Recommendation, and he has notified these draft decisions to the Commission and other NRAs. The service referred to in paragraph S2 is not included in the markets listed in the Recommendation or the markets which the Director or Ofcom has so far exercised its discretion to define as markets appropriate to national circumstances.

Removal of continued regulatory obligations
Paragraph 9(11) of Schedule 18 of the Act requires Ofcom as soon as reasonably practicable after giving a continuation notice, to take all steps necessary to enable them to decide whether or not to set a Condition for the purpose of replacing the continued provision. It further requires that Ofcom must then decide as soon as reasonably practicable whether or not to exercise its power to set a Condition within the categories set out in the Act. Paragraph 9(12) of Schedule 18 of the Act then requires that Ofcom must give a discontinuation notice with respect to the continuation notice as soon as reasonably practicable after making the decision required by paragraph 9(11). Ofcom considers therefore that while it is appropriate to keep such notices in place pending completion of planned market reviews, Ofcom does not believe it is appropriate to maintain Continuation Notices for services in a market which Ofcom has no plans to review.

Ofcom's proposal

The conveyance element of the PECS falls within wholesale interconnection markets which Ofcom has reviewed and in which SMP conditions have been imposed. However, Ofcom considers that it would be disproportionate to impose further ex ante regulation to control BT’s ability to increase its wholesale charges for the non-conveyance element of this service. Ofcom believes that the public profile of the retail 999 service and the public perception that it is provided as an essential social service rather than as a commercial venture, provide material reassurance that BT is unlikely to exploit its position unfairly by charging excessive wholesale prices. Furthermore, BT has also made a non-binding commitment to Ofcom that it will not increase its charges, for the non conveyance element of the PECS, by more than RPI, as specified in continued provision Condition 69.22(e) during the period to 30 September 2005, unless Ofcom agrees that the quality and security of the service would otherwise be endangered.

Given the general view of the emergency services, that a proliferation of competing wholesale providers might endanger the quality and security of the retail 999 service, Ofcom also believes that it would not be appropriate to impose ex ante regulation with a view to stimulating competition in the provision of parallel wholesale PECSs. Ofcom does recognise, however, that a highly resilient national service could, no doubt, be provided by organisation(s) other than BT if the emergency services and/or other providers of public electronic communications services were to decide that continued reliance on the former incumbent was no longer desirable. If the absence of formal price controls leads to a situation where BT does exploit its position to anti-competitive effect, Ofcom will, amongst other things, consider using its statutory powers under the Competition Act 1998, the Enterprise Act 2002 or the Communications Act 2003 where appropriate. Ofcom, in association with the emergency services and other providers of publicly available telephone services may also consider the possibility that an alternative provider of a national PECS should be selected, by commercial means or otherwise.

Ofcom therefore proposes that BT’s continued provision Condition 69.23 should now cease to have effect.

Next steps

Interested parties are invited to comment on the proposal contained in this document no later than 6 May 2004. Arrangements for submitting comments are detailed on pages 3 and 4.
Section 1

Background and process

Ofcom

1.1 Ofcom assumed its powers under the Communications Act 2003 (the “Act”) on 29 December 2003. The present document refers to action taken by the Director General of Telecommunications (“the Director”) before that date, and specifies action which Ofcom now proposes to take having assumed the powers of the Director.

Continuing licence conditions

1.2 On 10 September 2003, the Director published a statement Continuing Licence Conditions after 25 July 2003 (the "September Statement"). As the September Statement explained, when the new EU communications regime was implemented in the United Kingdom on 25 July 2003, individual licences granted under section 7 of the Telecommunications Act 1984 were replaced by general conditions of entitlement which apply to all persons providing Electronic Communications Network (“ECN”)s and Electronic Communications Service (“ECS”)s, or all such providers of a specified description. Additionally, individual Communication Providers may be subject to specific conditions, such as those imposed as a result of a finding of Significant Market Power (SMP), Access Related Conditions or conditions imposed as a consequence of a provider being designated as a universal service provider.

1.3 The new Directives seek to ensure that there is a coherent transition from the old regime to the new regime and to ensure that there is no regulatory gap. The Director has concluded already a number of consultations in relation to the new regime such as consultations on the General Conditions, Universal Service Conditions and Conditional Access Conditions. Also he has concluded a number of market reviews proposing the imposition of SMP Service Conditions, along with consultations on the imposition of other Access-Related Conditions.

1.4 The Director had intended originally to complete market reviews so that new SMP services Conditions could be imposed, where appropriate, on 25 July 2003. Before imposing SMP Services Conditions and Access-Related Conditions (other than Conditional Access Conditions) the Director was required by the new regime to carry out a national consultation. He was required also to notify and consult with the European Commission (the "Commission") and the National Regulatory Authorities ("NRAs") in other Member States for at least a month. However, following the Commission’s advice that it could not receive market review proposals before the requirements of the new Directives came into effect on 25th July 2003, none of these conditions could be imposed on the first day of the new regime.

