



# **Calls to 0845 and 0870 numbers: review of retail price and numbering arrangements**

A statement and further statutory consultation issued  
by the Office of Communications

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# Executive summary

## Statement on 0845 and 0870 retail pricing

- S1 This statement sets out the decision of the Office of Communications ('Ofcom') in relation to retail pricing arrangements for calls from the BT network to 0845 and 0870 'number translation services' (NTS) numbers. Ofcom is publishing this statement as a result of Oftel's public consultation on this issue, which was launched in September 2003. Oftel's consultation document was published in response to two different sets of concerns. Firstly, Oftel was aware of growing consumer concerns about prices for these calls being uncertain and possibly misleading, particularly when advertised as being 'local rate' or 'national rate' calls. Secondly, there were also industry concerns that the current BT retail pricing arrangements for these calls (in particular the link between 0845/0870 calls and BT's standard retail price for geographic local and national calls) resulted in revenue uncertainty for Communications Providers that terminate these calls.
- S2 The consultation document examined five different options for retail pricing arrangements for 0845 and 0870 numbers, based either on retaining or removing the existing link on the BT network between the retail price for 0845 and 0870 calls and standard retail price for geographic local and national calls respectively. The consultation document sought views on these options and also invited stakeholders to propose any other additional options that might be appropriate. The consultation document set out the framework for a regulatory option appraisal, and expressed an intention to undertake a cost-benefit analysis of the various options if sufficient data were obtained during the consultation process to enable a meaningful cost-benefit analysis to be carried out.
- S3 42 responses to the consultation were received from a wide range of stakeholders and are available on Ofcom's web site. During the consultation period, Oftel also proactively sought to make presentations on the key issues to the NTS Focus Group, Oftel's Internet Service Provider Forum and the Advertising Standards Authority. Shortly after the consultation closed Ofcom also met the Communications Managers Association (CMA) to discuss the issues. The formal responses and other input received from stakeholders during the consultation period are summarised in this statement, and Ofcom's comments on the key issues raised are set out.
- S4 Ofcom is aware that, since Oftel's consultation at the end of 2003, there have been (and continue to be) significant industry developments in relation to NTS. These developments, their impact on the various options put forward for 0845/0870 retail pricing and the relationship between 0845/0870 retail pricing and Ofcom's other work related to NTS, are described in this statement.
- S5 In particular, the impact of recent NTS-related developments has been noted by Ofcom in arriving at the decision set out in this statement. However, Ofcom considers that full analysis of these issues would have unreasonably delayed the production of this statement, and that this full analysis needs to be carried out in the context of Ofcom's future wider-ranging re-examination of the NTS framework. In this statement, it is Ofcom's intention to set out as plainly as possible (and in a timely manner) an up-to-date policy position in relation to 0845/0870 retail pricing, before undertaking the wider-ranging re-examination. Ofcom considers that this should have the benefit of giving some clarity in the short term to both industry and consumer stakeholders prior to (and whilst taking care not to pre-empt the outcome of) that re-examination. Clearly there will also need to be careful co-ordination between future Ofcom work on NTS and Ofcom's Telecommunications Strategic Review.
- S6 Following consideration of the consultation responses and detailed economic, legal and technical analysis, and mindful of recent industry developments, Ofcom has decided to implement a slightly modified version of the option known as Option 1(b) in the consultation document. This includes the following measures:

- € The current link on the BT network between BT's retail price for 0845 and 0870 calls and BT's standard (pre-discount and call package) retail price for geographic local and national calls respectively will remain in place;
- € Calls to numbers in the 0844 non-geographic range (which are not linked to BT's standard local rate) will continue to be subject to a price cap of 'up to 5p per minute or per call' on the BT network. However, pricing arrangements for calls to these numbers will be made more flexible within this price cap to give Communications Providers more control over their revenues if they choose to use this range; and
- € Ofcom will work with the industry to produce guidance to NTS Service Providers using 084 and 087 numbers on how these numbers (and in particular, pricing indications for calls to services on these numbers) can be advertised so that they are not misleading to consumers.

### Further statutory consultation

- S.7 Ofcom is also carrying out a further statutory consultation on a proposed change to the way that 084 and 087 number ranges are designated in the National Telephone Numbering Plan to make it clearer to the industry the basis on which these numbers are allocated. Ofcom is also carrying out a statutory consultation on the changes required to the telephone numbering application form for 08 numbers, should the proposed changes to the National Telephone Numbering Plan be implemented. Responses to both these consultations are required by **31 May 2004**. and

## Section 1

# Introduction and background

## Scope

- 1.1 This statement confirms the retail pricing arrangements for calls from the BT network to the 0845 and 0870 number ranges. On 26 September 2003 Oftel published a consultation ('the September 2003 Consultation')  
<http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/2003/0845condoc0903.pdf>  
in response to concerns about the potential for consumers to be misled by the designation of these number ranges as 'local rate' and 'national rate' respectively, and also in response to concerns about the knock-on impact of BT's June 2003 standard retail price reductions for local and national calls on Terminating Communications Providers. Responses were received from a wide range of stakeholders and these are summarised in Section 3 of this statement. This statement should be read in conjunction with the September 2003 Consultation.
- 1.2 Oftel joined four other communications regulators to form the Office of Communications (Ofcom) in December 2003. Ofcom regulates the communications sector under the new framework established by the Communications Act 2003 (the Act).
- 1.3 This statement does not concern retail pricing arrangements for 0845 and 0870 calls from the Kingston Communications (Hull) PLC network separately from the generality of non-BT Originating Communications Providers. This is because NTS specific regulation for Kingston was not deemed to be appropriate in the relevant Oftel market review, namely Oftel's *Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets* ('the Call Origination Market Review') - see below.
- 1.4 Retail pricing arrangements for the 0844 and 0871 number ranges are beyond the scope of this document, except in so far as it is necessary to consider retail pricing arrangements for these number ranges as part of some of the options for the future of the 0845 and 0870 number ranges.
- 1.5 It has been pointed out to Ofcom that there is a price point within the 0870 number range that is not priced at 'national rate', namely the G2 price point (which is 'local rate' + 1p per minute on the BT network). Ofcom considers this to be a historical anomaly, since this price point was allocated to 0870 prior to the introduction of the 0844/0871 ranges. It was used by BT for its 'BT Click Plus' service and subsequently by other providers as the only alternative NTS range above 'local rate' at the time. Clearly references in this document to the 0870 range in relation to 'national rate' prices should be taken to exclude 0870 numbers at the G2 price point. Ofcom does not consider that the existence of this price point materially alters the analysis or conclusions set out in this statement.
- 1.6 Ofcom is aware of wider industry and consumer concerns about the overall functioning of the NTS regime, and the impact of recent industry developments on the provision of NTS services. These developments and wider concerns have been noted in the preparation of this statement. Ofcom considers that, because of the wide-ranging nature of these concerns and developments, it is not possible for Ofcom to address these issues in detail in the context of this statement. These issues were outside the scope of the September 2003 Consultation, and to attempt to analyse them here would introduce significant delay in the production of this statement, with consequential uncertainty for the industry. As Ofcom has explained to the relevant industry group (the NTS Focus Group) Ofcom aims to address these additional issues (for example the new NTS pricing initiatives, the position of non-dominant originators, wider consumer concerns about the proliferation of NTS numbers and alternative NTS models) as part of Ofcom's NTS framework re-examination. Both this statement and the NTS framework re-examination (and the other NTS work with which Ofcom is engaged - see below) are part of Ofcom's NTS Policy Programme, which has been

set up with the aim of ensuring that the NTS regime continues to meet Ofcom's mission of furthering the interests of the citizen-consumer where appropriate by encouraging competition.

## **The legal framework**

- 1.7 The legal framework for Ofcom's involvement in and enforcement of retail pricing arrangements for 0845 and 0870 calls was set out in Section 1 of the September 2003 Consultation, and is summarised again for reference at Annex D of this statement.
- 1.8 Ofcom has a number of ex ante and ex post powers available to it. The purpose of this statement is to set out what Ofcom considers to be fair and reasonable terms and conditions for the provision by BT of NTS call origination in relation to appropriate retail pricing of calls to 0845 and 0870 numbers on the BT network (going forward, and until any further policy development work is concluded). Where necessary, Ofcom may consider exercising its ex ante powers including those under BT's Significant Market Power (SMP) NTS Call Origination Condition ('the BT NTS Call Origination Condition') which is set out in Annex H or, if appropriate, its ex post powers under the Competition Act 1998 ('the Competition Act').
- 1.9 The part of the legal framework which governs Ofcom's involvement in telephone numbering, is the Communications Act 2003 (the Act). Annex K of this statement contains a draft legal notification of changes to the National Telephone Numbering Plan ('the Plan'), as required by section 60 of the Act, that Ofcom considers will make pricing arrangements for calls to 084 and 087 numbers clearer to the industry. These changes comprise separate new designations for the 0844, 0845, 0870 and 0871 number ranges, the addition of definitions of terms used in those designations and the addition of text relating to the fact that designations in the Plan are not intended to be used for advertising services. There will also be consequential administrative changes to the National Numbering Scheme ('the Scheme') to ensure that the Scheme continues to be consistent with the new proposed terminology in the Plan, should the Plan be modified as proposed, but Ofcom is not required to consult on those changes. Annex L of this statement contains a draft Direction under section 49 of the Act relating to the consequential modifications required to the telephone numbering application form for 08 numbers.

## Section 2

# Links to other Ofcom work

### Introduction

- 2.1 Ofcom is undertaking a number of different NTS-related activities currently, of which this statement on 0845/0870 retail pricing is only one. This statement has links to Ofcom's other NTS work at both a tactical and strategic level. In this Section, the various strands of Ofcom's NTS work are set out for completeness. Dependencies between those strands and this statement are highlighted and Ofcom's approach to dealing with those dependencies is set out.

### Ofcom's tactical work on NTS

#### a. Consultation on Options for NTS Interconnection Charging

- 2.2 On 19 December 2003 Oftel began a consultation on options for the treatment of interconnection charging for NTS including the option of withdrawing the existing Network Charge Differential (NCD) method of calculating BT's NTS call origination and transit charges and replacing it with an Element Based Charging (EBC) matrix via BT's Inter-Network Call Accounting wholesale billing system using Calling Line Identification (INCA/CLI) already in use for most other call types. The consultation period closed on 23 January 2004 and Ofcom is currently evaluating comments and is preparing a statement. A copy of the consultation document can be found at:

[http://www.ofcom.org.uk/legacy\\_regulators/oftel/nts\\_ic\\_condoc/nts\\_charging.pdf](http://www.ofcom.org.uk/legacy_regulators/oftel/nts_ic_condoc/nts_charging.pdf)

Responses to the consultation can be found at:

[http://www.ofcom.org.uk/consultations/past/0845\\_0870\\_review\\_responses/?a=87101](http://www.ofcom.org.uk/consultations/past/0845_0870_review_responses/?a=87101)

- 2.3 Ofcom does not consider that there is any significant dependency between the outcome of Ofcom's consultation on options for NTS interconnection charging and this statement, since this statement relates to retail prices for 0845 and 0870 calls on the BT network. The outcome of this statement will have no impact on the appropriateness of the option that Ofcom chooses for NTS interconnection charging.

#### b. Retail Uplift

- 2.4 Oftel published its Call Origination Market Review on 28 November 2003. In this review Oftel imposed the BT NTS Call Origination Condition on BT (set out for reference at Annex H) as a remedy to BT's SMP in the market identified in that review.
- 2.5 The BT NTS Call Origination Condition placed an obligation on BT to retail NTS calls on behalf of Communications Providers (including Terminating Communications Providers) and to pass the retail revenue net of a retention for its wholesale charges to the Terminating Communications Provider. The charges that BT can retain for the provision of wholesale NTS call origination comprise regulated charges for origination and conveyance of the NTS call, retailing the NTS call (retail uplift), and, for premium rate service ('PRS') calls, a PRS bad debt surcharge. The review also concluded that the retail uplift charge should be implemented as a charge control.
- 2.6 In preparation for the implementation of the NTS retail uplift charge control, Oftel commissioned independent consultants to undertake a study on the retail costs, such as billing and marketing, which it is appropriate for BT to include in the NTS retail uplift charge. Oftel published the consultants' reports on 19 December 2003 to allow the industry time to

review them in advance of an Ofcom consultation process for setting the charge which is planned to begin in May/June 2004. A copy of the consultants' reports can be found at:

[http://www.ofcom.org.uk/legacy\\_regulators/oftel/review\\_nts\\_retail\\_uplift/?a=87101](http://www.ofcom.org.uk/legacy_regulators/oftel/review_nts_retail_uplift/?a=87101)

The current level of retail uplift was originally set by Oftel in March 2003. This had retrospective effect from April 2001 and will remain in force until the implementation of the new charge control.

- 2.7 Work on the proposed retail uplift consultation is still at an intermediate stage and no conclusions have yet been drawn by Ofcom. However, it is possible that the proposed charge control may result in a change in the retail uplift charges. This would result in a change to the termination payments (also known as 'POLOs': payments to other licensed operators) available to Terminating Communications Providers for calls to 0845 and 0870 numbers. Nevertheless, Ofcom considers that it is possible to come to a conclusion regarding the appropriate retail price arrangements for 0845/0870 calls on the BT network in this statement separately from the outcome of Ofcom's work on the retail uplift. This is because, whichever option Ofcom decides to implement in relation to retail prices for 0845/0870 calls, BT will still be entitled to retain the retail uplift to cover the retail costs of origination of 0845/0870 calls (as well as other NTS calls) due to the requirements of the BT NTS Call Origination Condition.

### **c. Open Cases**

#### (i) Ofcom 'own initiative' investigation into suspected margin squeeze

- 2.8 In response to stakeholders concerns about BT's decision to reduce its standard retail prices for 'local rate' and 'national rate' calls at certain times of the day and week, Oftel opened an 'own initiative' investigation in July 2003 into a suspected margin squeeze at the Internet Service Provider (ISP) level of the NTS value chain, amounting to a possible breach of the Competition Act. The margin squeeze investigation is examining whether the difference between BT's retail price for its 0845/0870 service and BT's payments to its hosted ISPs using 0845/0870 numbers is sufficient to cover BT's costs in providing the 'ISP' elements of the end-to-end service.
- 2.9 At the time of writing, this investigation is still continuing. Ofcom does not consider that this statement in any way pre-empts the outcome of Ofcom's investigation in relation to whether or not there has been a breach of the Competition Act. BT will of course continue to be subject to obligations under the Competition Act regardless of Ofcom's decision in relation to appropriate retail pricing arrangements for 0845 and 0870 calls from BT's network.

#### (ii) NTS termination payments

- 2.10 On 1 June 2003 BT changed its retail prices for 0845 and 0870 calls at certain times of the day and week. Subsequently BT sent a pricing letter to other Communications Providers relating to decreased termination payments, which was revised by another pricing letter on 24 October 2003. This pricing letter had an effective date of 29 August 2003, being 56 days after the original written notification. A number of Communications Providers refused to sign the letters, and on 23 December 2003 BT referred a dispute to Oftel for resolution. Ofcom accepted the case on 28 January 2004.
- 2.11 At the time of writing, publication of a draft determination in this dispute was imminent and this will then be available on Ofcom's web site. In summary, the draft determination (if finalised) would direct the parties to agree to the revised terminating payments with effect from 29 August 2003 (with an adjustment to take account of new data about the average length of short duration calls). This dispute is an example of how the current link between geographic and non-geographic standard call prices on the BT network can cause changes in



the terminating revenues available for 0845 and 0870 calls that are undesirable from the Terminating Communications Providers point of view, and that drive disputes to the regulator.

(iii) Increased NTS discounts from 1 April 2004

2.12 In February 2004 BT sent an Operator Charge Change Notification ('OCCN') revising NTS termination payments due to a change in the rate of discounts applied by BT to NTS numbers. A number of Communications Providers refused to sign the OCCN, and on 7 April 2004 BT referred a dispute to Ofcom for resolution. One of the Communications Providers that did not sign the OCCN has also brought a related dispute to Ofcom. These disputes are examples of how the current application of discounts by BT to the 0845 and 0870 ranges can cause changes in the terminating revenues available for 0845 and 0870 calls that are undesirable from the Terminating Communications Providers' point of view, and that drive disputes to the regulator.

#### **d. BT's proposed increase in termination rates for BT-hosted NTS services**

2.13 On 1 April 2004, BT issued a Network Charge Change Notification (NCCN), notifying the industry of its intention to increase the termination rates for various BT-hosted NTS services from 1 May 2004. Ofcom is aware that the increase notified in the NCCN could possibly be considered to place an additional strain on the current link between the retail prices of 0845/0870 calls and local/national geographic calls on the BT network, since it could be argued that this link is part of the reason BT considers itself to be constrained from accepting similar requests for increases in termination rates for 0845/0870 services hosted by other Terminating Communications Providers. However, since Ofcom has not had the opportunity to fully consider the impact of the NCCN, given that it is a very recent development, Ofcom considers that it is important that it not delay publication of this statement and further consultation. Ofcom however intends to consider the wider impact of the issues raised by this NCCN in the context of Ofcom's NTS framework re-examination (see below) as well as being alive to the possibility that Communications Providers may (on a stand alone basis) ask Ofcom to investigate the specific increase itself.

### **Ofcom's strategic work with a link to NTS**

#### **a. Ofcom NTS framework re-examination**

2.14 The NTS framework re-examination project has been set up by Ofcom to review the current NTS framework at a fundamental level to ensure that it meets Ofcom's strategic objective of furthering the interests of citizen-consumers through a regulatory regime which, where appropriate, encourages competition. Ofcom has initiated this work in response to growing consumer and industry concerns which cut across the entire NTS landscape, and which are not therefore amenable to resolution in isolation from each other. Consumers are concerned about the proliferation of NTS numbers (particularly where use of a geographic number would appear to be equally appropriate), lack of pricing transparency, and pricing in itself. Industry is concerned about instability in revenues for terminating these services, technical limitations of billing systems and the inability of non-dominant call originators to negotiate directly with NTS terminators. The project will work within the basic framework established in the Call Origination Market Review published by Oftel on 28 November 2003. It will make a detailed study of the operation of NTS and will consider how best NTS can meet the needs of all stakeholders in the long term and whether any changes to the framework would deliver net benefits. Ofcom intends that the project will describe and evaluate alternative NTS models, developed from information gathered during international benchmarking and via consultations with stakeholders, before coming to a conclusion on what if any new arrangements are required for NTS. The intention of this statement is to set out an up-to-date policy on 0845/0870 retail pricing, pending the outcome of the NTS framework re-examination.

## **b. The Ofcom Strategic Review of Telecommunications**

- 2.15 The aim of the Ofcom Strategic Review of Telecommunications ('the Strategic Review') is to assess the options for enhancing value and choice in the UK telecommunications sector. It will have a particular focus on assessing the prospects for maintaining and developing effective competition in UK telecommunications markets, while having regard for investment and innovation. It is intended to give Ofcom's future casework and policy development a clear strategic framework for the future. It will not however be looking at the detail of individual types of calls and services (for example, retail pricing arrangements for 0845 and 0870 calls). Ofcom therefore considers it appropriate for the Strategic Review to proceed in parallel with Ofcom's tactical work on retail pricing for 0845/0870 calls and Ofcom's NTS framework re-examination. Ofcom will ensure that there is effective internal communication of the key issues raised by each of these pieces of work, and that the outcome of the NTS-specific work is consistent with the objectives (and does not pre-empt the outcome) of the Strategic Review.

### **Other wider issues being considered by Ofcom: BT's new retail pricing plans**

- 2.16 In March 2004, BT announced its new retail pricing plans, which involve (amongst other changes) moving residential customers currently on BT's standard line rental package to BT Together Option 1 from 1 July 2004. (BT Together Option 1 is part of a family of discount packages offered by BT under which, to varying degrees, customers pay increased monthly charges and decreased per-call charges). Whilst BT's standard call charges will remain in place for business and residential light user scheme (LUS) customers, other residential customers will – following this change - be paying 5.5p for off-peak calls of up to an hour to local or national geographic numbers (but not 0845 and 0870 non-geographic numbers). This development will clearly place additional strain on the description of 0845 and 0870 prices as being BT's standard local and national call prices, and Ofcom has taken this possibility into account in its analysis of the various options for 0845 and 0870 retail pricing set out in Section 4. In relation to NTS termination payments, BT has stated to Ofcom that there will be no effect on NTS terminating payments as a direct result of these changes.
- 2.17 Due to Ofcom's wider concerns about the competitive impact of BT's retail price changes on other Originating Communications Providers, Ofcom has opened an own initiative investigation into BT's retail pricing proposals. Details of the scope of this investigation are set out in Ofcom's online Competition Bulletin publication. If BT's new retail pricing plans are implemented, then additional strain on the geographic/non-geographic retail price link on the BT network will arise, and this possibility has been taken into account in the analysis of policy options in Section 4. If BT's new retail pricing plans are not implemented, then this additional strain will not arise by this path.

### Section 3

## Summary of responses to the consultation and Ofcom's comments

- 3.1 Copies of all the responses received to Oftel's consultation document published on 26 September 2003 can be found on Ofcom's website at:  
[http://www.ofcom.org.uk/consultations/past/0845\\_0870\\_review\\_responses/?a=87101](http://www.ofcom.org.uk/consultations/past/0845_0870_review_responses/?a=87101)
- The consultation document itself can also be found at:  
<http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/2003/0845condoc0903.pdf>
- 3.2 Responses were received from the following stakeholder groups:
- € Individual consumers (20)
  - € Consumer representative groups (5)
  - € Other regulatory bodies (3)
  - € Terminating Communications Providers (5 including UKCTA representing 17)
  - € NTS Service Providers (6)
  - € Originating Communications Providers (2)
  - € BT
- 3.3 In the consultation document Oftel presented a number of options for retail pricing of 0845 and 0870 calls on the BT network upon which comments were sought. These were;
- € Option 1(a): the geographic/non-geographic link is not broken for 0845 and 0870 numbers and there is no change to the retail pricing arrangements for 0844 and 0871 calls;
  - € Option 1(b): the geographic/non-geographic link is not broken for 0845 and 0870 numbers, but the retail pricing arrangements for 0844 and 0871 calls are modified to allow tariffing at the 10k block level;
  - € Option 2(a): the geographic/non-geographic link is broken, and it is possible for those allocated 0845 and 0870 numbers by Oftel/Ofcom to choose the retail prices on the BT network for each 10k block (or, for internet-only services, 1k block) they are allocated;
  - € Option 2(b): the geographic/non-geographic link is broken, 0845 and 0870 numbers are allocated in 1k blocks and it is possible for those allocated 0845 and 0870 numbers by Oftel/Ofcom to choose the retail prices on the BT network for each 1k block they are allocated; and
  - € Option 3: the geographic/non-geographic link is broken, and Oftel/Ofcom sets the retail prices for calls to 0845 and 0870 numbers.
- 3.4 Oftel also asked a number of specific questions relating to the above options as well as inviting any general comments respondents wished to make (see Annex G). Comments were received from more than forty organisations and individuals. Some of these referred to one or more of Oftel's questions whilst others raised additional issues not previously identified by Oftel. In this Section, a summary of the key points made in the various responses is set out, followed by Ofcom's comments on the issues raised. Ofcom's detailed assessment of the options for future retail pricing of 0845/0870 numbers (both those set out in the September 2003 Consultation and those proposed by stakeholders in their responses) is set out in

Section 4, taking into account the comments made by respondents. Ofcom has carefully considered all points raised by respondents in reaching its final decision.

### Consumers and Consumer Groups

- 3.5 The consultation document was thought by some consumer respondents to be too complex, and technical. It was also perceived as biased towards the revenue earning concerns of industry stakeholders rather than addressing the interests of consumers who considered that they were paying unnecessarily high prices for these calls.
- 3.6 Respondents considered that published information implying that 0845 calls were priced at local rate and 0870 calls at national rate could be misleading for customers who did not use BT as their Communications Provider. Respondents noted that even BT customers who have opted for discounted call options face paying more for 0845 and 0870 calls than for their geographic equivalents.
- 3.7 There was a strong view that Ofcom must act to reduce call prices and not allow the current confusing range of 084 and 087 prices to continue. It was held that all 0845 calls should be priced at local rate and if this meant that Internet Service Providers' profit margins were being reduced, they could migrate their services to 0844 numbers where they could choose their required retail prices.
- 3.8 Some respondents believed that Oftel had overstated the extent to which the prices for 0845 and 0870 calls are linked to corresponding geographic pricing because only the BT Standard tariff has aligned prices and relatively few consumers use that. Respondents considered that 0845 and 0870 are frequently advertised as being priced at local and national rates and felt that this should mean what it says. In other words, some consumer respondents considered that the link between geographic and 0845/0870 call prices should be maintained for all phone companies, not just BT. They considered Ofcom should enforce correct pricing of these calls on all phone companies and not permit a proliferation of confusing prices which would be the effect of introducing new pricing ladders for 0845 and 0870 (as envisaged under Options 2(a) and 2(b) in the consultation document).
- 3.9 Many consumer respondents failed to see why companies are allowed to make profits from calls to these numbers, particularly calls to 0870 numbers. They felt that this encourages Communications Providers and NTS Service Providers to potentially overcharge, disallow discounts and unnecessarily extend call waiting times to increase revenues. Some noted what they saw to be an increasing range of services that have changed from geographic to 0870 numbers, which they assumed was because of the revenue earning opportunities. These include organisations, public service and government agencies and some individuals where respondents felt that callers had no choice when wishing to call these organisations and yet had to pay higher prices for these calls than for geographic calls. Some respondents suggested Ofcom should force all NTS Service Providers to publish alternative geographic numbers for their services so that callers have a choice, and would be able to use the geographic number to avoid the higher non-geographic call prices, especially when the company they are calling is located nearby.
- 3.10 Building on this point, some consumers said that Ofcom should prevent what appeared to respondents to be indiscriminate selling of NTS numbers to users they regarded as inappropriate such as individual consumers who seemed to be promised payments for receiving what could be seen as simple substitutes for geographic calls.
- 3.11 One consumer respondent supported Option 1 in Oftel's consultation document, under which the current retail pricing arrangements for 0845/0870 calls on the BT network – and in particular, the link to standard local/national geographic call prices - would remain in place. This respondent considered that, whilst the description of 0845/0870 calls as local/national rate was not 100% accurate, it did provide the consumer with some information. Other similar views were expressed that competition on the basis of retail price for 0845 and 0870 calls (as envisaged under Options 2(a) and 2(b)) would be very confusing for consumers who

would not know the price of these calls unless they checked the price list of their Originating Communications Provider before making the call.

- 3.12 Another respondent, a consortium of organisations representing deaf, deafened, deafblind and hard of hearing people, pointed out that users of textphones receive special tariffs under General Condition 15.4 that compensate for the additional time to make a call using a textphone. (Ofcom considers that there was a typographic error in the response and that the respondent intended to refer to General Condition 15.3). Special services are excluded from the reduced tariff – these services include calls where “BT returns a large percentage of the call revenue to a third party” (according to BT Price List Section 2, Part 23, Sub Part 1). This respondent noted that BT considers that this includes the 087 range and therefore gives no rebated tariff to calls made to numbers in that range. This respondent considered that text users are therefore being doubly penalised by increasing use of 087 numbers. (The respondent pointed out that 084 numbers do receive the reduced tariff, but BT could change this at any time).
- 3.13 The last main point made was that Originating Communications Providers should be compelled – in the interests of increased pricing transparency - to publish the prices of calls to NTS numbers and mobiles in telephone bills or possibly through the use of recorded announcements before calls are connected and charging begins. It was also suggested that all revenue sharing calls should be on the 09 number range rather than some being on the 08 range, as a clear indication to the consumer about the nature of the call.

### **Ofcom's comments**

- 3.14 Ofcom acknowledges that this is a very detailed and complex subject. The consultation document was designed to present the issues as openly and simply as possible and was not intended to be biased towards any particular group of stakeholders. It aimed to present the concerns reported by a range of stakeholders in a balanced and even handed way so that a decision could be reached which sustains competition in the provision of services whilst protecting and promoting the interests of consumers more generally.
- 3.15 Concerns about the fact that many Communications Providers do not charge their local/national geographic rates for 0845/0870 calls are well noted by Ofcom. Ofcom notes that each Originating Communications Provider is obliged by General Condition of Entitlement 10 to publish “clear and up to date information on its applicable prices and tariffs” for any Publicly Available Telephone Services that it provides, which includes 0845 and 0870 calls. Many discharge this obligation through publishing price lists on their web sites and making paper copies of their price lists available to customers. Ofcom acknowledges however that such price list information may not be the most readily accessible form of pricing information for consumers.
- 3.16 The suggestion that Ofcom provide improved price transparency for 0845/0870 calls by requiring that all Originating Communications Providers charge the same rate for their geographic local/national calls as for their 0845/0870 calls is examined in the next Section of this statement. Ofcom is also committed, as one of the outcomes of this statement, to producing co-regulatory guidance for the industry, and in particular for those companies that use 084 and 087 numbers, on the promotion and marketing of these numbers in order to minimise the risk of consumers being misled.
- 3.17 Consumers have expressed concerns about NTS Service Providers making money from 0845 and 0870 calls, and the resultant incentives to extend call times. In this context, Ofcom notes that many of the wide range of valued services now available on NTS numbers would possibly not have been launched had it not been for the revenue sharing arrangements that these numbers afford. It is also important to understand that not all NTS Service Providers use 0845 and 0870 numbers specifically to earn revenue from calls. The level of payments received by NTS Service Providers for each call is in fact very small (due to the relatively low retail price of these calls) and it requires large numbers of calls to generate small levels of revenue. For example, during the first quarter of 2004, an evening call to an 0845 number on

the BT network would have a retail price (before discounts and call packages) of 1p per minute. The Terminating Communications Provider would receive a payment of approximately 0.35p per minute for terminating the call, of which only a proportion (subject to commercial negotiation) would be available to be passed on to the NTS Service Provider (this example is simplified and the figures are approximate). 'Pay-as-you-go' metered internet services do generate significant numbers of long duration calls, primarily because of the length of time internet users spend 'on-line' when compared to voice calls. Without the revenue from these calls ISPs would be likely to have to charge additional subscriptions for their services (or find alternative sources of revenue), meaning that the 'pay-as-you-go' model – which many consumers value – would (in the absence of alternative sources of revenue) no longer exist.

- 3.18 Voice NTS Service Providers such as call centre helpdesks and banks are less likely, however, to receive enough revenue from the phone calls themselves to fund their services in their entirety. To the extent that any revenue is generated from such phone calls, it may be used to off-set other costs in the organisation to the ultimate benefit of users. Nevertheless, Ofcom considers that for most voice NTS Service Providers, this will be a secondary consideration. Many businesses may choose to use 084 and 087 numbers to provide a single point of contact without the possibly alienating effect of using a geographic number. Also the 084 and 087 call products offered by Communications Providers offer advanced call answering features which can be used to vary the way calls are answered and routed depending on time of day or the location of the caller (techniques which can ultimately allow improved customer service). Some businesses may use easily remembered NTS numbers so that their customers more readily recall the number. Others may use non-geographic numbers so that they can easily move their operations to different locations without having to change numbers which would not be possible with ordinary geographic numbers.
- 3.19 Ofcom considers it possible that many organisations using 0845 and 0870 numbers may not be aware of the subtleties of the different retail pricing arrangements for these calls from the various non-BT Originating Communications Providers, or via BT's various discount packages. Some – particularly those using 0845 'local rate' numbers - may actually believe they are offering their customers the benefit of contacting them from anywhere in the country for the cost of a local rate call, and may not realise that in many cases, their customers might be better off contacting them via a geographic number. Ofcom will ensure that the co-regulatory guidance that it intends to produce on marketing and promotion of 084 and 087 numbers makes this point clear to all users of these numbers, who will then be able to make well-informed decisions about whether or not they wish to publish alternative geographic numbers.
- 3.20 Nevertheless, Ofcom shares consumers' concerns about the proliferation of 0845 and 0870 numbers, and their apparently inappropriate use in some cases as simple substitutes for geographic numbers. This is one of the issues Ofcom will be addressing in its NTS framework re-examination (see paragraph 2.14 above).
- 3.21 In relation to the actual prices paid for 0845/0870 calls, even though many non-BT Originating Communications Providers do not price these calls at their local/national geographic rate, it is important to note that the local rate/national rate link for 0845 and 0870 calls (and the 5p/10p retail price cap for 0844 and 0871 calls) on BT's network will act as a consumer protection mechanism for all fixed customers. This is because prices on all fixed networks are likely to be set taking into account the price on the BT network due to competitive pressure.
- 3.22 In regard to concerns about NTS Service Providers deliberately extending the duration of calls or inappropriately selling NTS numbers to individuals, Ofcom has little evidence that such practices are widespread. The level of complaints received by Ofcom in 2003 relating to NTS charging practices and NTS Service Provider behaviour was in fact very small, amounting to less than a half of one percent of all complaints about telecommunications matters. Ofcom acknowledges that consumer complaints may not be a particularly good indication of the level of consumer detriment from 0845/0870 calls due to low consumer

awareness of the cost of calling these numbers as indicated by the results of Oftel's consumer research (as set out in Annex F of the September 2003 consultation and updated in Annex F of this statement). However, whilst consumers may not be fully aware of the cost of calling 0845 and 0870 numbers, it could be considered that the low level of complaints indicates that the prices for these calls that appear on phone bills are not sufficiently large to drive consumers to complain. In relation to the length of calls, some companies are undoubtedly more consumer-friendly as regards how they handle callers than others, and consumers can generally make choices about the companies they use on that basis (except in the case where there is no alternative way of accessing a particular organisation or service – which is an issue Ofcom intends to address in its future work on NTS). Ofcom will continue to monitor complaint levels and will encourage other regulatory bodies to investigate specific cases reported to them.

- 3.23 Ofcom notes the comments from one respondent relating to the fact that BT charges reduced tariffs for 084 numbers but not for 087 numbers for textphone users to compensate for the additional time taken to make a call. Whilst consideration of this issue is beyond the scope of the September 2003 Consultation and this statement, this does appear to Ofcom to be something that should be looked into. Ofcom would not however want this apparent anomaly corrected by removal of the reduced tariffs for 084 numbers. Ofcom will therefore consider this matter separately in the context of its work on disability issues.
- 3.24 In relation to consumer suggestions that Originating Communications Providers be compelled to announce the cost of calls at the start of each NTS call, or that all revenue sharing calls should be on the 09 number range, Ofcom's view is that such steps would be disproportionate at present. This is due to comparatively low cost of calling 084 and 087 numbers and the low volume of consumer complaints currently. Requiring all 084 and 087 services to migrate to the 09 number range would incur substantial costs and inconvenience for both the industry and consumers. The Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS) has a Code of Practice that governs the provision of PRS, and which has statutory backing from Ofcom in respect of services priced at 10p per minute or per call or above on the BT network. Even this Code of Practice only requires the pre-announcement of pricing for certain types of PRS call considered to raise particular consumer protection issues (namely Live Services i.e. those which involve two-way or multi-way live conversation). Ofcom will however keep the need for such obligations on 084 and 087 NTS Service Providers under review in the light of evidence of consumer harm arising. Ofcom's intention of working with the industry to produce guidelines on how 084 and 087 numbers can be promoted without misleading consumers should also help address consumer concerns in this area.

### **Other Regulatory Bodies**

- 3.25 Most concerns expressed by other regulatory bodies focussed on the advertising of the prices of calls to 0845 and 0870 numbers.
- 3.26 One body held that the responsibility for advertising prices lay with the Originating Communications Provider rather than the NTS Service Provider who ultimately has no control over what prices are charged on the various different originating networks. This respondent considered that any advertisement of 0845/0870 numbers by the NTS Service Provider as 'local/national rate' was misleading since prices vary between networks, and vary on one network depending on discount arrangements. This respondent suggested that the only sure way of not misleading consumers was to ensure that no price information for 0845 and 0870 numbers be given on advertisements placed by the NTS Service Providers.
- 3.27 Another regarded this as less of an issue since more than 50% of calls to 0870 numbers were made by BT customers and the majority of consumers probably realised that the prices quoted by NTS Service Providers related to calls made from BT's network. However, this respondent noted that sustaining this position in future might become more difficult with increasing competition between growing numbers of Originating Communications Providers.

- 3.28 There was no clear preference for any of the options proposed by Oftel but other regulatory bodies considered that the imperative was to make pricing information as clear as possible for consumers.