1.5 In order to avoid a regulatory gap, the Directives permit and require Member States to continue the existing regime until such time as each Member State can complete its assessment of the imposition of the new SMP Services and Access-Related (other than Conditional Access) conditions. This has been implemented in the United Kingdom by paragraphs 9 and 22 of Schedule 18 of the Communications Act 2003 (the "Act"). Schedule 18 permits the Director to issue Continuation Notices which have the effect of continuing certain Licence Conditions and Interconnection Directions under the old licensing regime for a transitional period. BT’s Condition 69.23 (hereinafter referred to as "continued provision Condition 69.23") was made to
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continue in force by a notice ("Continuation Notice") issued by the Director to BT on 23 July 2003 ( "BT's Continuation Notice").

**Discontinuing continued provisions**

1.6 As was explained in chapter 5 of the September Statement, paragraph 9(11) to Schedule 18 of the Act required the Director, as soon as reasonably practicable after making the Continuation Notice, to take all steps necessary to enable him to decide whether or not to set a condition for the purpose of replacing the continued provision. That statement also explained that paragraph 9 (12) to Schedule 18 of the Act required the Director to give a notice that the Continuation Notice ceases to have effect, and that he must do this as soon as reasonably practicable after taking a decision to impose (or not to impose) conditions under the new regime. These requirements now apply to Ofcom as they did to the Director. Ofcom considers therefore that while it is appropriate to keep such notices in place pending completion of planned market reviews, Ofcom does not believe it is appropriate to maintain Continuation Notices for services in a market where there are no plans to review that market under the Act (see below). A draft notice is attached at Annex 3 to the present consultation document, which when given to BT in final form will notify BT that continued provision Condition 69.23 in BT's Continuation Notice no longer applies.

1.7 Although the Act does not require the Director or, subsequently, Ofcom to consult before discontinuing a Continuation Notice, the Director stated in the September Statement, that, in the majority of cases, before discontinuing any provisions of any Continuation Notice, he would consult on the matter for at least 14 days.

**Market reviews**

1.8 The European Commission ("the Commission") has adopted a Recommendation on Relevant Products and Services Markets (the "Recommendation") which lists a set of markets in which ex ante regulation may be warranted. However, National Regulatory Authorities ("NRAs") are able to regulate markets that differ from those identified in the Recommendation where this is justified by national circumstances. The Director is obliged to take the utmost account of this Recommendation when defining markets appropriate to national circumstances. In some instances the Director has exercised his discretion to define markets other than those included in the Recommendation, and he has notified these draft decisions to the Commission and other NRAs.

1.9 The service referred to in Chapter 2 below and paragraph S2 above is not included in the markets listed in the Recommendation or the markets which the Director or Ofcom has so far exercised discretion to define as markets appropriate to national circumstances.
Section 2

Ofcom’s proposal

The Public Emergency Call Service

2.1 The wholesale service, known as the Public Emergency Call Service, or PECS, is provided to other providers of electronic communications services. All providers of publicly available telephone services are obliged to offer their retail customers access to the emergency services at no charge, and most rely on BT’s PECS to answer and deliver these calls, although Cable and Wireless and Kingston Communications also provide a PECS.

2.2 BT’s PECS includes call answering by trained operators (the “non conveyance element”), conveyance of the call from a point of Interconnection with the originating operator to the call answering centre and onward conveyance of the call to the appropriate emergency authority. Although retail calls to 999 and 112 are free of charge, providers of communications services must pay for the underlying wholesale service. BT presently levies a fixed, per call, charge for operator handling (the “non-conveyance element”) and time related charges for the conveyance elements.

Continued Provision Condition 69.23

2.3 Continued provision Condition 69.23 requires BT to ensure that each discrete charge for the non-conveyance element of a PECS does not increase by more than RPI, as specified in continued provision Condition 69.22(e), in each relevant year.

Future regulation of PECS

2.4 The conveyance element of the PECS falls within wholesale interconnection markets which Ofcom has reviewed and in which SMP conditions have been imposed. However, Ofcom considers that it would be disproportionate to impose further ex ante regulation to control BT’s ability to increase its wholesale charges for the non-conveyance element of this service. Ofcom believes that the public profile of the retail 999 service and the perception that it is provided as an essential social service rather than as a commercial venture, should help to ensure that BT does not unfairly exploit its position by charging excessive wholesale prices. BT may also be constrained, to some extent, by the presence of other providers of PECSs. Furthermore, BT has made a non binding commitment to Ofcom that it will not increase its charges, for the non conveyance element of the PECS, by more than RPI, as specified in continued provision Condition 69.22(e) during the period to 30 September 2005, unless Ofcom agrees that the quality and security of the service would otherwise be endangered.