### Ofcom's comments

- 3.29 Ofcom notes the comments in relation to misleading price indications. Ofcom is aware that, over time, industry pricing of 0845 and 0870 numbers has changed and as a result the current designations set out in the Plan and the Scheme may therefore no longer be entirely reflective of current practice. As described in Section 5 Ofcom proposes to amend the designations in the Plan as set out in Annex K (and also make the necessary consequential amendments to the Scheme) to more accurately reflect the basis on which 0845 and 0870 numbers are allocated to Communications Providers.
- 3.30 In addition to this Ofcom intends to produce broad guidance for the industry on advertising 084 and 087 services in ways which will help consumers better understand what prices they can expect to pay for these calls. Communications Providers and NTS Service Providers should however note that they are individually responsible for ensuring that they do not give misleading price indications to consumers when advertising their services. Whilst the Plan and the Scheme include the relevant designations for 0845 and 0870 numbers, these are statutory documents rather than price lists. As such they should not be relied upon to give accurate pricing information to consumers – as has been noted above, only Originating Communications Providers are in a real position to provide complete and up-to-date pricing information.
- 3.31 As stated previously, Ofcom shares the concerns of respondents as to how pricing information can be made more easily accessible to consumers. Ofcom notes that ICSTIS has produced a Guideline on the pricing information for PRS calls (*ICSTIS Guideline Number 1: Pricing Information* [http://www.icstis.org.uk/icstis2002/pdf/guideline\\_01.pdf](http://www.icstis.org.uk/icstis2002/pdf/guideline_01.pdf)) that deals explicitly with the issue of the departure of call charges from the advertised rate due to the variability of retail prices on non-BT networks. This is particularly important for PRS, since the ICSTIS Code of Practice includes an obligation that all advertisements for PRS must contain pricing information – a similar obligation does not exist for 084 and 087 services currently. To address concerns about accessibility and clarity of pricing information, Ofcom will work with other regulators such as ICSTIS and the Advertising Standards Authority as well as the industry to produce the guidance on the promotion and marketing of 084 and 087 numbers mentioned above.

### Terminating Communications Providers

- 3.32 Most comments from Terminating Communications Providers focussed on the preservation of revenues in the face of declining BT retail prices (whether the decline was brought about through increased discounting or headline retail price reductions). Suggestions were offered which sought to insulate terminating payments from future BT pricing initiatives. This included a proposal by a group of Communications Providers that Ofcom should break the geographic/non-geographic link for 0845 and 0870 calls on the BT network, fix BT's payments to Terminating Communications Providers and then recalculate the payment annually using the year zero net retail price and BT's costs for that particular year. This proposal evolved after the close of the consultation period into a slightly modified proposal (the so-called 'NTS Futures proposal') that envisaged the geographic/non-geographic link being broken, Terminating Communications Providers and BT agreeing bi-laterally the terminating payment, and then BT setting its own retail price (see further discussion at paragraphs 4.10 and 4.11). Some Terminating Communications Providers also believed non-dominant Originating Communications Providers' retail prices should be regulated as this was easier than trying to inform consumers about the range of available prices.
- 3.33 Of Oftel's proposed options there was a general preference for Option 2(a) (breaking the NTS/geographic links and introducing a pricing ladder at the 10k number level) since this would enable Terminating Communications Providers to select new retail prices without



having to force their NTS Service Provider customers to migrate to 0844 number ranges. Most acknowledged that enhancing their routing and billing systems to enable Option 2(b) (1k numbering/pricing) would probably be too onerous for most Originating Communications Providers. There was also a general view that until Ofcom's decision was implemented BT's retail prices should be frozen to prevent further detrimental effect on terminating payments.

- 3.34 Some Terminating Communications Providers proposed that more information about retail pricing could be given if the digits dialled were used to indicate the price of the call (e.g. 081 = 'up to 1ppm/ppc' / 084 = 'up to 4ppm/ppc' etc). This would also provide additional consumer protection from price changes without number changes.
- 3.35 Another respondent proposed the use of a strong universal brand rather than 'local/national rate' descriptions, for example "Low Call" and "Midi-Call".
- 3.36 One respondent was unclear whether all Originating Communications Providers were obliged to build specific 084/087 ranges.

### **Ofcom's comments**

- 3.37 The alternative retail pricing proposal for 0845 and 0870 calls on the BT network put forward by Terminating Communications Providers is evaluated in Section 4 alongside the other options considered. Ofcom's concerns about this proposal, and how Ofcom intends to handle the 'NTS Futures proposal', are explained in that Section.
- 3.38 The suggestion that non-dominant Originating Communications Providers' retail prices should be regulated to give improved transparency for consumers (which was also suggested by consumer respondents) is also evaluated in Section 4 of this statement.
- 3.39 In relation to Option 2(a), Ofcom has examined more closely since the consultation the number of different NTS Service Providers that typically share the same 0845 and 0870 10k number blocks. On the basis of data obtained by Ofcom, it appears that there may typically be around 100 different NTS Service Providers sharing each 0845 or 0870 block of 10,000 (10k) numbers allocated by Ofcom, with more than 2000 NTS Service Providers in some of these blocks. This means that a retail price requested by one NTS Service Provider or group of NTS Service Providers in a particular block may end up being imposed on other NTS Service Providers who may not agree with that proposal. The other NTS Service Providers may then be forced to accept the new price or migrate to another number range which is priced at their preferred level.
- 3.40 Ofcom also considers that increasing the range of prices in 0845 and 0870 (as envisaged under Option 2(a)) would only make it more difficult for consumers to know what they are paying for calls. A full evaluation of Option 2(a), and the other options Ofcom has considered, is set out in the next Section.
- 3.41 The proposal that dialled digits be used to convey pricing information for NTS calls to consumers (e.g. 081 = 'up to 1ppm/ppc' / 084 = 'up to 4ppm/ppc' etc) does not appear very attractive to Ofcom. Attempts at similar arrangements for PRS numbers have been demonstrated by Ofcom consumer research not to be very meaningful to consumers, and have led to number conservation issues for Ofcom. Indeed these arrangements for PRS are now the subject of an Ofcom consultation as to whether or not they should be abolished. In addition, the introduction of such arrangements could require the widespread migration of existing 084 and 087 services to new number ranges without much gain for consumers.
- 3.42 Ofcom does think there is value in the idea that a strong universal brand for 0845 and 0870 calls (e.g. "Low Call" and "Midi-Call") be developed to assist consumers with price recognition, particularly in the case of consumers using non-dominant Originating Communications Providers where the local/national link may not apply. Ofcom's proposed redesignation of 0844, 0845, 0870 and 0871 calls in the Plan seeks to introduce such a description, whilst retaining the geographic/non-geographic link on the BT network for the reasons set out in the next Section.

- 3.43 In response to the request for clarification as to whether all Originating Communications Providers have obligations to build specific 084/087 ranges, Ofcom can confirm that this is not the case. Guidance on end-to-end connectivity obligations was published by Oftel in May 2003 ([www.ofcom.org.uk/static/archive/oftel/publications/eu\\_directives/2003/endcon0503.htm](http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/endcon0503.htm)). This guidance sets out that only BT and Kingston are expected to ensure that their customers can call other customers and services irrespective of terminating network, that is to provide end-to-end connectivity. Oftel considered that other providers would have a commercial incentive to provide end-to-end connectivity to their customers, and that this commercial incentive should be sufficiently strong to ensure no additional ex ante regulation was required in this area, but that Oftel would consider the need for such regulation if there was a potential effect on competition or potential detrimental impact on consumers.

### **NTS Service Providers**

- 3.44 Most NTS Service Providers that commented on the issues raised in the September 2003 Consultation responded in their capacity as ISPs rather than voice NTS Service Providers. There was an almost unanimous rejection of any suggestion that services may have to be migrated to new number ranges in order to obtain pricing freedom. Where preferences were stated these were all for Option 2(a) which would allow prices to be varied without having to change numbers. From feedback Ofcom has received to this and other consultation exercises it is clear NTS Service Providers regard having to migrate customers onto different numbers as difficult, costly and likely to lead to significant customer churn particularly for internet services. However very little detail was supplied in the responses to this consultation which quantified or supported those assertions.
- 3.45 Apart from the alleged difficulties in migrating from 0845 numbers, NTS Service Providers pointed out that in their view 0844 numbers were largely unrecognised by consumers and that many fixed and mobile Originating Communications Providers refused to open 0844 numbers on their networks. 0844 and 0871 numbers tended to be unobtainable from overseas countries from where significant levels of voice NTS traffic originate.
- 3.46 In relation to the pricing of 0845 and 0870 calls, most NTS Service Providers believed that the use of these numbers gave a strong indication to consumers of the prices they could expect to pay, whereas 0844 and 0871 did not enjoy the same degree of recognition by consumers, and prices could vary (subject to the 5p/10p price cap on the BT network) between different blocks of 0844 and 0871 numbers. Even if the geographic/non-geographic link were broken for 0845 and 0870 calls on the BT network, NTS Service Providers considered they would still be able to give broad tariff indications for 0845 and 0870 calls although there were differences in the views on which price ceilings should apply (4/5ppm for 0845 and 8/10ppm for 0870). It was further suggested that the link hardly exists now because so few Originating Communications Providers align NTS and geographic prices and BT only does so for its Standard Tariff.
- 3.47 However, NTS Service Provider respondents considered that the continued link between BT's NTS and geographic prices means that BT is failing to provide NTS call origination on fair and reasonable terms (as it is obliged to do under the BT NTS Call Origination Condition). This was because of the impact changes in retail prices and discounts have on Terminating Communications Providers' termination payments. Some NTS Service Providers shared the views of Terminating Communications Providers in suggesting that termination payments should be frozen going forward and that all Originating Communications Providers' retail prices should be controlled.

### **Ofcom's comments**

- 3.48 Ofcom has addressed the subject of migrating customers to new numbers for dial-up internet access in Annex E of this document.

- 3.49 Ofcom notes that the issues faced by voice NTS Service Providers wishing to migrate their services to new number ranges are somewhat different, and revolve around making consumers aware of the new numbers to dial, and the cost of marketing, new signage, stationery and other customer materials bearing the new number. However, Ofcom has focussed its consideration of migration issues (although not exclusively) on the migration of dial-up internet access customers for the following reasons:
- € NTS Service Providers (whether voice or data) using the 0845 range are more likely to experience commercial pressure to migrate than those using 0870 numbers (since the revenue share available on 0845 numbers is lower than that available on 0870 numbers due to the lower retail price);
  - € the bulk of the traffic on 0845 numbers is 'pay-as-you-go' dial-up internet access traffic (93% of NTS call volumes are data calls for dial-up internet access according to Oftel's Market Information Fixed Update Quarter 4 2002/3); and
  - € Ofcom considers that voice NTS Service Providers are much less likely than ISPs to be relying on the revenues from 0845 calls to fund their services in their entirety (for the reasons set out at paragraphs 3.18 and 3.19).
- 3.50 Broadly Ofcom considers (on the basis of evidence collected during this consultation process and during Oftel's market reviews) that techniques are available to ISPs to enable them to undertake large scale dial-up internet access customer migrations to new NTS numbers with a low churn and at relatively low cost. A successful programme requires a sophisticated approach and investment in software tools (principally the forced portal and microdialer technologies). Ofcom acknowledges that these are not equally available to all ISPs as a result of each ISP's past business decisions. However, this does not represent a material distortion of the competitive process, since all ISPs did (and do) have access to this technology should they so wish.
- 3.51 In relation to churn, it should be noted all churn from one ISP is likely to be to the benefit of other ISPs (if the assumption is made that the proposed changes do not materially change the number of consumers in the UK who want access to the internet).
- 3.52 If ISPs migrate to 0844/0871 numbers, ISPs will be able to set their margins on a competitive basis and could conceivably recover the costs of migration from customers via increased margins if they so wish.
- 3.53 Ofcom wishes to remove perceived barriers to the use of 0844 and 0871 number ranges for both voice and data NTS Service Providers. To this end the additional IN Dip charge levied by BT on 1k internet number blocks has recently been removed, and, as an outcome of this statement, Ofcom has decided that there should be increased retail pricing flexibility for 0844 numbers to encourage more NTS Service Providers to use them. Ofcom will also consider the extent to which non-dominant Originating Communications Providers failing to open 0844 and 0871 numbers on their networks represents a material problem, although it is accepted that little can be done to influence overseas phone companies to allow outgoing international calls to these numbers.
- 3.54 Although valuable to some consumers and operators, Ofcom considers that the benefits of higher consumer recognition of 0845/0870 numbers compared to 0844/0871 numbers should not be overstated. Oftel's consumer research (as set out at Annex F) indicates that there is in fact a considerable degree of consumer confusion about the meaning of all 084 and 087 numbers, making the differences in recognition between 0845/0870 numbers and 0844/0871 numbers less material. For example, although 29% of consumers questioned recognised 0845 numbers as being local rate, more (36%) thought these numbers were national or premium rate numbers. Only 15% of consumers knew the typical price for an 0845 call, and only 5% knew the typical price for an 0844 call. Consumer preferences as to the most meaningful way in which to describe calling rates were fairly evenly divided between a 'local/national rate' description and a 'pence-per-minute' description.

- 3.55 In relation to concerns expressed by NTS Service Providers about whether BT's influence over NTS termination payments represents a breach of any of BT's regulatory obligations, Ofcom notes that Ofcom has launched an 'own initiative' investigation into BT's decision to reduce its standard retail price for 'local rate' and 'national rate' calls at certain times of the day and week, with consequential impact on termination payments for 0845 and 0870 calls (as described in Section 2). This investigation is looking into a suspected margin squeeze at the ISP level of the NTS value chain amounting to a possible breach of the Competition Act as a result of BT's action.

### Originating Communications Providers

- 3.56 The only Communications Providers focussing primarily on NTS call origination rather than NTS termination (other than BT) to respond to the consultation paper were two cable companies.
- 3.57 One respondent believed no attempt should be made to review NTS retail pricing arrangements in isolation from the range of NTS wholesale issues that exist (for example, the difficulties that non-dominant Originating Communications Providers have undertaking commercial negotiations with Terminating Communications Providers and NTS Service Providers). The respondent therefore considered that Ofcom should include the review of 0845 and 0870 retail pricing within an overall review of NTS and not as a piecemeal item. The respondent also set out its view that breaking the link between 0845/0870 retail pricing and standard local/national geographic pricing on the BT network would not introduce greater transparency of prices for consumers or introduce greater price competition at the retail level. Option 2 (a or b) would result in Originating Communications Providers incurring excessive costs for upgrading their billing systems and would only result in unwelcome price proliferation. Given that Ofcom is also currently investigating allegations of a margin squeeze on ISPs terminating 0845 calls under the Competition Act, the respondent thought it likely that breaking the NTS/geographic link would lead to price increases for consumers, particularly for voice NTS services. Given that the majority of NTS calls are to 0845 internet services and that these (according to the respondent) are in rapid decline, any potential benefits arising from Ofcom's proposals are likely to be short lived.
- 3.58 The other respondent believed that Oftel has not given sufficient consideration to the practicalities of managing price and numbers changes and could have conducted more detailed consumer research. All the options proposed by Oftel were felt by this respondent to be too extreme and that a 'middle way' existed which would meet the interests of all stakeholders to a large degree. This model was similar to that proposed by many Terminating Communications Providers (see paragraph 3.32 above) in that it seeks to insulate terminating payments from the effects of BT's wholesale and retail price changes to a large degree. It also placed the onus on NTS Service Providers to clearly publicise their numbers and on Originating Communications Providers to ensure consumers were aware of the retail prices that apply to those numbers.

### Ofcom's comments

- 3.59 Ofcom does not agree that any clarification of Ofcom's policy on 0845/0870 retail pricing should be delayed so as to form part of an overall review of NTS. In consulting in September 2003, Oftel gave a commitment to address the issues with 0845/0870 retail pricing it had already identified, along with any others raised by stakeholders on this matter during the consultation. Ofcom considers that there is an expectation amongst the majority of stakeholders that Ofcom will set out its conclusion as a result of the consultation. If Ofcom were not to publish a statement, this would by default mean that Ofcom was implementing Option 1(a), which is the 'status quo' option, without adequately explaining its reasons for doing so. Whilst the policy position on 0845/0870 retail pricing remains unresolved, this has the potential to drive disputes into Ofcom. Additionally, Ofcom considers that there are clear benefits to the industry and consumers of providing clarity on the existing Ofcom policy in this

area, so that the starting point for any more fundamental review going forwards is understood as widely as possible.

- 3.60 In relation to the proposal that Ofcom should implement a solution that insulates termination payments for the effects of BT's wholesale and retail price changes, Ofcom has evaluated such an option alongside the other options proposed in the consultation (see Section 4).

## BT

- 3.61 BT considered there was little justification for changing the existing arrangements until Ofcom is able to complete a full review of the NTS model, which BT encouraged Ofcom to do. BT thus preferred Option 1(a), the status quo option.
- 3.62 BT also set out its belief that Ofcom had the necessary powers to enforce pricing of calls by non-dominant Originating Communications Providers via General Condition 17.5 ('the Numbering General Condition'), if Ofcom so wished. BT considered that this would enable the powerful marketing message of 'local rate' or 'national rate' to remain in place and also become more meaningful for consumers, since all Originating Communications Providers would be required to respect the link between 0845/0870 retail prices and local/national geographic prices. It was suggested that all Originating Communications Providers could be required by Ofcom to charge for 0845 and 0870 calls at BT's local and national geographic rates, to remove any risk of Originating Communications Providers' geographic prices increasing to meet their existing NTS levels. Other Originating Communications Providers could also choose not to originate calls to these ranges at all if they did not wish to maintain the link to geographic call prices for calls to 0845/0870 numbers.
- 3.63 BT did not favour the introduction of multiple different tariffs for 0845 and 0870 calls as envisaged under Options 2(a) and 2(b), as BT considered that this would add to consumer confusion with callers not knowing whether a call would cost anything between 1ppm and 5ppm in the case of calls to 0845 numbers (if a cap of 5p were to be placed on these calls).
- 3.64 In relation to Oftel's comments in the September 2003 Consultation about the benefits to competition (available under some of the options considered) of NTS Service Providers being able to keep their numbers whilst changing their prices, BT noted that having to change numbers to change prices is not new, as this has always been the case with PRS. If Terminating Communications Providers set tariffs for 0845/0870 calls, BT believed this would lead to price increases above geographic levels, and major issues with consumer information. Unscrupulous companies could take advantage of the uninitiated, for example by offering services at low introductory rates followed by price hikes if number changes were not required.
- 3.65 BT considered that if the link were to be maintained then Option 1(b) offered little advantage over maintaining the existing position with Option 1(a). BT did not believe tariffing at the 10k number level in 0844 would benefit consumers or Communications Providers. In regard to Option 1(b), whilst BT noted that a detailed exhaustive feasibility had not been carried out, BT indicated that costs for it at retail and wholesale billing levels would be of the order of £300k with timescales of at least 6 months. BT believed Originating Communications Providers were likely to incur similar costs for Option 1(b).
- 3.66 BT agreed that Option 2 would provide Communications Providers and their NTS Service Providers with greater certainty in relation to their payments but considered it had a number of disadvantages. BT said that:
- € prices would still require the caveat of 'from a BT line' (unless Ofcom enforced uniformity of retail prices for all Originating Communications Providers);
  - € pricing at the 10k level instead of 100k would make it more difficult for consumers to identify call prices;
  - € Originating Communications Providers would incur additional billing costs to facilitate 10k pricing;
  - € prices for 0845 and 0870 calls would almost certainly increase;

- € the number of NTS Service Providers who already share existing 10k blocks means that some might be forced into an untimely and/or unplanned change of number if they wanted “no change” to their tariff or numbering arrangements, since the tariff for the block would be set by the Terminating Communications Provider, not the NTS Service Provider;
  - € NTS Service Providers porting numbers to new Terminating Communications Providers would be forced to use the tariff of the range holder; and
  - € under either Option 2(a) or 2(b), BT would seriously consider (subject to Ofcom confirming this was possible) continuing to maintain a link between its 0845/0870 tariffs and its standard local/national geographic tariffs.
- 3.67 BT said that if Ofcom nevertheless chose Option 2, rather than move to 10k or 1k number blocks, it might be possible for entire 100k blocks to be allocated to the same Terminating Communications Provider and that the same tariff could apply across the whole block. This would lead to a 30% reduction in the required implementation costs. If, however, Ofcom decided on either of Options 2(a) or 2(b), the 'ladder' of tariffs used for 0845 and 0870 should be the same as those already existing for 0844 and 0871. This would serve to reduce implementation timescales.
- 3.68 BT noted that Option 3 would require Ofcom to set a single retail price for 0845 calls and 0870 calls at a level such that callers did not feel 'ripped off', and that, even if most Communications Providers agreed with the Ofcom tariff, it might still be challenged legally by individual Communications Providers. BT considered that unless Ofcom could enforce its chosen retail price for all Originating Communications Providers, Option 3 would have no benefit over the other options.
- 3.69 BT suggested a change to Option 3 whereby Communications Providers collectively agreed a retail price for all 0845 and 0870 calls. However, in the September 2003 Consultation, Ofcom ruled this out due to Competition Act issues (see Annex K of the September 2003 Consultation).
- 3.70 BT also suggested, as another alternative option, that the retail price for 0845 and 0870 calls could be returned to the level for 0845 and 0870 calls prior to BT's 1 June 2003 retail price reductions. In BT's view, a single tariff for each of 0845 and 0870 would be no less competitive than a multiplicity of tariffs, and would enable all NTS Service Providers to be treated fairly, rather than having a retail price change imposed unwillingly on them as could arise under either Option 2(a) or 2(b) (see paragraph 3.66). Similarly, BT suggested that 0845 and 0870 prices could be set at something like local/national rate plus 1p. This would enable advertisers to say that calls to these numbers were 'linked to local (or national) rate' and would restore some pricing clarity. BT admitted that this suggestion had clear disadvantages but considered that the resultant price increase would be less covert.

### **Ofcom's comments**

- 3.71 Ofcom has committed to carrying out a re-examination of the NTS framework (see paragraph 2.14 above). Ofcom considers that, as set out in Sections 4 and 5, there are some improvements that can be made to the current arrangements that would bring benefits to both consumers and the industry, pending this re-examination. In particular, Ofcom will produce guidance to advertisers of 084 and 087 numbers to encourage them to provide clearer information to consumers, to address at least some of the concerns BT identifies in relation to consumer awareness and information.
- 3.72 Ofcom notes BT's suggestions that Ofcom consider enforcing certain explicit retail pricing arrangements for 0845 and 0870 calls for all Originating Communications Providers, and has considered this option further in Section 4. However, Ofcom does not agree with BT that Ofcom has the necessary powers under paragraph 17.5 of the Numbering General Condition to enforce pricing for 0845 and 0870 calls on all Originating Communications Providers. Paragraph 17.5 of the Numbering General Condition requires that:

"The Communications Provider shall install, maintain and adjust its Public Electronic Communications Network so that it routes Signals and otherwise operates in accordance with the National Telephone Numbering Plan and any Allocation of Telephone Numbers made by the Director from time to time".

- 3.73 Ofcom does not consider that the pricing data stored in billing systems falls within the meaning of this condition. Ofcom set out the legal framework for its involvement in and enforcement of retail pricing arrangements for 0845 and 0870 calls in Chapter 1 of the September 2003 Consultation, and in Section 1 and Annex D of this statement.
- 3.74 Ofcom has considered BT's comments regarding the various available options for 0845 and 0870 retail pricing in its analysis of policy options in Section 4. Ofcom agrees that single price points for all of 0845 and all of 0870 are easier for consumers to understand than a ladder of different retail prices, even if this ladder were subject to a ceiling on the BT network. Ofcom also agrees that there is scope for prices – particularly for voice calls - to inflate to the ceiling for 0845 and 0870 calls under Options 2(a) and 2(b).
- 3.75 Ofcom notes BT's comments about the number of different NTS Service Providers sharing 10k blocks of 0845 and 0870 numbers, and agrees with BT that the implementation of Option 2(a) or 2(b) could result in many NTS Service Providers either accepting unwanted retail price changes for their services, or having to migrate to new numbers (see paragraph 3.39 above). However, by the same token, the fact that many NTS Service Providers share the same 10k (or indeed 1k) number blocks will, Ofcom believes, lessen the risk (identified by Oftel in the September 2003 Consultation) of changes to the prices of blocks of 0845/0870 numbers (as envisaged under some of the options considered) without consumers being aware. Changing the price of an entire number block would involve changing the prices of all the services sharing the same 10k (or 1k) number block, which would be difficult to achieve in an inconspicuous manner, given the number of NTS Service Providers likely to be using numbers from within the block in question.
- 3.76 In relation to BT's proposals for several different variations on Option 3 (under which Ofcom would set the retail price for 0845 and 0870 calls on the BT network), Ofcom notes that many of these suggestions would be likely to result in an increase in the retail prices paid by consumers for calls to these services, which does not appear to Ofcom to be in the consumers' interest, despite the stability in termination payments that might be afforded to the industry. Ofcom has considered further the desirability of Option 3 in Section 4. Ofcom agrees with BT that the likelihood of Ofcom's decision as to the appropriate retail price under Option 3 (or any variants on Option 3) being legally challenged by at least one member of the industry is high.

## Section 4

# Analysis of policy options

- 4.1 This Section sets out the advantages and disadvantages of the policy options considered. The options were either set out explicitly in the September 2003 Consultation or were suggested by respondents during the consultation period. In assessing the options, Ofcom has been mindful of new developments in the industry since the close of the consultation period. This Section also summarises Ofcom's conclusions in relation to each option. The detail of Ofcom's appraisal of each option is included at Annex J.

### Criteria for evaluating options

- 4.2 In the September 2003 Consultation, Oftel outlined the criteria considered key for assessing the relative merits of the different policy options. The main criteria to be considered were developed from the European Community requirements set out in section 4 of the Communications Act, and were described in the September 2003 Consultation as the promotion of competition and the promotion of the interests of consumers (in terms of transparency of pricing and the opportunity for consumers to benefit from future retail price reductions). Although there may be a number of other benefits linked with the different proposals and which are relevant to the assessment of the policy these two broad criteria are considered most important.
- 4.3 Oftel asked for comments about the proposed criteria in the September 2003 Consultation. Where specific comments were made the respondents were broadly in agreement with the criteria for assessing the available options proposed in the consultation document. Several Communications Providers provided more detailed comments and suggestions for additional criteria.
- 4.4 One respondent suggested that Ofcom should consider including the likely impact of each option on the introduction of new services, the economic effects from which include greater productivity, more choice and greater levels of competition. Its view was that greater pricing flexibility would encourage the introduction of more innovative services, and that the economic benefits of these should be taken into account in any cost/benefit analysis. Ofcom accepts that consumer choice and greater pricing flexibility may be in the interests of consumers and has attempted to consider these factors in its assessment of the relative merits of the options.
- 4.5 Another respondent suggested that more consideration should have been given to practicalities of managing price changes and numbering. Ofcom agrees that it is important to take practical issues into consideration and has attempted to do so in its assessment of the relative merits of the options.

### Cost-benefit analysis

- 4.6 In the September 2003 Consultation, Oftel asked for quantifiable evidence about the costs and benefits of implementing the various options identified for retail pricing of 0845 and 0870 calls in order to facilitate a full cost-benefit analysis (CBA) of the options. Overall the responses to the consultation about the likely impact on prices and output indicate that it is not possible to undertake a meaningful CBA in the form proposed in the consultation document. Since the costs and benefits to stakeholders of the different options are difficult to quantify Ofcom has considered the likely costs and benefits to all stakeholders in qualitative terms in order to identify the appropriate policy option to adopt. As a result the key objective of this Section is to qualitatively identify the costs and benefits of the different policy options available.



## Options considered

- 4.7 Five different options were proposed in the September 2003 Consultation, namely:
- € Options 1(a): the geographic/non-geographic link between retail prices for 0845/0870 and standard local/national call prices on the BT network is not broken and there is no change to the retail pricing arrangements for 0844 and 0871 calls;
  - € Option 1(b): the geographic/non-geographic link is not broken for 0845 and 0870 numbers on the BT network, but the retail pricing arrangements for 0844 and 0871 calls are modified to allow tariffing at the 10k block level;
  - € Option 2(a): the geographic/non-geographic link on the BT network is broken, Ofcom's allocation arrangements for 0845 and 0870 numbers remain unchanged, and it is possible for those allocated 0845 and 0870 numbers by Ofcom to choose the retail prices on the BT network for each 10k or 1k block they are allocated;
  - € Option 2(b): the geographic/non-geographic link on the BT network is broken, 0845 and 0870 numbers are allocated in 1k blocks and it is possible for those allocated 0845 and 0870 numbers by Ofcom to choose the retail prices on the BT network for each 1k block they are allocated; and
  - € Option 3: the geographic/non-geographic link on the BT network is broken, and Ofcom sets the retail prices for calls to 0845 and 0870 numbers.
- 4.8 As described in Section 3, two additional options were proposed by respondents during the consultation period:
- € Option 4: the geographic/non-geographic link on the BT network is broken and Ofcom sets the level of termination payment payable by BT, recalculating it annually based on the net retail price payable in the starting year, and using BT's costs for that particular year. This would allow BT (in theory) to vary its retail price without impact on the level of the termination payment. (In practice, in setting the level of the termination payment, Ofcom would also be setting the minimum retail price for 0845 and 0870 calls under this option, since BT has an obligation under its SMP Basis of Charges Condition set out in the Call Origination Market Review to recover its costs for network access, for example NTS call origination.)
  - € Option 5: Ofcom requires all Originating Communications Providers (both BT and non-dominant Originating Communications Providers) to price 0845 calls at their local geographic rate and 0870 calls at their national geographic rate.

## New developments since the close of the consultation period

- 4.9 Since the end of the consultation period in December 2003, there have been several new developments which are relevant to the issue of retail pricing of 0845 and 0870 calls on the BT network.
- 4.10 BT and a group of other Communications Providers ('the NTS Futures Sub-group') presented a proposal ('the NTS Futures Proposal') to Ofcom and the NTS industry that was effectively a further development of Option 4, outlined at paragraph 4.8 above. The key elements of this proposal in relation to 0845/0870 retail pricing are:
- € the link between geographic and non-geographic call prices on the BT network would be broken;
  - € 0845 calls would continue to be tariffed at one headline rate (as would 0870 calls) and would not be broken up into different pricing steps within the 0845 or 0870 range;
  - € BT and Terminating Communications Providers would agree the termination payment bilaterally, but it would be the same gross termination payment for all Terminating Communications Providers, varying for each Terminating Communications Provider only

depending on how far each Terminating Communications Provider has built out to the BT network; and

€ BT would then set the retail price for 0845 and 0870 calls on its network by adding a retail margin.

- 4.11 This is a very recent development, and only a high level framework has been mapped out by the NTS Futures Sub-group at present. The actual level of the termination payment, and the consequential impact on the retail prices that consumers could expect to pay for 0845 and 0870 calls on the BT network, has yet to be proposed, although Ofcom considers it likely that the proposal would result in an initial increase in retail prices for these calls, without any clear mechanism for future reductions in these prices. As this proposal was made well after the end of the formal consultation period, and the full details are not yet available, Ofcom has been unable to consider this proposal further in the context of this statement. The NTS Futures Sub-group has suggested, and Ofcom agrees, that this proposal be fed into Ofcom's longer term re-examination of the NTS framework (see paragraph 2.14 above).
- 4.12 An additional issue that has arisen since the end of the consultation is that BT announced publicly in March 2004 its new retail pricing plans, which involve moving residential customers currently on BT's standard line rental to BT Together Option 1. Whilst BT's standard call charges will remain in place for business and residential light user scheme (LUS) customers, other residential customers will – following this change - be paying 5.5p for off-peak calls to local or national geographic numbers of up to an hour (but not 0845 and 0870 non-geographic numbers). This development will clearly place additional strain on the description of 0845 and 0870 prices as being BT's standard local and national call prices. Ofcom has taken this into account in its consideration of the options available for 0845 and 0870 retail pricing. Additionally, as mentioned at paragraph 2.17 above, Ofcom has opened an own initiative investigation into the wider implications of BT's retail pricing proposals.

### **Assessment of options**

- 4.13 Ofcom has considered the likely advantages and disadvantages of the various options and concluded that Option 1(b) is the most appropriate solution. This is based on a number of factors which are summarised below. The detail of Ofcom's appraisal of each option is included at Annex J. For the purposes of the following summary, a number of headings are used for clarity. These headings are not intended to represent additional or alternative criteria, but are intended to reflect various aspects of the two principal criteria set out at paragraph 4.2 above, namely promotion of competition and the promotion of the interests of consumers.

### **Price transparency and consumer confusion**

- 4.14 All options are likely to be associated with a degree of consumer confusion about the prices of 0845/0870 numbers.
- 4.15 Options 1 and 5 give consumers a relatively simple message about the price of calls to 0845/0870 numbers, although there is still likely to be confusion from some groups about the tariffs they face. It is also important not to overstate the value of a simple price message. Arguably, a simple price message has been available for 0845 and 0870 numbers since they were introduced in 1996, yet, according to Oftel's research as set out at Annex F, levels of consumer recognition of 0845 as 'local rate' and 0870 as 'national rate' are still low (29% and 28% respectively). However, to address concerns about confusion as to the appropriateness of the 'local rate' and 'national rate' pricing message, Ofcom proposes to change the designations of 084 and 087 numbers in the Plan so as to make the designations clearer to industry. In addition, Ofcom plans to issue guidance to advertisers as to how 084/087 numbers should be promoted to provide clearer information to consumers.
- 4.16 Under Option 3 price transparency for consumers could be achieved if one retail price covered the entire 0845 range and another covered the entire 0870 range. The respondents that proposed Option 4 suggested that under this option, BT could do what it wanted in terms

of retail pricing and discounting as long as the terminating payment was fixed. In reality, however, BT's SMP Basis of Charges Condition requires that BT must cover its costs for the provision of network access, for example NTS call origination. Under Option 4 therefore, although there may be some slight variations in retail prices, with some opportunity for BT to reduce its retail prices (in line with costs of NTS call origination) its ability to do so is limited given the fixed minimum level of termination payment it must pay. As a result retail prices will effectively be fixed at the level of the termination payments plus BT's origination costs (which may vary, but only slightly over time). This may give larger numbers of consumers greater price transparency compared to the status quo and options 2(a) and 2(b), although the retail price of 0845/0870 calls could increase if BT's call origination charges increase.

- 4.17 Options 2(a) and 2(b) are likely to be associated with substantial increases in consumer confusion about the price of NTS calls. Tariff awareness generally may deteriorate because of the potential proliferation of price points. BT consumers who previously understood the concept of the link between geographic and non-geographic tariffs may be confused about the new system of tariffs.
- 4.18 There is the risk that tariff transparency may suffer if Terminating Communications Providers are able to change their prices, without having to change their numbers as envisaged under Options 1(b), 2(a) and 2(b). However, Ofcom considers that this risk is smaller than Oftel previously thought, due to the large number of NTS Service Providers who typically share 10k or 1k number blocks, which will make it less straightforward for a Terminating Communications Provider to change the retail price for a number block unobtrusively.

### **Impact on competition**

- 4.19 Options 1(a), 1(b) and 5 ensure that there will continue to be downward pressure on the retail prices for 0845 and 0870 calls by virtue of the link between retail geographic and non-geographic prices on the BT network (and, in the case of Option 5, on all other networks as well). This should benefit both BT and non-BT consumers, since non-dominant Originating Communications Providers will set their retail prices for 0845 and 0870 calls taking into account the price that BT charges. BT's geographic local and national retail prices are being driven down due to competition (for example by means of carrier pre-selection) and retail price control regulation.
- 4.20 Option 1(b) has the added benefit that there is greater potential for retail price competition for 0844/0871 calls to develop since the prices for these services on the BT network will be able to change without Terminating Communications Providers and NTS Service Providers having to change their numbers for any new services, and after any initial migration of existing services from 0845/0870 numbers.
- 4.21 Under Options 2(a) and 2(b) consumers may also benefit from retail price competition as Terminating Communications Providers gain flexibility in setting prices for their 0845/0870 number blocks. For example there may be more price competition in dial-up internet services (or some competing voice services such as conference call facilities) than under Option 1(a) as consumers can select between a number of competing ISPs offering different retail prices to achieve essentially the same service. However the competitive pressures on voice calls to specific organisations or via call centres may be limited since consumers cannot choose different telephone numbers to access the same service. Also the extent of price competition under Options 2(a) and 2(b) may be more limited than Oftel previously believed as a result of the potentially large numbers of voice and data services coexisting within 10k or 1k blocks. Since one retail price for the block (selected by the Terminating Communications Provider) might suit some NTS Service Providers but not others, dissatisfied NTS Service Providers face the problem of having to accept the retail prices chosen by their Terminating Communications Providers or migrate their services to other number ranges. Ofcom acknowledges that, under Option 1(b), sharing of 0844/0871 number blocks between NTS Service Providers could also mute competition on the basis of the retail price in the 0844/0871 ranges in a similar way. However, Ofcom considers that, given the lower take-up

of 0844/0871 numbers to date (as set out in Annex D of the September 2003 Consultation), this will be less of a problem in the 0844/0871 number ranges than it is in the more heavily used legacy 0845/0870 ranges.

- 4.22 If the geographic/non-geographic link is broken on the BT network, it is therefore feasible that consumers may suffer because non-geographic rates may increase to the proposed retail price ceilings. This may be a particular problem for some voice calls, as noted. Under Option 3, prices for 0845/0870 calls on the BT network would be fixed by Ofcom (and this would also largely be the case under Option 4), and the only future significant downward pressure on prices would be regulatory pressure. Under Option 5, the obligation on all Originating Communications Providers to link geographic and non-geographic retail prices could significantly limit the scope for non-BT Originating Communications Providers to compete on the basis of geographic call charges (and for consumers to benefit from such competition). This is because any reductions they made in their geographic retail prices would have to be accompanied by reductions in their non-geographic retail prices, and reductions in non-geographic call prices must be made taking into account the level of the termination payment paid (under the current interconnection arrangements) to the Terminating Communications Provider.