2.5 Given the general view of the emergency services, that a proliferation of competing wholesale providers might endanger the quality and security of the retail 999 service, Ofcom also believes that it would not be appropriate to impose ex ante regulation with a view to stimulating competition in the provision of parallel wholesale PECSs. Ofcom does recognise, however, that a highly resilient national service could, no doubt, be provided by organisation(s) other than BT if the emergency services and/or other providers of public electronic communications services were to decide that continued reliance on the former incumbent, was no longer desirable. If the absence of formal price controls leads to a situation where BT does exploit its position to anti competitive effect, Ofcom will, amongst other things, consider using its statutory powers under the Competition Act 1998, the Enterprise Act 2002 or the Communications Act 2003 where
appropriate. Ofcom, in association with the emergency services and other providers of publicly available telephone services may also consider the possibility that an alternative provider of a national PECS should be selected, by commercial means or otherwise.

2.6 Ofcom therefore proposes that BT’s continued provision Condition 69.23 should now cease to have effect.

**Next steps**

2.7 Interested parties are invited to comment on the proposal contained in this document. Arrangements for submitting comments are detailed on pages 3 and 4. If, after taking into account any representations made, Ofcom remains of the view that continued provision Condition 69.23 should be discontinued, Ofcom will give a notice which discontinues that continued provision. A draft notice is attached to this consultation document at Annex 3.
Annex 1

Ofcom’s consultation principles

How we will approach each formal consultation

There are seven principles which we will follow for each written consultation:

Before the consultation

A1.1 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

A1.2 We will be clear about who we are consulting, why, on what questions and for how long.

A1.3 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.

A1.4 We will normally allow ten weeks for responses to consultations on issues of general interest.

A1.5 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 organisations 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.

A1.6 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

A1.7 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 2

Consultation response cover sheet

A2.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.

A2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don’t want to be published. We will keep your completed cover sheets confidential.

A2.3 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the ‘Consultations’ section of our website.

A2.4 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. 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.
Proposal to discontinue charge control for non conveyance elements of a Public Emergency Call Service

Cover sheet for response to an Ofcom consultation

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<tr>
<td>To (Ofcom contact):</td>
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<tr>
<td>Name of respondent:</td>
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<tr>
<td>Representing (self or organisation/s):</td>
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<td>Address (if not received by email):</td>
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<td>What do you want Ofcom to keep confidential?</td>
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<tr>
<td>Whole response</td>
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<td>Part of the response</td>
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If you want part of your response, your name or your organisation to be confidential, 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)?

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<th>DECLARATION</th>
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<tr>
<td>I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom’s website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.</td>
</tr>
<tr>
<td>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.</td>
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Annex 3

Proposed notice to British Telecommunications PLC under paragraph 9 of schedule 18 to the Communications Act 2003

Proposed notice that certain continued provisions set out in the continuation notices given to British Telecommunications plc on 23 July 2003 will cease to have effect from the [.....]

1. Ofcom, in accordance with Paragraph 9(12) of Schedule 18 to the Communications Act 2003 (‘the Act’) hereby gives notice to British Telecommunications plc (‘BT’) that Condition 69.23 (‘continued provision Condition 69.23’) contained in Schedule 1 of the continuation notice given to BT on 23 July 2003, which took effect from 25 July 2003, (‘the Continuation Notice’), will cease to have effect from the [ ] (the ‘Discontinued Provision’).

2. In giving this notice, Ofcom has, in accordance with Paragraph 9 (11) of Schedule 18 to the Act, taken all steps necessary for enabling it to decide whether or not to set a condition under Chapter 1 of Part 2 of the Act for the purpose of replacing continued provision Condition 69.23 and whether or not to exercise its power to set a condition under that Chapter for that purpose.

3. All directions, determinations, consents and other provisions which were continued under the Continuation Notice by virtue of Paragraph 9(8) of Schedule 18 to the Act will also cease to have effect from [ ] to the extent that they were given or made for the purposes of the Discontinued Provision.

4. To the extent that the Continuation Notice does not cease to have effect under Paragraph 1 of this notice, the Continuation Notice shall continue to have effect until Ofcom has given a further notice to BT in accordance with Paragraph 9(1) of Schedule 18 to the Act that it shall cease to have effect.

5. Ofcom issued a consultation as to its proposals to discontinue continued provision Condition 69.23 on [ ] and requested comments by [ ] 2004. Ofcom has taken into account the comments it received during that consultation.

6. In this notice, except as otherwise provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them. For the purposes of interpreting this notice, headings and titles shall be disregarded.

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