### **Costs to Communications Providers and others**

- 4.23 Options 2(a) and 2(b) are associated with potentially substantial costs to Originating Communications Providers in terms of development in order to upgrade their networks and support systems to deal with pricing at a more disaggregated number block level than currently exists, with Option 2(b) likely to be more expensive than Option 2(a) due to the greater level of pricing disaggregation envisaged under Option 2(b). Originating Communications Providers would also incur on-going costs for additional management of retail pricing data under these options, again likely to be higher for Option 2(b) than 2(a), given the greater number of individually-tariffed number blocks envisaged under Option 2(b).
- 4.24 Although the other options do not generally impose this cost it is worth noting that Option 1(b) will impose some additional costs on Originating Communications Providers to allow pricing of 0844/0871 numbers at the 10k level (and at least one respondent thought these costs would be similar to the upfront costs for Option 2(a)). The on-going costs for additional management of retail pricing data would in Ofcom's view be likely to be lower since there would be fewer individually-tariffed number blocks under Option 1(b) than under either of Options 2(a) or 2(b).
- 4.25 In addition some respondents have indicated that Options 1(b), 2(a) and 2(b) impose costs on large companies; companies often have their own systems for recording and costing telephone calls, which would have to be upgraded with consequential financial and staffing costs.

### **Revenue stability**

- 4.26 Option 1(a) and Option 5 are the only options that do not address the concerns of Terminating Communications Providers and NTS Service Providers about the stability of their revenues from NTS calls. Options 2(a), 2(b), 3 and 4 address the concerns directly by enabling Terminating Communications Providers and NTS Service Providers to guarantee their revenues from 0845/0870 numbers by breaking the geographic/non-geographic price link. Option 1(b) addresses the concerns indirectly by making migration to 0844/0871 potentially more beneficial to Terminating Communications Providers in terms of increased pricing flexibility on these ranges, thereby giving them more control over their revenues if they choose to use these ranges.

### **Regulatory involvement**

- 4.27 Options 1 and 2 are consistent with Ofcom's commitment to seeking the least intrusive regulatory mechanisms consistent with achieving its policy objectives, and arguably Option 1

is less intrusive than Option 2, since it imposes a lower regulatory burden on BT (and indirectly on other Originating Communications Providers). Ofcom's commitment to seeking the least intrusive regulatory mechanisms implies relying on markets to set prices where possible and using minimum controls. Options 3, 4 and 5 are not consistent with this commitment since they involve setting BT's retail prices directly (Option 3), more detailed constraints on BT's retail pricing (Option 4) or widening the scope of the geographic/non-geographic link to non-dominant Originating Communications Providers (Option 5).

- 4.28 Ofcom believes that price setting by the regulator is likely to be most appropriate in situations of entrenched dominance. This is because the regulator is likely to set prices at the "wrong" level because information about costs is always imperfect and available only with a lag. This could result either in excessive charges and hence losses to consumers or charges which are too low and hence damage investment. Moreover, the regulator is unlikely to be able to respond quickly to market developments and so the price structure may become ossified, stifling innovation. Thus, whilst prices which are determined by the regulator may be preferable to those set by an unregulated and strongly dominant firm, there is a presumption in other circumstances that prices should be set by the market. Setting retail prices should be a last resort when wholesale regulation has not resolved the problem. For this reason it would also be more difficult to satisfy the tough legal tests required to implement Option 3 or 4 (or, to a lesser extent, Option 5 which involves widening in the scope of obligations to maintain a geographic/non-geographic link from BT to all Originating Communications Providers).
- 4.29 Option 1(a) requires the least regulatory involvement as it is basically the status quo, although there would probably be significant ongoing involvement as a result of disputes arising between BT and Terminating Communications Providers and/or NTS Service Providers as a result of reductions in their terminating payments arising from the geographic/non-geographic retail price link on the BT network.
- 4.30 Ofcom hopes to minimise the extent of these disputes by helping to make migration to 0844/0871 numbers more beneficial by removing barriers to migration as set out in Section 3 and Annex E and by implementing new pricing arrangements for 0844 numbers as envisaged under Option 1(b). It is intended that these changes will assist Terminating Communications Providers and NTS Service Providers to make the choice to switch their services to 0844 numbers which should minimise complaints from them about the erosion of their revenue shares in future.
- 4.31 Under Options 2(a) and 2(b) Ofcom may also benefit from seeing a reduction in the number of disputes brought by Communications Providers as Terminating Communications Providers and NTS Service Providers gain some control over their revenue streams. However they are also likely to be associated with substantial increases in consumer complaints about the lack of transparency of retail prices and the loss of the simple message achieved under the link with geographic prices, which might lead to the perceived need for more regulatory intervention in this area.

### **Loss of geographic/non-geographic link**

- 4.32 Options 2, 3 and 4 involve breaking the link on the BT network between BT's standard geographic call prices and 0845/0870 call prices. The implication of this is that NTS Service Providers are no longer able to market their services as being priced at standard local and national rates for BT customers (with due care to avoid misleading consumers). NTS Service Providers have indicated that they value the link as a marketing tool, although, as Ofcom has noted, this link does not to date appear to have resulted in particularly high levels of consumer recognition of the meaning of 0845 and 0870 numbers. Options 1(a), 1(b) and 5 do not result in the complete loss of this marketing message, although there is still likely to be consumer confusion about which consumers benefit from the link. Ofcom's proposal to change the designations of 084 and 087 numbers in the Plan to more appropriately reflect the basis on which these numbers are allocated and to issue guidance to advertisers as to how 0845/0870 numbers should be promoted should help reduce this problem.

## Conclusion

### 4.33 In Ofcom's view:

- € Option 1(a), the status quo, has the benefits to all consumers of retaining the geographic/non-geographic link on the BT network, notably the downward pressure on 0845 and 0870 call prices, but is associated with some consumer confusion and does not respond to Terminating Communications Provider/NTS Service Provider concerns about their revenue flows.
- € Option 1(b) has the benefits to all consumers associated with retaining the geographic/non-geographic retail price link on the BT network. The benefits of this link are not so much pricing transparency for consumers (since, even with the link in place, consumer awareness is not high, and there is the risk of some consumers being misled), but that without this link, Ofcom believes that there is a significant risk that retail prices for 0845 and 0870 calls – particularly voice calls - would increase. Ofcom acknowledges that Option 1(b) does not tackle consumer frustrations with the descriptions of 0845 and 0870 calls as 'local rate' and 'national rate' which is why Ofcom is proposing some additional measures to address this issue (see below). Option 1(b) responds to Terminating Communications Provider/NTS Service Provider concerns about their revenue flows by making migration to 0844/0871 number ranges more attractive. **For these reasons Ofcom has decided that this option should be implemented, with the slight modifications set out in Section 5.**
- € Options 2(a) and 2(b) may be effective solutions to the criticisms by Terminating Communications Providers and NTS Service Providers about the current instability and erosion of their revenue from NTS calls. Moreover they may deliver a degree of price competition in the delivery of some NTS services. However Ofcom considers that this is likely to be less than originally envisaged by Oftel, due to the friction introduced by large numbers of NTS Service Providers sharing the same 10k or 1k number blocks. This means that the ability of Options 2(a) and 2(b) to provide Terminating Communications Providers and NTS Service Providers with pricing flexibility without the need to migrate services to new numbers is likely to be significantly reduced. In addition, any increase in price competition will be at the expense of further reductions in price transparency for consumers, significant costs to Originating Communications Providers for system development and on-going pricing data maintenance and the potential for price inflation of some NTS services.
- € Options 3 and 4 address the concerns of Terminating Communications Providers and NTS Service Providers about their revenue flows but at the expense of significant and arguably disproportionate regulatory intervention by Ofcom, and the risk that retail prices for consumers would be higher than they might otherwise be under some other options considered.
- € Option 5 addresses the concerns of consumers about price transparency, such that all consumers would benefit from the geographic/non-geographic retail price link. However this is at the expense of significant and arguably disproportionate regulatory intervention by Ofcom and the risk of creating a significant constraint on competition on the basis of geographic call prices.

## Section 5

# Ofcom's decision

5.1 For the reasons set out in Section 4, Ofcom has decided that Option 1(b) is to be implemented for retail pricing arrangements for 0845 and 0870 calls on the BT network for the time being. However, to address concerns raised during the consultation process, and to take account of recent developments in the market, Ofcom had decided to implement Option 1(b) with a slight modification, and with other measures designed in particular to address the issue of consumer and industry confusion over the pricing for 084 and 085 calls. Ofcom's decision in full is therefore that:

- € the current link on the BT network between BT's standard (pre-discount and call package scheme) retail price for 0845 and 0870 calls and geographic local and national calls respectively will remain in place;
- € calls to numbers in the 0844 non-geographic range (which are not linked to BT's standard local rate) will continue to be subject to a price cap of 'up to 5p per minute or per call' on the BT network, but Terminating Communications Providers will be able to choose (and subsequently change) the retail price on the BT network (from a ladder of established retail price points) for each 0844 block they are allocated by Ofcom (whether a 10k block or an internet-only 1k block) to give them more control over their revenues if they choose to use this range. Ofcom has decided not to extend the same tariffing arrangements to the 0871 number range at this stage. This is because the most significant revenue concerns arise at present in relation to 0845 numbers due to their low retail prices, and the resultant higher relative impact of any reductions in retail price on the revenue share available on these numbers. There is therefore a need to make migration to 0844 more attractive for Terminating Communications Providers using 0845 numbers. In addition, limiting the new arrangements to 0844 at this stage also reduces the scope for consumer confusion over the new arrangements, and allows the incidence of changes in retail price without adequate consumer awareness to be monitored in a lower risk number range. Terminating Communications Providers will also be able to opt into or out of BT discount schemes on a 10k block-by-10k block basis for 0844 number ranges without having to change their existing numbers;
- € Ofcom is carrying out a further statutory consultation on a proposed change to the way the 084 and 087 number ranges are designated in the Plan to make it clearer to the industry the basis on which these numbers are allocated by Ofcom. Ofcom is also carrying out a statutory consultation on the changes required as a result to the numbering application form for 08 numbers. Additionally, there will be consequential administrative changes to the Scheme, but Ofcom is not required to consult on these changes; and
- € Ofcom will work with the industry to produce guidance to NTS Service Providers using 084 and 087 numbers on how these numbers (and in particular, pricing indications for calls to these numbers) can be advertised, in order to reduce the scope for consumers to be misled over pricing for calls to these numbers.

5.2 Ofcom notes the significant recent industry developments in relation to 0845 and 0870 retail pricing, including the 'NTS Futures' proposal for breaking the geographic/non-geographic retail price link on the BT network, and BT's own plans for changes to its retail prices from July 2004. Ofcom acknowledges that these developments place additional strains on the geographic/non-geographic link on the BT network. However, it is important to note that the primary purpose of the link is not to provide information for consumers. Rather it is to protect consumers' interests by maintaining reasonable retail prices for 0845 and 0870 calls on the BT network (and arguably for 0845 and 0870 calls from the networks of other Originating Communications Providers as well) due to competitive pressure in the geographic call market, in the absence of a suitable alternative mechanism for doing so. None of the alternative mechanisms examined in this document for setting the retail price for 0845 and

0870 calls on the BT networks appears at this stage to be better for consumers than the current geographic/non-geographic link. If the link is to be broken in future, Ofcom considers it should not be broken in isolation. Other measures must be put in place to ensure that the interests of consumers are fully taken into account in any future arrangements that the industry wishes to put in place.

- 5.3 With this statement and having reviewed the available options at this time, Ofcom has set out its current policy position on retail pricing of 0845 and 0870 calls on the BT network, to serve as a clear starting point for Ofcom's future work with consumers and the industry to review the NTS framework in the interests of all stakeholders.



## Section 6

# Consultation on changes to the National Telephone Numbering Plan

- 6.1 It is Ofcom's duty when proposing a modification to the Plan (and any modifications to a new telephone numbering application form) that it shows how it considers that its proposals comply with the legal tests in the Act.
- 6.2 This consultation invites comments on the notification of proposals to modify the Plan at Annex K. The effect of the modification will be to clarify the designations of the 0844, 0845, 0870 and 0871 number ranges in the Plan to provide additional information to the industry about the basis on which these ranges are allocated. Definitions of 'BT's Standard Local Call Retail Price' and 'BT's Standard National Call Retail Price', which are terms used in the designations of the 0845 and 0870 number ranges respectively, will also be added to the Plan in order to set out in more detail how Ofcom intends that the link is maintained between retail prices for 0845/0870 calls and local/national geographic calls on the BT network. In addition, the definition of 'Special Service' will be modified to remove the illustrative examples of different types of Special Service from the definition as Ofcom considers these not to be particularly informative. The definition of 'Special Service' will also be modified to remove the reference to a price threshold for Special Services, as Ofcom considers that it is the proposed new designations of the 0844, 0845, 0870 and 0871 number ranges that will contain the relevant pricing information rather than this definition. There will also be consequential administrative changes to the Scheme to ensure that it continues to be consistent with the Plan (should the Plan be modified as proposed) but Ofcom is not required to consult on those changes. Ofcom is satisfied that the proposal for a modification to the Plan meets the tests set out in section 60(2) of the Act (see paragraph D.10) being:
- € objectively justifiable, in that it relates to Ofcom's duty to publish and modify a Plan and is justified in order to ensure that accurate information is given to those applying for 084 and 087 numbers from Ofcom;
  - € not unduly discriminatory, in that all Communications Providers eligible to apply for Telephone Numbers may apply to Ofcom for an allocation of 084 and 087 numbers. Although the proposed modifications do refer explicitly to charging for BT customers, Ofcom does not consider this to be unduly discriminatory as Ofcom regards this to be necessary due to BT's SMP in wholesale call origination;
  - € proportionate, in that the proposed modification to the Plan is the minimum revision to its provisions necessary to ensure accurate information is given to those applying for 084 and 087 numbers;
  - € transparent, in that the Notification proposing the modification to the Plan and its effect are set out in this consultation.
- 6.3 In making its proposals, Ofcom considers that it is fulfilling its duty in section 63 of the Act (which refers to Ofcom's general duty as to telephone numbering functions), namely that Ofcom is:
- € securing the best use of appropriate numbers, in that (for the reasons set out in Section 4 of this document), the revised designations proposed for the 0844, 0845, 0870 and 0871 ranges will continue to allow these numbers to be used for the provision of value-added services, whilst ensuring that there continues to be pressure on retail prices for these services; and
  - € encouraging efficiency and innovation, in that the proposal ensures that those applying for numbers understand what retail pricing arrangements will apply to their services when

using these numbers, and those wishing to set their own retail prices in order to fund innovative services will be able to do so.

- 6.4 Ofcom considers that its proposals are consistent with its general duties in carrying out its functions as set out in section 3 of the Act (see paragraph D.21). The proposals further the interests of citizens in relation to communications matters and consumers in relevant markets for the reasons set out in Section 4 of this document, for example by ensuring that there continues to be pressure on the retail prices of 0845 and 0870 calls, both directly on the BT network by means of these designations, and indirectly on the networks of other Originating Communications Providers due to competitive pressure.
- 6.5 In proposing the modification to the Plan, Ofcom has also considered the Community obligations set out in section 4 of the Act (see paragraph D.22), particularly the requirement to promote competition in the provision of Electronic Communications Networks and Electronic Communications Services, and the requirement to promote the interests of all persons who are citizens of the European Union. Ofcom has explained in Section 4 of this document why it considers the decision in this statement, and the proposal for modifications to the Plan, meet these requirements.

*Question 1: Ofcom proposes to modify the Plan in relation to the designations for 0844, 0845 and 0870 and 0871 numbers as shown in Annex K. Do you have any specific comments on the proposals to modify the Plan in this manner?*

## Section 7

# Draft Direction on modifications to the application form for 08 numbers

7.1 The purpose of this Section of this document is to introduce Ofcom's consultation on a draft Direction relating to a modified application form for 08 Telephone Numbers. The proposed changes are largely administrative, to ensure that the application form will be consistent with the new designations of the 0844, 0845, 0870 and 0871 number ranges in the Plan proposed elsewhere in this document. Ofcom is consulting on a draft Direction under paragraph 17.9 of the Numbering General Condition. Condition 17.9 states that:

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

(a) use an appropriate application form as directed by the Director from time to time as he thinks fit;

(b) provide such information as is required by such application form"

7.2 The effect of the Direction will be to modify the telephone numbering application form for 08 Telephone Numbers. A notification of the draft direction is at Annex L, and the proposed modified application form for 08 numbers is attached. The proposed changes to the text of the application form are italicised and underlined, with text to be deleted indicated by square brackets. Ofcom is satisfied that the modified application form is appropriate for application for 08 numbers and that the draft Direction meets the tests set out in section 49(2) of the Act, in that it is:

- € objectively justifiable, in that it relates to the need to change certain text on the application form to ensure it is consistent with the proposed new designations of the 0844, 0845, 0870 and 0871 number ranges in the Plan, as set out elsewhere in this statement;
- € non-discriminatory, in that all Communications Providers affected by the direction will have to use the same forms, and the proposed modifications will be applicable to all applicants;
- € proportionate, in that the changes to the application form proposed are the minimum necessary to ensure the form is consistent with the proposed new designations in the Plan, and the form only requests the minimum information necessary for Ofcom to make a decision on whether the applicant is eligible to be allocated Telephone Numbers, or to be allocated further telephone numbers. Communications Providers should note that the revised application form will continue to request tariff information for 0844 non-internet blocks beyond the date that 10k tariffing of 0844 numbers commences on the BT network. This is in order to provide information important to Ofcom in the processing of applications for additional numbering capacity; and
- € transparent in that the draft Direction, and its effect, have been set out in this consultation and will be set out in the forthcoming statement and determination at the end of the consultation period.

7.3 In proposing the draft Direction, Ofcom has considered its general duties in carrying out functions as set out in section 3 of the Act, in particular the requirement to further the interests of citizens in relation to communications matters and consumers in relevant markets, by making available an up-to-date application form for Communications Providers to request allocations of 08 Telephone Numbers, which may then be provided to citizen consumers in order to access 08 services.

- 7.4 In proposing the draft Direction, Ofcom has also considered the Community obligations set out in section 4 of the Act (see paragraph D.22), particularly the requirement to promote competition in the provision of Electronic Communications Networks and Electronic Communications Services, and the requirement to promote the interests of all persons who are citizens of the European Union. Ofcom has explained in Section 4 of this document why it considers the decision in this statement (which results in the need for Ofcom to update the application form for 08 numbers) meets these requirements.
- 7.5 Comments are invited on the draft direction by **31 May 2004**. Clearly the direction will become redundant and will not be made unless the modification to the Plan proposed elsewhere in this document is made, making the proposed changes to the designations of the 0844, 0845, 0870 and 0871 number ranges.

*Question 2: Do you have any comments on Ofcom's proposed revised telephone numbering application form (as set out in Annex L) for 08 numbers?*

## Section 8

# The consultation process and next steps

### How to respond

- 8.1 Ofcom is publishing this consultation document so that interested parties may comment on the issues it addresses. The closing dates for submitting comments are:
- 5pm on 31 May 2004** for comments on the notification of proposed modifications to the National Telephone Numbering Plan; and
- 5pm on 31 May 2004** for comments on the draft Direction proposing a modified telephone numbering application form for 08 numbers.
- 8.2 Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, 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 cover sheet (see Annex B) to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.
- 8.3 Please can you send your response to [geoff.brighton@ofcom.org.uk](mailto:geoff.brighton@ofcom.org.uk).
- 8.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Geoff Brighton  
Competition and Markets  
4<sup>th</sup> floor  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7783 4109
- 8.5 Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.
- 8.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex C. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

### Further information

- 8.7 If you have any questions about the issues raised in this consultation, or need advice on the appropriate form of response, please contact Geoff Brighton on 020 7783 4175.

### Copies of this document

- 8.8 This document can be viewed in the consultation section of Ofcom's website at:  
<http://www.ofcom.org.uk/consultations>

### Confidentiality

- 8.9 Ofcom thinks 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](http://www.ofcom.org.uk), as soon as possible after the consultation period has ended.
- 8.10 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. 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.
- 8.11 Please also note that copyright in responses will be assumed to be relinquished unless specifically retained.

### Next steps

- 8.12 Following the end of the consultation period, and subject to consideration of the responses received, Ofcom intends to publish its decisions in the following manner:
- € a Direction and accompanying statement on the telephone numbering application form for 08 numbers (assuming the proposed modifications to the Plan are adopted);
  - € the modification to the Plan (assuming it is adopted) and accompanying statement; and
  - € should Ofcom decide to proceed with these changes to the Plan as a result of this consultation, Ofcom intends to make the necessary consequential changes in the Scheme to support the proposed changes in the Plan.

### Ofcom's consultation process

- 8.13 Ofcom is aware of the effect of its actions on consumers and organisations and strongly believes that consultation has a vital role to play in its decision making process, allowing those who may be affected by or concerned about a particular issue to have their views taken into account. It is, therefore, important that Ofcom's consultation process is effective and to this end, it has devised seven principles which it will follow for each written consultation (see Annex A). With respect to this consultation, Ofcom is satisfied that it has met the principles in the following manner:
- 8.14 Discussions with stakeholders: Oftel and Ofcom have presented the impact of various options for the retail pricing on 0845 and 0870 numbers to stakeholders both before, during and after the September 2003 Consultation. This work has included discussions with the NTS Focus Group (an interest group of Communications Providers originating and terminating NTS services), Oftel's ISP Forum, the Advertising Standards Authority, the Communications Managers Association and members of the Ofcom Consumer Panel. The specific issues considered in this further consultation are the detailed changes required to the Plan and the application form for 08 numbers to implement Ofcom's decision taken as a result of the September 2003 Consultation. As a result of previous discussions, and the fact that this consultation is about detailed changes to statutory documents, further discussions with stakeholders on these specific matters of detail prior to the launch of this particular consultation were not deemed to be necessary.
- 8.15 Extent of consultation: this consultation is aimed particularly at Terminating Communications Providers and NTS Service Providers. This is because it relates to proposed amendments to the Plan and application form for 08 numbers, which are intended to give clearer information to those allocated numbers (i.e. Terminating Communications Providers, and, through them, NTS Service Providers) as to the basis on which 084 and 087 numbers are allocated by Ofcom. However, it is a public consultation and responses from all interested parties are welcome on the proposed amendments to the Plan and application form for 08 numbers.
- 8.16 Consultation details: The consultation seeks comments from stakeholders on proposed changes to the Plan and the application form for 08 numbers to implement Ofcom's decision

as a result of the September 2003 Consultation. As such, the consultation relates only to these changes, rather than the broader issues surround 0845 and 0870 retail pricing policy which have already been addressed in the body of this document as a result of the September 2003 Consultation. The Executive Summary provides a précis of the document's main points and proposals under consultation.

- 8.17 Timetable for responses: The consultation on the modification to the Plan and the numbering application form for 08 numbers will run for the statutory one month consultation period. Ofcom considers that it is appropriate to consult for a shorter period than the standard ten weeks because this consultation only relates to changes to statutory documentation required to implement Ofcom's policy decision as a result of Oftel's previous consultation in September 2003, which ran for three months. Once the deadline for receipt has passed, Ofcom will take all submissions into account in its decision, ensuring it remains accountable to its stakeholders.
- 8.18 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](mailto: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, whose views are less likely to be obtained in a formal consultation.
- 8.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 020 7981 3585  
Fax: 020 7981 3333  
E-mail: [philip.rutnam@ofcom.org.uk](mailto:philip.rutnam@ofcom.org.uk)

## Annex A

# Ofcom's consultation principles

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

### Before the consultation

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

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

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.

4 We will normally allow ten weeks for responses, other than on dispute resolution.

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.

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

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 B

# Consultation response cover sheet

- B.1 In the interests of transparency, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), as soon as possible after the consultation period has ended, 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, unless we are asked not to.
- B.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.
- B.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.
- B.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, 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):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

Name/contact details/  
job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

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)?

Yes

No

### DECLARATION

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. If I have sent my response by email, Ofcom can disregard any standard email text about not disclosing email contents and attachments.

Name

Signed (if hard copy)

## Annex C

# Consultation questions

*Question 1: Ofcom proposes to modify the Plan in relation to the designations for 0844, 0845 and 0870 and 0871 numbers as shown in Annex K. Do you have any specific comments on the proposals to modify the Plan in this manner?*

*Question 2: Do you have any comments on Ofcom's proposed revised telephone numbering application form (as set out in Annex L) for 08 numbers?*

## Annex D

# The legal framework

### The new regulatory framework

- D.1 A new regulatory framework for electronic communications networks and services entered into force on 25 July 2003. The framework is designed to create harmonised regulation across Europe and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers. The basis for the new regulatory framework is five new EU Communications Directives:
- € Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (“the Framework Directive”);
  - € Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (“the Access Directive”);
  - € Directive 2002/20/EC on the authorisation of electronic communications networks and services (“the Authorisation Directive”);
  - € Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, (“the Universal Service Directive”) and;
  - € Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (“the Privacy Directive”).
- D.2 The first four Directives were implemented in the UK on 25 July 2003. This was achieved via the Communications Act 2003 (“the Act”). The fifth Directive was adopted slightly later than the other four Directives and was implemented by Regulation which came into force on 11 December 2003.
- D.3 As a consequence of this new regulatory regime, a number of market reviews were carried out by Director-General of Telecommunications (the “Director”).

### The BT NTS Call Origination Condition

- D.4 Oftel published its *Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets* (Explanatory Statement and Notification) on 28 November 2003 (‘the Call Origination Market Review’). It is available on Ofcom's web site at [http://www.ofcom.org.uk/legacy\\_regulators/oftel/narrowband\\_mkt\\_rvw/fixednarrowbandstatement.pdf](http://www.ofcom.org.uk/legacy_regulators/oftel/narrowband_mkt_rvw/fixednarrowbandstatement.pdf)
- D.5 In this review, Oftel established an NTS call origination condition (‘the BT NTS Call Origination Condition’) as a remedy to the proposal that BT has Significant Market Power (SMP) in the markets identified in that review. This condition is set out at Annex H. Under this obligation, BT must provide NTS call origination (i.e. the origination of NTS calls and the retailing of those calls to the end-user on behalf of the purchaser of NTS Call Origination) on fair and reasonable terms, conditions and charges. In addition, the provision of NTS call origination services is subject to the other SMP conditions which apply to all requests for network access, (for example call origination services) which regulate such matters as the basis of charges and the requirement that there be no undue discrimination.

### The Communications Act 2003 and the National Telephone Numbering Plan

- D.6 Oftel joined four other communications regulators to form the Office of Communications (Ofcom) on 29 December 2003. Ofcom regulates the communications sector under the framework established by the Act, which received Royal Assent on 17 July 2003 and came into force on 25 July 2003. Ofcom's duties include (under section 63 of the Act) the duty “to secure that what appears to them [*i.e. Ofcom*] to be the best use is made of the numbers that

are appropriate for use as telephone numbers". The legal framework governing the numbering aspects of this statement is contained within the Act.

D.7 Section 56(1) of the Act states that:

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

(a) the numbers that they have determined to be available for allocation by them as telephone numbers'

D.8 Oftel consulted on the Plan, the final version of which was published on 22 July 2003 and came into force on 25 July 2003. Part A of the Plan sets out the numbers that are available for allocation as Telephone Numbers in accordance with section 56(1)(a) of the Act. This includes 0845 and 0870 numbers. Part A1 of the Plan states that the designation of 084 numbers is:

'Special Services: up to 5p per minute or per call, set by Terminating Communications Provider, or at Originating Communications Provider's 'Local Rate' (inclusive of value added tax)'

and the designation of 087 numbers is:

'Special Services: up to 10p per minute or per call, set by Terminating Communications Provider, or at Originating Communications Provider's 'National Rate' (inclusive of value added tax).'

D.9 The Act provides for Ofcom to review and revise the Plan. Section 56(2) states that:

'It shall be OFCOM's duty-

(a) from time to time to review the National Telephone Numbering Plan; and

(b) to make any revision of that plan that they think fit in consequence of such a review;

but this duty must be performed in compliance with the requirements, so far as applicable, of section 60.'

D.10 One of the outcomes of this statement is that Ofcom is proposing a change to the designations of 084 and 087 numbers as contained in the Plan. Therefore, consideration must be given to section 60 of the Act, which advises on procedures for modifying documents referred to in the numbering conditions, including, specifically, the Plan. Section 60(2) of the Act provides that:

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

(a) objectively justifiable in relation to the matters to which it relates;

(b) not such as to discriminate unduly against particular persons or against a particular description of persons;

(c) proportionate to what the modification is intended to achieve; and

(d) in relation to what it is intended to achieve, transparent.'

D.11 Section 60(3) further provides that:

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

(a) stating that they are proposing to do so;

(b) specifying the Plan or other document that they are proposing to revise or modify;

(c) setting out the effect of their proposed revisions or modifications;

(d) giving their reasons for making the proposal; and

(e) specifying the period within which representations may be made to OFCOM about their proposal.'

D.12 Ofcom has taken into consideration the requirements in section 60 of the Act, regarding the changes proposed to the Plan as a result of this statement (see Section 6). This statement therefore includes a draft notification of changes to the Plan which is issued for a one-month consultation period as required by section 60(4) of the Act (see Annex K).

D.13 As well as listing the numbers available for allocation, the Plan also sets out restrictions on the Adoption and other uses of those numbers in accordance with sections 56(1)(b) and 56(1)(c) of the Act. Part B1 of the Plan states that:

'Those to whom Ofcom has allocated any telephone number listed in Part A of the Plan shall not adopt or otherwise use them, except in accordance with the applicable designation given for that number range.'

D.14 In proposing the modification to the Plan and the application form for 08 numbers in the document, Ofcom must also have regard to Section 63 of the Act which provides that:

'It shall be the duty of OFCOM, in the carrying out of their functions under sections 56 to 62-

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

(b) to encourage efficiency and innovation for that purpose.'

### **The Numbering General Condition**

D.15 Ofcom is also permitted to set general conditions under section 45 of the Communications Act, including requirements in connection with the allocation, adoption and use of telephone numbers. Condition 17 ('the Numbering General Condition') is set out at Annex I. The Numbering General Condition requires (amongst other things) that numbers are adopted in line with the Plan. Condition 17.4 states that:

'The Communications Provider shall have a Numbering Plan for such Telephone Numbers as Ofcom may Allocate to it from time to time. Except where Ofcom otherwise consents in writing, such Numbering Plan shall be consistent with the National Telephone Numbering Plan.'

D.16 As explained, the Plan and the Numbering General Condition both require telephone numbers to be used in accordance with their designations. However, 0845 and 0870 numbers are currently allocated to Terminating Communications Providers, not Originating Communications Providers, which means that it is the Terminating Communications Provider that is bound to observe the designations in the Plan. In other words, any references to retail pricing arrangements for these numbers in the designations in the Plan are not enforceable via the Numbering General Condition, since these numbers are allocated to Terminating Communications Providers but retail price arrangements are in general in the control of Originating Communications Providers.

### **The National Numbering Scheme**

D.17 The Plan supplies broad designations for number ranges, but does not provide detail about sub-ranges. This is to avoid the need to frequently consult on amendments to the Plan, which do not represent a policy change or have a material effect on stakeholders. Detail on designations of sub-ranges is provided in the National Numbering Scheme ('the Scheme'), which is a day to day record of telephone numbers allocated by Ofcom in accordance with the Plan, and as provided for in section 56(3) of the Act. The Scheme, therefore, provides finer detail than the Plan on designations for the 08 range which is used for Special Services paid for through the telephone bill of a subscriber and charged at special rates. In order to allow meaningful tariff information, sub-ranges in the 08 range are allocated with the first few digits having the following significance:

080	No charge to caller
0820	Internet for Schools
0844	Up to 5p, set by terminating communications provider
0845	Originating communications provider's 'Local Rate'
0870	Originating communications provider's 'National Rate'
0871	Up to 10p, set by terminating communications provider

- D.18 However, although the Scheme has until now designated that 0845 and 0870 numbers are charged at the Originating Communications Provider's local and national rate, the Numbering General Condition does not impose a direct obligation on Communications Providers to act in accordance with the Scheme, as its legal basis is only as a record of numbers allocated. Therefore, the intention that the price of calls to 0845 and 0870 numbers be no higher than the tariff for standard geographic calls is in reality guidance rather than an enforceable condition. This is due to two reasons:
- € the legal status of the Scheme; and
  - € the fact that the intentions behind the designation cannot be enforced by the withdrawal of number blocks, as the allocatee is the Terminating Communications Provider, whilst it is currently the originator of the call that sets the retail price for 0845 and 0870 numbers.
- D.19 Therefore, despite the fact that some Communications Providers (most notably BT) maintain a working practice of linking the tariffs for 0845 and 0870 calls to the tariffs for 'local rate' and 'national rate' geographic calls, neither the Plan nor the Scheme contains enforceable obligations to do so. Ofcom has set out its policy in this statement and where necessary, Ofcom may consider exercising its ex ante powers including those under the BT NTS Call Origination Condition or, if appropriate, its ex post powers under the Competition Act.
- D.20 One of the outcomes of this statement is that Ofcom is proposing a change to the designations of 084 and 087 numbers as contained in the Plan. If, following consultation, these proposed changes to the Plan are implemented, Ofcom will also make some administrative changes to the Scheme in relation to 084 and 087 numbers, to ensure that the Scheme continues to be consistent with the proposed new terminology in the Plan. Ofcom is not required to consult on changes to the Scheme.

### General duties of Ofcom

- D.21 The Act confers duties on Ofcom to be observed in the carrying out of its functions. Section 3(1) of the Act gives these duties as:

“(a) to further the interests of citizens in relation to communications matters; and  
(b) to further the interests of consumers in relevant markets, where appropriate by promoting competition”.

As part of the fulfilment of these duties, it is Ofcom's responsibility to secure the availability throughout the UK of a wide range of electronic communications services (ECSs), having regard to the interests of consumers in respect of choice, price, quality of service and value for money.

### Duties for the purpose of fulfilling Community obligations

- D.22 In addition to its general duties as to telephone numbers, Ofcom must also take into account the six Community requirements in carrying out its functions as set out in section 4 of the Act. These include the requirement to promote competition in the provision of electronic communications networks and electronic communications services, and the requirement to promote the interests of citizens of the European Union.

## Annex E

# Migration of dial-up internet access customers to new access numbers

### Introduction

- E.1 In Annex E of the September 2003 Consultation, Oftel examined the reasons quoted by ISPs against migrating their internet services from 0845/0870 number ranges to 0844/0871 number ranges and also provided some commentary on Oftel's own research into the subject. Oftel also specifically sought input from stakeholders on the costs of migration, and how these might be divided between fixed and per-customer costs (see Question 3 in the September 2003 Consultation).
- E.2 Since the consultation was issued, Ofcom has collated information about ISP migration techniques from responses to the consultation, from information gathered during Oftel's Review of the Wholesale Unmetered Narrowband Internet Termination Market during 2003, from meetings with ISPs and from Ofcom's own desk research on the subject. Overall, data about various forms of migration was obtained from six major ISPs which collectively serve more than 60% of narrowband internet users according to Oftel consumer and business research. The information collated from these various sources forms the basis for this Annex.

### Migration Process

- E.3 For an ISP to migrate a group of dial-up internet access customers to a new telephone number requires that the ISP arrange for each customer's computer be reconfigured to dial the new telephone number.
- E.4 The ISP's access telephone number is stored in 'dialler' software that controls the modem and manages the establishment of the dial-up connection. Dialler software is generally provided as a standard feature of the operating system<sup>1</sup>, but some ISPs provide their own customised dialler applications.
- E.5 Several different methods are employed by ISPs to update the access telephone numbers stored in customers' computers. These include:
- € requesting the customer to manually edit the telephone number stored in the dialler;
  - € providing the customer with a CD-ROM that either updates the telephone number in the existing dialler or replaces the existing dialler with a new dialler; and
  - € by requesting the customer to download either a new dialler or an application that updates the telephone number in the existing dialler.
- E.6 Since all of the techniques described above require customers to take action, ISPs use a variety of techniques to encourage them to make the changes, including:
- € sending the customer email and/or letters;
  - € generating popup messages when the user first logs on the ISP;
  - € the 'forced portal' approach which forcibly redirects users to a web page that provides instructions on how to make the changes and then prevents users from surfing until the changes have been made; and

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<sup>1</sup> E.g. Dial-up networking in the Windows 98 or Remote Access in Apple Macintosh operating system.



€ ultimately cutting off the old number.

- E.7 Ofcom acknowledges that email and letters are not particularly effective means for ISPs to contact metered internet access customers since ISPs often have only indirect relationships with their customers and therefore don't know their customers' names and addresses. Also customers frequently use third party email providers (such as Hotmail) instead of the email accounts provided by the ISP, preventing the ISP from contacting customers via email. A significant proportion of metered internet access customers are infrequent internet users adding to the difficulty of contacting them. Email and letters are more effective for contacting unmetered internet access customers since ISPs have direct billing relationships with their customers and are therefore able to contact their customers more easily.
- E.8 Evidence obtained by Ofcom from certain ISPs (the details of which are confidential) indicates that a large proportion of customers (metered and unmetered) typically ignore letters and emails from their ISPs. This suggests that the forced portal approach is an important element of a successful migration strategy since customers cannot ignore the ISP's request to migrate to the new dial-up access number and this approach largely overcomes the difficulties that ISPs have contacting metered dial-up internet access customers.
- E.9 Evidence obtained by Ofcom from certain ISPs (although again, the details are confidential) indicates that regardless of the means used to contact customers that the success of customer migration programmes varied according to the techniques and the particular software used by the ISP to perform the migration. In general, ISPs that had previously deployed customised dialler software had the most success with software updates that migrated customers to new dial-up access numbers. Whereas ISPs that employed more basic techniques had significant levels of failure to migrate customers amongst those that downloaded software updates and/or new diallers. In one particular case, one ISP has informed Ofcom that it was able to migrate 95% of its active metered internet access customers without manual Intervention by the ISP (although again, the details are confidential to Ofcom).
- E.10 Ofcom's research (as described at paragraph E.2 above) indicates a trend towards the deployment of 'customer service' software by ISPs. In addition to configuring and managing the internet connection, this typically provides customers with connection and service status information and provides ISPs with automated service, support and diagnostic capabilities. In the UK this type of software has been purchased by several major ISPs and has being deployed to broadband customers. However several of the commercial applications also support dial-up internet access.
- E.11 As a more general point, Ofcom's research indicates most of the commercial dialler vendors are based in North America and that North American ISPs more commonly use sophisticated dialler technology than their European counterparts. Some North American ISPs use diallers that function as dynamic routing devices, permitting them to route calls according to the time of day and traffic load on particular routes. Such diallers often have the capability to receive updated call routing rules whilst the customer is surfing rather than as a discrete download.
- E.12 Ofcom believes that by adopting a sophisticated approach ISPs can successfully migrate dial-up internet access customers to new access numbers without incurring significant levels of failure.

### **Migration Induced Churn**

- E.13 Some stakeholders have in the past (for example, as part of the information gathered during Oftel's Review of the Wholesale Unmetered Narrowband Internet Termination Market during 2003) provided various figures to Ofcom for the proportion of customers using metered internet access that they have been able to successfully migrate to new dial-up numbers. Ofcom considers that caution must be used when assessing such figures, since it is the proportion of active metered customers who successfully migrate that is critical. A suitable

definition of an active customer might be a customer who has accessed a service at least once in the 30 days prior to migration. Some metered customers may only very infrequently use the service. Whilst Ofcom acknowledges that such customers may be particularly difficult to migrate to new dial-up numbers, it is also the case that such customers must represent a small proportion of an ISP's revenues since they are only infrequent users of the service. Therefore it seems reasonable for Ofcom to consider the proportion of active customers who can be successfully migrated, rather than considering the totality of an ISP's metered customer base. In addition, when looking at the proportion of customers who do not migrate, Ofcom considers that it is important to bear in mind the background level of churn that would have occurred anyway in the relevant time period, regardless of the migration process. The cost to an ISP's business of a background customer churn cannot be validly attributed to the migration process.

- E.14 Ofcom notes that as an additional measure to reduce churn, that ISPs could apply a forced portal to an old access number and keep it open (with significantly reduced port capacity) for a period of time after the bulk of a migration programme was completed to pick up occasional internet users.
- E.15 Ofcom notes that apart from migration from the 0845/0870 number ranges to the 0844/0871 number ranges, most ISPs have other commercial reasons for changing customers' dial-up access numbers, including;
- € changing customers from metered to unmetered internet access products; and
  - € changing to a new Terminating Communications Provider may require a mass migration of customers to a new dial-up access number.
- E.16 Therefore there are strong commercial incentives on ISPs to have established cost-effective processes for helping customers make this change. It appears to Ofcom that these processes could be exploited and broadened to encompass migration from 0845 to 0844 numbers.

### Other obstacles to migration

- E.17 Although customer migration is the major obstacle to migration to the 0844/0871 number ranges, ISPs and Terminating Communications Providers have indicated that there are a number of other obstacles to the use of the 0844/0871 ranges, even without the need to migrate. Ofcom has addressed some of these (such as the removal of BT's IN DIP charge for 0844 numbers allocated in 1k blocks) and others appear to have been overstated and are not therefore included in the list below which describes the outstanding problems:
- € At the moment, retail prices for the 0844 and 0871 number ranges are set at the 100k block level. Terminating Communications Providers must maintain separate 100k number blocks for each retail price and ISPs that wish to change their 0844/0871 tariffs must migrate their customers to a different 100k number block. Ofcom has addressed this problem in this statement by requiring BT to offer retail pricing at the 10k block level for 0844 numbers. In future this will mean that ISPs and other NTS Service Providers will be allocated 10k 0844 number blocks by Ofcom, and will be able to choose (and subsequently vary) the retail price for that block without having to change numbers.
  - € ISPs argue that it takes too long for BT to open up new 0844/0871 100k number blocks; particularly if the price point requested is not on BT's standard pricing ladder (this process can take several months). This is however BT's normal industry-standard timescale for creating new retail price points on its network. It applies on a non-discriminatory basis to many other number ranges (e.g. 118 DQ numbers) as well as NTS numbers, and is applied equally by BT to BT's downstream businesses as well as its competitors.
  - € NTS Service Providers have noted that other Originating Communications Providers can also be slow at opening 0844/0871 number blocks or may refuse to do so all together, reducing the pool of potential users of the 0844/0871 services concerned. However, if there

is a significant migration of well-known services, particularly internet access services, to the 0844 range, consumer and competitive pressure is likely to force these Communications Providers to open these ranges promptly.

- € In some cases there is limited access from abroad to UK 0844/0871 number ranges. Whilst this is beyond Ofcom's powers to influence, it seems likely that international access represents a very small proportion of calls to these numbers, particularly in the case of NTS numbers used for internet access, since calls are typically long, and international call rates tend to be expensive.

## Annex F

# Updated 0845/0870 consumer research results

F.1 In November 2002, Oftel included questions in its residential consumer survey about use and awareness of 0870 numbers. Oftel published a full report giving details of this research (as well as other research carried out at the same time) on 27 January 2003 and this report can be found on Ofcom's web site at

[www.ofcom.org.uk/static/archive/oftel/publications/research/2003/q11fixr0103.htm](http://www.ofcom.org.uk/static/archive/oftel/publications/research/2003/q11fixr0103.htm)

F.2 The key findings in relation to 0870 numbers were:

- € 28% of UK adults were aware that calls to 0870 are intended to be charged at the national rate;
- € 23% of UK adults thought calls to 0870 would be expensive;
- € 15% of UK adults thought calls to 0870 would be charged at the local rate or would be cheap;
- € 5% of UK adults thought calls to 0870 would be free; and
- € the remaining 28% of UK adults said they did not know how much calls to 0870 would cost.

F.3 In August 2003, Oftel included questions in its residential consumer survey about awareness of 0844 and 0845 numbers, and pricing of 0844, 0845, 0870 and 0871 numbers. Oftel published a full report giving details of this research (as well as other research carried out at the same time) on 27 October 2003. This report can be found on Ofcom's web site at

[www.ofcom.org.uk/static/archive/oftel/publications/research/2003/q14fixres1003.pdf](http://www.ofcom.org.uk/static/archive/oftel/publications/research/2003/q14fixres1003.pdf)

F.4 The key findings are summarised below, with all percentages quoted being percentages of UK adults with fixed line phones.

F.5 For 0845 numbers:

- € 29% recognised these numbers as local rate;
- € 22% thought that 0845 numbers were national rate;
- € 14% thought that 0845 numbers were premium rate numbers;
- € 1% thought that 0845 numbers were charged at some other rate;
- € 35% did not know at what rate 0845 numbers were charged; and
- € 15% knew the typical price for calls to 0845 numbers (1-5ppm).

F.6 For 0844 numbers:

- € 7% thought that 0844 numbers were local rate;
- € 19% thought that 0844 numbers were national rate;
- € 15% thought that 0844 numbers were premium rate numbers;
- € 59% did not know at what rate 0844 numbers were charged;
- € 5% knew the typical price for calls to 0844 numbers (1-5ppm).

- F.7 When consumers were asked the most likely price for calls to numbers described as 'local rate', 57% said these calls cost from 1p-5ppm.
- F.8 For 0870 numbers:
- € 13% knew the typical price for calls to these numbers (1-10ppm).
- F.9 For 0871 numbers:
- € 9% knew the typical price for calls to these numbers (1-10ppm).
- F.10 Consumers were asked how best to describe the calling rates for 0844 and 0845 numbers:
- € just over a third (36%) found a 'local rate' description easier to understand;
  - € just over a third (35%) found a pence-per-minute description easier to understand; and
  - € 3 in 10 (29%) had no preference or did not know which description they found easier to understand.

## Annex G

# Questions from Oftel's September 2003 consultation

Q1: What comments do stakeholders have on the criteria proposed by Oftel for evaluation of the options for retail pricing of calls to 0845 and 0870 numbers? Are there any additional criteria that Oftel should take into account? What relative weight should Oftel place on each factor?

Q2: What evidence (e.g. data from business plans) do stakeholders have on whether it is financially viable for NTS Service Providers to continue to offer value-added services on the 0845 and 0870 number ranges following BT's 1 June 2003 retail price reduction?

Q3: What evidence (e.g. experience of actual migration activities) do stakeholders have on the costs of migration to 0844/0871 numbers? (These costs may include, for voice services, the cost of publicity, the costs of changing consumer literature and signage, the costs of managing mis-dialling, increased customer service costs and management overhead. For data services, there may be additional costs such as the cost of developing software to assist customers in changing their dial-up number and running a customer helpline). What evidence do stakeholders have on the split between fixed and per-customer costs for migration activities?

Q4: What quantitative data do stakeholders have on the other costs and benefits of Option 1(a) and Option 1(b), for example the fixed and on-going costs of modifying billing and support systems and processes to allow 10k tariffing in the 0844 and 0871 ranges under Option 1(b)?

Q5: By how much do stakeholders estimate that retail prices for 0845 and 0870 calls would change over the next 5 years under Option 1(a) and Option 1(b)? Under Option 1(b), by how much would retail prices for 0844 and 0871 numbers change over the next 5 years (split between voice and data services)? This should be backed up by information about assumptions regarding price cost margins, price elasticity of demand etc in order to provide an outline 'business plan' for these services in the event that Option 1(b) is implemented.

Q6: What comments do stakeholders have on the desirability of implementing Option 1(a)? Do stakeholders agree with Oftel's initial assessment of Option 1(a) against the proposed criteria? What comments do stakeholders have on the desirability of implementing Option 1(b)? Do stakeholders agree with Oftel's initial assessment of Option 1(b) against the proposed criteria?

Q7: What comments do stakeholders have on the desirability of a ladder of retail price points for 0845 and 0870 calls under Option 2, as opposed to Communications Providers being able to request bespoke retail price points?

Q8: What comments do stakeholders have on the impact of BT retail pricing at the 10k or 1k block level (as proposed under Options 2(a) and 2(b)) on other Originating Communications Providers?

Q9: Under Option 2(a) (and Option 2(b)) what should the tariff ceiling be for the 0845 and 0870 number ranges? Would 'up to 4p' for 0845 calls and 'up to 8p' for 0870 calls be appropriate? What suggestions do stakeholders have regarding mechanisms for NTS Service Providers using 084 and 087 numbers to make price information clear and readily accessible to customers, and to proactively inform customers of price changes where there is an on-going relationship with those customers? How could these mechanisms be enforced?

Q10: How long do stakeholders consider that the necessary changes to Originating Communications Providers' systems will take to implement Option 2(a)?

Q11: What quantitative data do stakeholders have regarding the costs and benefits of Option 2(a), for example the fixed and on-going costs of modifying billing and support systems and processes to allow 10k tariffing in the 084 and 087 number ranges?

Q12: By how much do stakeholders estimate that retail prices for 084 and 087 calls would change over the next 5 years under Option 2(a) (split between voice and data services)? This should be backed up by information about assumptions regarding price cost margins, price elasticity of demand etc in order to provide an outline 'business plan' for these services in the event that Option 2(a) is implemented.

Q13: What comments do stakeholders have on the desirability of implementing Option 2(a)? Do stakeholders agree with Oftel's initial assessment of Option 2(a) against the proposed criteria?

Q14: How long do stakeholders consider that the necessary changes to Originating Communications Providers' systems will take to implement Option 2(b)?

Q15: What quantitative data do stakeholders have regarding the costs and benefits of Option 2(b), for example the fixed and on-going costs of modifying billing and support systems and processes to allow 1k tariffing in the 084 and 087 number ranges?

Q16: What comments do stakeholders have on the viability and likely cost of discounting at the 1k level as an extension to Option 2(b)?

Q17: By how much do stakeholders estimate that retail prices for 084 and 087 calls would change over the next 5 years under Option 2(b) (split between voice and data services)? This should be backed up by information about assumptions regarding price cost margins, price elasticity of demand etc in order to provide an outline 'business plan' for these services in the event that Option 2(b) is implemented.

Q18: What comments do stakeholders have on the desirability of implementing Option 2(b)? Do stakeholders agree with Oftel's initial assessment of Option 2(b) against the proposed criteria?

Q19: What comments do stakeholders have on the desirability of implementing Option 3? Do stakeholders agree with Oftel's initial assessment of Option 3 against the proposed criteria?

Q20: What comments do stakeholders have on the desirability of a 'national rate only' variant of Options 2(a), 2(b) or 3?

Q21: Are there any other options Oftel should be considering? How do stakeholders consider that these options rate against Oftel's proposed criteria?

Q22: Do stakeholders agree with Oftel's initial view that Options 1(a), 1(b) and 2(a) are the most promising options set out in this consultation document for the future retail pricing arrangements for calls to 0845 and 0870 numbers? Which of these options do stakeholders prefer? If none of these, which other option do stakeholders consider to be the best option and why?

## Annex H

# The BT NTS Call Origination Condition

*Note: the paragraph numbering used in this Annex is the paragraph numbering used in the Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets published by the Director on 28 November 2003.*

### Condition AA11

#### Requirement to provide NTS Call Origination

AA11.1 The Dominant Provider shall provide NTS Call Origination as soon as it is reasonably practicable to every Third Party who reasonably requests it in writing.

AA11.2 Without prejudice to paragraphs AA11.3 and AA11.4 below and where a request is covered by paragraph AA11.1 above, the Dominant Provider shall provide NTS Call Origination on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as the Director may from time to time direct.

AA11.3 The Dominant Provider shall pass the Net Retail Call Revenue to the Third Party that is purchasing the NTS Call Origination, less the charges referred to in Condition AA11.4 below.

AA11.4 The Dominant Provider shall make no charges for providing NTS Call Origination covered by paragraph AA11.1 except for:

- (a) a charge for the Call Origination Service used to originate the NTS Call;
- (b) a charge for the NTS Retail Uplift; and
- (c) a charge for bad debt relating to the retailing by the Dominant Provider of Premium Rate Services calls.

AA11.5 The Dominant Provider shall comply with any direction the Director may make from time to time under this Condition AA11.

AA11.6 This Condition AA11 is without prejudice to the generality of the provisions in Conditions AA1(a) to AA7 above.

#### Relevant definitions

“Net Retail Call Revenue” means the retail revenue for calls, excluding VAT and after any applicable discounts;

“NTS” means number translation services;

“NTS Calls” means a call to a number identified in the Numbering Plan for the United Kingdom as a Special Service number or a Premium Rate Service number

- plus calls to 0500 Freephone numbers;

- excluding calls to 0844 04 numbers for Surftime Internet access services and calls to 0808 99 numbers for FRIACO;

“NTS Call Origination” means originating NTS Calls and retailing those NTS Calls to the End-User on behalf of the Third Party who has requested NTS call origination;

“NTS Retail Uplift” means the charge for retailing NTS Calls to the End-User.



## Annex I

# The Numbering General Condition

*Note: the paragraph numbering used in this Annex is the paragraph numbering used in the General Conditions of Entitlement published by the Director on 22 July 2003 and which took effect from 25 July 2003. Since Ofcom has now assumed its powers under the Act (which the Director carried out on Ofcom's behalf for a transitional period), references to the Director should be read as references to Ofcom.*

## 17. ALLOCATION, ADOPTION AND USE OF TELEPHONE NUMBERS

### General Prohibitions on Adoption and Use

17.1 A Communications Provider shall not Adopt Telephone Numbers from the National Telephone Numbering Plan unless:

- (a) the Telephone Numbers have been Allocated to the Communications Provider; or
- (b) the Communications Provider has been authorised (either directly or indirectly) to Adopt those Telephone Numbers by the person Allocated those Telephone Numbers.

17.2 The Communications Provider may only use a Telephone Number from the National Telephone Numbering Plan where that Telephone Number has been Allocated to a person, unless the use in question is for the purposes of indicating that the Telephone Number has not been Allocated.

17.3 The Communications Provider may only use (or, where specified, Adopt) a Telephone Number listed in the Annex to this Condition where such use or Adoption is in accordance with the designation attributed to that Telephone Number in the Annex.

### Requirements in Connection with the Adoption of Telephone Numbers

17.4 The Communications Provider shall have a Numbering Plan for such Telephone Numbers as the Director may Allocate to it from time to time. Except where the Director otherwise consents in writing, such Numbering Plan shall be consistent with the National Telephone Numbering Plan. When applying for Telephone Numbers, the Communications Provider shall provide such details of its Numbering Plan to the Director as are relevant to the application.

17.5 The Communications Provider shall install, maintain and adjust its Public Electronic Communications Network so that it routes Signals and otherwise operates in accordance with the National Telephone Numbering Plan and any Allocation of Telephone Numbers made by the Director from time to time.

17.6 Where Telephone Numbers have been Allocated to the Communications Provider, that provider shall secure that such Telephone Numbers are Adopted or otherwise used effectively and efficiently.

17.7 The Communications Provider shall not unduly discriminate against another Communications Provider in relation to its Adoption or use of Telephone Numbers for purposes connected with the use by that other Communications Provider, or its Customers, of any Electronic Communications Network or Electronic Communications Service.

17.8 The Communications Provider shall take all reasonably practicable steps to secure that its Customers, in using Telephone Numbers, comply with the provisions of this Condition, where applicable, and the provisions of the National Telephone Numbering Plan.

### Application for Allocation or Reservation of Telephone Numbers

17.9 When applying for an Allocation or reservation of Telephone Numbers, the Communications Provider shall:

- (a) use an appropriate application form as directed by the Director from time to time as he thinks fit;
- (b) provide such information as is required by such application form; and
- (c) provide to the Director, on request, any other information considered by the Director to be relevant to the application, and the supply of which does not place an undue burden on the Communications Provider.

17.10 The Director will determine, taking into account the provisions of the National Telephone Numbering Plan, any application for Telephone Numbers by the end of the period of three weeks after the date of the receipt by him of the completed application form. Where the Director has required any additional information under paragraph 17.9(c) in relation to any application, the Director will determine the application by the end of the period of three weeks after the date of the receipt by him of that additional information.

### Withdrawal of a Number Allocation

17.11 It is hereby declared that the Director may withdraw an Allocation of Telephone Numbers from a Communications Provider where:

- (a) the Communications Provider has not Adopted those Telephone Numbers within six months, or such other period as the Director may from time to time direct, from the date on which the Telephone Numbers were Allocated, or
- (b) in relation to an Allocation of a series of Telephone Numbers, the Communications Provider has not Adopted those Telephone Numbers to any significant extent within six months, or such other period as the Director may from time to time direct, from the date on which the series of Telephone Numbers was Allocated.

17.12 For the purposes of this Condition,

- (a) "Communications Provider" means a person who provides an Electronic Communications Network or an Electronic Communications Service;
- (b) "Numbering Plan" means a plan describing the method used or to be used for the Adoption of a Telephone Number by the Communications Provider.

## Annex J

## Detailed analysis of policy options

## Option 1(a): Status quo

J.1 In this option the geographic/non-geographic link is not broken and the link on the BT network is maintained between the standard retail price of local and national geographic calls and the standard retail price of calls to 0845/0870 numbers. There is no change in the retail price arrangements for 0844 and 0871 calls.

	Advantages	Disadvantages
Stakeholders		
Consumers	<p>Some BT consumers continue to benefit as the reduction in standard local or national geographic retail prices drives down the prices of 0845 and 0870 calls. Other consumers may also benefit from this link as the prices of 0845/0870 call on other Originating Communications Providers' networks will be set mindful of the BT price due to competitive pressure.</p> <p>The link with BT's geographic prices gives some BT consumers a broad indication of the price they are likely to pay.</p> <p>The current system of allocation of 0844/0871 numbers ensures that prices for particular numbers will not vary after the numbers are allocated. This should be beneficial for consumer clarity about prices of these number ranges, and removes the risk of consumers being unaware of price changes after numbers are allocated.</p>	<p>The current link between BT's standard geographic and non-geographic prices may be misleading to some consumers:</p> <ul style="list-style-type: none"> <li>- Not all BT consumers benefit from the link as geographic call prices are lower than 0845/0870 prices for consumers on some packages. This will become more pronounced for residential customers after BT's proposed retail price changes from July 2004.</li> <li>- Relatively large numbers of consumers do not appreciate the 0845/0870 and geographic price link. Only 29% of consumers recognised 0845 numbers as local rate numbers with a similarly low proportion recognising 0870 numbers as national rate numbers. Only 15% of consumers know the typical price of 0845 number, with 13% aware of the price of 0870 numbers.</li> <li>- Alternatively some consumers may realise there is a link but do not understand that it only applies to calls made on the BT network (and other Communications Providers are not obliged to link 0845/0870 call prices to either their own geographic call prices or BT's geographic call prices).</li> <li>- Most other Originating</li> </ul>

		<p>Communications Providers do not link 0845/0870 numbers to geographic price points (partly because they do not use geographic rates in the same way as BT and partly because they are not obliged to do so). It is possible that increased competition in the call origination market over time could lead to greater confusion (if greater numbers of consumers did not benefit from the clarity of the geographic/non-geographic price link).</p> <p>Consumers may face inconvenience and a degree of confusion about prices if their Terminating Communications Providers migrate their NTS services to 0844 and 0871 numbers in order to maintain their revenue.</p> <p>The potential for increased use of 0844 and 0871 numbers in future may be confusing for BT consumers who are accustomed to the link between 0845/0870 numbers and geographic prices.</p> <p>The link between BT's geographic and non-geographic prices could feasibly limit reductions in geographic prices on the BT network (since the impact on 0845/0870 retail prices has to be taken into account when geographic retail price reductions are made).</p>
BT	<p>Can continue to make the link between 0845/0870 and standard geographic prices.</p> <p>No additional system development costs incurred.</p>	
Other Originating Communications Providers	<p>No additional system development costs incurred.</p>	
Terminating Communications Providers	<p>Terminating Communications Providers along with NTS Service Providers continue to be able to market their services (with care) as being priced at the standard BT local and national rates for BT customers.</p>	<p>The link between 0845/0870 prices and standard local/national prices on the BT network will cause revenue uncertainty for Terminating Communications Providers continuing to use 0845/0870 numbers.</p>

	<p>Terminating Communications Providers have the ability to migrate their NTS services to 0844 and 0871 numbers, thereby choosing the retail price on the BT network and whether or not BT discount schemes will apply, to give control over their revenue.</p>	<p>Terminating Communications Providers will incur costs associated with switching to 0844/0871 numbers in order to achieve certainty over their revenue streams.</p> <p>Even if Terminating Communications Providers use 0844/0871 numbers, they cannot achieve 100% certainty over their revenues since, once they have selected a retail price for their numbers, they cannot subsequently change this without changing their 0844/0871 numbers.</p>
NTS Service Providers	<p>NTS Service Providers are able to market their services (with care) as being priced at the standard local and national rates.</p>	<p>The link between 0845/0870 prices and standard local/national prices on the BT network will cause revenue uncertainty for NTS Service Providers continuing to use 0845/0870 numbers.</p> <p>NTS Service Providers will incur costs associated with switching to 0844/0871 numbers in order to achieve certainty over their revenue streams. It is worth noting that all NTS Service Providers and Terminating Communications Providers should face the same costs of migration making the impact on competition negligible, although smaller NTS Service Providers may face higher unit costs as a result of the fixed costs involved. Moreover since a relatively small proportion of new numbers issued have been in 0844/0871 number ranges Ofcom is inclined to believe that Terminating Communications Providers and NTS Service Providers continue to benefit from the link between 0845/0870 and geographic number prices. This may be driving the reluctance to migrate to the 0844/0871 number ranges rather than solely because of the costs involved.</p> <p>Even if NTS Service Providers use 0844/0871 numbers, they cannot achieve 100% certainty over their revenues since, once they have selected a retail price for their numbers, they cannot subsequently change this without changing their 0844/0871 numbers.</p>

**Option 1(b): Geographic/non-geographic link retained, 0844/0871 pricing arrangements amended**

J.2 In this option the geographic/non-geographic link is not broken and the link on the BT network is maintained between the standard retail price (before discounts and call packages) of local and national geographic calls and the retail price of calls 0845/0870 numbers. In addition the pricing arrangements on the BT network for the 0844/0871 number ranges are made more flexible, by enabling price variations at the 10k level, to give Terminating Communications Providers and NTS Service Providers more control over their revenues by migrating to this range.

	Advantages	Disadvantages
Stakeholders		
Consumers	<p>Some BT consumers continue to benefit as the reduction in standard local or national geographic retail prices drives down the prices of 0845 and 0870 calls. Other consumers may also benefit from this link as the prices of 0845/0870 call on other Originating Communications Providers' networks will be set mindful of the BT price due to competitive pressure.</p> <p>The link with BT's geographic prices gives some BT consumers a broad indication of the price they are likely to pay.</p> <p>There is increased potential for retail price competition for 0844/0871 calls to develop compared with Option 1(a) since the prices for these services can change on the BT network without Terminating Communications Providers and NTS Service Providers having to change their numbers.</p>	<p>The current link between BT's standard geographic and non-geographic prices may be misleading to some consumers:</p> <ul style="list-style-type: none"> <li>- Not all BT consumers benefit from the link as geographic call prices are lower than 0845/0870 prices for consumers on some packages. This will become more pronounced for residential customers after BT's proposed retail price changes from July 2004.</li> <li>- Relatively large numbers of consumers do not appreciate the 0845/0870 and geographic price link. Only 29% of consumers recognised 0845 numbers as local rate numbers with a similarly low proportion recognising 0870 numbers as national rate numbers. Only 15% of consumers know the typical price of 0845 number, with 13% aware of the price of 0870 numbers.</li> <li>- Alternatively some consumers may realise there is a link but do not understand that it only applies to calls made on the BT network (and other Communications Providers are not obliged to link 0845/0870 call prices to either their own geographic call prices or BT's geographic call prices).</li> </ul>

		<ul style="list-style-type: none"> <li>- Most other Originating Communications Providers do not link 0845/0870 numbers to geographic price points (partly because they do not use geographic rates in the same way as BT and partly because they are not obliged to do so). It is possible that increased competition in the call origination market over time could lead to greater confusion (if greater numbers of consumers did not benefit from the clarity of the geographic/non-geographic price link).</li> </ul> <p>Consumers may face inconvenience if Terminating Communications Providers and NTS Service Providers switch to 0844/0871 number ranges in order to achieve revenue certainty.</p> <p>The potential for increased use of 0844 and 0871 numbers in future may be confusing for BT consumers who are accustomed to the link between NTS numbers and geographic prices.</p> <p>The change in the allocation of 0844/0871 numbers means that there may be greater use of these ranges and greater price proliferation, reducing pricing transparency especially as the prices consumers face for these calls may change as Terminating Communications Providers and NTS Service Providers respond to competitive pressure. Some risk that consumers may be unaware of these price changes.</p> <p>The link between BT's geographic and non-geographic prices could feasibly limit reductions in geographic prices (since the impact on 0845/0870 retail prices has to be taken into account when geographic retail price reductions are made).</p> <p>Increased granularity of 0844/0871 tariffs may impose costs on large companies; companies often have their own systems for recording and costing telephone calls, which would have to be upgraded with consequential financial and staffing</p>
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		costs.
BT	Can continue to make the link between 0845/0870 and standard geographic prices.	Some billing system upgrade required to enable pricing at the 10k level for calls to 0844/0871 number ranges. BT claims this cost may be in the region of £300k (for BT and other Originating Communications Providers alike). There will also be additional ongoing costs of maintaining more tariffing and discounting information for 0844/0871 blocks (i.e. at a 10k block level rather than 100k block level), although Ofcom considers that this will be less than for Options 2(a) and 2(b), since there will be fewer number blocks affected.
Other Originating Communications Providers		Other Originating Communications Providers must either increase the granularity of their pricing of 0844/0871 numbers or deal with commercial consequences of continuing to tariff at the 100k level. Either way Originating Communications Providers are likely to incur some costs. According to two Communications Provider respondents, the costs of moving to 10k pricing are unacceptably high (in which case Ofcom assumes that these Communications Providers would make a commercial decision not to upgrade their billing systems), although another respondent argues that this cost should not be excessive for Communications Providers with modern billing systems.
Terminating Communications Providers	Terminating Communications Providers along with NTS Service Providers continue to be able to market their services (with care) as being priced at the standard BT local and national rates for BT customers.  As well as choosing the retail price on the BT network, and whether or not BT discounts will apply, under the new numbering arrangements for 0844/0871, Terminating Communications Providers would also have the ability to subsequently change their retail	The link between 0845/0870 prices and standard local/national prices on the BT network will cause revenue uncertainty for Terminating Communications Providers continuing to use 0845/0870 numbers.  Terminating Communications Providers will incur costs associated with switching to 0844/0871 numbers in order to achieve certainty over their revenue streams.



	<p>prices (at the 10k level) for 0844 and 0871 number ranges without having to change their numbers, giving complete control over revenues.</p> <p>Greater use of 0844/0871 numbers could result in greater consumer awareness of these ranges, and lower churn away from services migrating to 0844/0871 number ranges.</p>	
NTS Service Providers	<p>NTS Service Providers are able to market their services (with care) as being priced at the standard local and national rates.</p> <p>Greater use of 0844/0871 numbers could result in greater consumer awareness of these ranges, and lower churn away from services migrating to 0844/0871 number ranges.</p>	<p>The link between 0845/0870 prices and standard local/national prices on the BT network will cause revenue uncertainty for NTS Service Providers continuing to use 0845/0870 numbers.</p> <p>NTS Service Providers will incur costs associated with switching to 0844/0871 numbers in order to achieve certainty over their revenue streams. It is worth noting that all NTS Service Providers and Terminating Communications Providers should face the same costs of migration making the impact on competition negligible, although smaller NTS Service Providers may face higher unit costs as a result of the fixed costs involved. Moreover since a relatively small proportion of new numbers issued have been in 0844/0871 number ranges Ofcom is inclined to believe that Terminating Communications Providers and NTS Service Providers continue to benefit from the link between 0845/0870 and geographic number prices. This may be driving the reluctance to migrate to the 0844/0871 number ranges rather than solely because of the costs involved.</p>

**Option 2(a): Terminating Communications Providers select the BT retail price**

J.3 Under this option the geographic/non-geographic retail price link on the BT network is broken and those allocated 0845/0870 numbers by Ofcom individually select the retail price for calls to their numbers on BT’s network, subject to price ceilings, in 10k number blocks.

	Advantages	Disadvantages
Stakeholders		

<p>Consumers</p>	<p>Consumers may benefit from retail price competition as Terminating Communications Providers gain flexibility in setting prices for their number blocks. In particular there may be more price competition in the numbers used to provide dial-up internet services (and some competing voice services such as conference call facilities) compared with Option 1(a) as consumers can select between a number of competing ISPs to achieve essentially the same service.</p> <p>Consumers may benefit if the increased revenue stability for Terminating Communications Providers and NTS Service Providers under this option results in innovation in non-geographic services.</p>	<p>Tariff awareness generally may deteriorate under this system:</p> <ul style="list-style-type: none"> <li>- If there is a proliferation of 0845/0870 price points, consumers may be unaware of the cost of their service.</li> <li>- BT consumers who previously understood the concept of the link between geographic and non-geographic tariffs may be confused about the new system of tariffs.</li> <li>- Tariff transparency may suffer as Terminating Communications Providers change their prices, without having to change their numbers.</li> <li>- The different discount arrangements for different 10k blocks of numbers under this option may worsen consumer confusion about tariffs.</li> </ul> <p>BT consumers who previously benefited from reductions in retail prices due to the geographic/non-geographic price link may suffer if the prices of their non-geographic calls do not fall at the same rate as geographic calls.</p> <p>Customers of other Originating Communications Providers may also suffer, since they may have also indirectly benefited from reductions in the price of 0845/0870 calls on the BT network due to resulting competitive pressure on their providers to reduce their 0845/0870 prices.</p> <p>The competitive pressures on voice calls to specific organisations or via call centres may be limited since consumers cannot choose different telephone numbers to access the same service. As a result it is possible that all consumers may suffer if some non-geographic call rates increase to the proposed retail price ceilings, particularly if consumers are unaware of price changes.</p> <p>Changes such as the increased granularity of 084/087 tariffs may</p>
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		impose costs on large companies; companies often have their own systems for recording and costing telephone calls, which would have to be upgraded with consequential financial and staffing costs.
BT		BT will have to undertake system developments since the greater the number of price points in all 084/087 number ranges the greater the data maintenance required. BT claims this cost may be significant and in the region of £300k (for BT and other Originating Communications Providers alike). There will also be additional ongoing costs of maintaining more tariffing and discounting information for 084/087 blocks, although Ofcom considers this will be less than for Option 2(b) since Option 2(b) envisages this information being held at the 1k block level.
Other Originating Communications Providers		Other Originating Communications Providers may incur costs in order to upgrade their network to deal with pricing at a more disaggregated number block level than currently exists. If they did not make the system upgrade it is likely that they would face a competitive disadvantage in terms of their ability to set retail prices of non-geographic calls.
Terminating Communications Providers	No need to migrate 0845/0870 services in order to ensure a degree of revenue certainty by selecting new retail price points for their number blocks and opting out of BT's discount scheme.	Terminating Communications Providers lose the ability to be able to market their services (with care) as being priced at the standard BT local and national rates for BT customers.
NTS Service Providers	NTS Service Providers should also benefit from greater revenue stability without the need to migrate their services to new number ranges.	NTS Service Providers lose the ability to be able to market their services (with care) as being priced at the standard BT local and national rates for BT customers.  Since large numbers of voice and data services coexist within 10k blocks, one retail price for the 10k block (selected by the Terminating Communications Provider) might

		suit some NTS Service Providers but not others. Dissatisfied NTS Service Providers face the problem of having to accept the retail prices chosen by their Terminating Communications Providers or migrating their services to other number ranges. This may reduce the extent of retail price competition available under this Option.

**Option 2(b): Terminating Communications Providers select the BT retail price with a greater degree of granularity**

J.4 Under this option the geographic/non-geographic retail price link on the BT network is broken and those allocated 0845/0870 numbers by Ofcom individually select the retail price for calls to their numbers on BT's network, subject to price ceilings, in 1k number blocks.

	Advantages	Disadvantages
Stakeholders		
Consumers	<p>Consumers may benefit from retail price competition as Terminating Communications Providers gain flexibility in setting prices for their number blocks. In particular there may be increased price competition in the numbers used to provide dial-up internet services (and some competing voice services such as conference call facilities) compared with Option 1(a) as consumers can select between a number of competing ISPs to achieve essentially the same service.</p> <p>Consumers may benefit if the increased revenue stability for Terminating Communications Providers and NTS Service Providers under this option results in innovation in non-geographic services.</p>	<p>Tariff awareness generally may deteriorate under this system:</p> <ul style="list-style-type: none"> <li>- The greater proliferation of price points may make consumer confusion over prices worse than under options 1(a), 1(b) and 2(a).</li> <li>- BT consumers who previously understood the concept of the link between geographic and non-geographic tariffs may be confused about the new system of tariffs.</li> <li>- Tariff transparency may suffer as Terminating Communications Providers change their prices, without having to change their numbers.</li> <li>- The different discount arrangements under this option (either at the 10k or 1k block level) may worsen consumer confusion about tariffs.</li> </ul> <p>BT consumers who previously benefited from the geographic/non-geographic price link may suffer if the prices of their non-geographic calls do not fall at the same rate as geographic calls.</p>

		<p>Customers of other Originating Communications Providers may also suffer, since they may have also indirectly benefited from reductions in the price of 0845/0870 calls on the BT network due to resulting competitive pressure on their providers to reduce their 0845/0870 prices.</p> <p>The competitive pressures on voice calls to specific organisations or via call centres may be limited since consumers cannot choose different telephone numbers to access the same service. As a result it is possible that all consumers may suffer if non-geographic rates increase to the proposed retail price ceilings, particularly if consumers are unaware of price changes.</p> <p>The increased granularity of 0845/0870 tariffs may impose costs on large companies; companies often have their own systems for recording and costing telephone calls, which would have to be upgraded with consequential financial and staffing costs. This is likely to be greater than under Options 1(b) and 2(a).</p>
BT		<p>BT has indicated that it does not believe it could satisfactorily deliver Option 2(b) in any time frame due the extremely large scale of the development required in its systems and platforms, since under this option, all 084/087 numbers would be routed at the 1k level rather than 10k level.</p> <p>The greater number of price points imposes a larger data maintenance overhead on BT, associated with management of pricing and discounting information and billing data. According to BT this is likely to exceed the costs under Options 1(b) and 2(a).</p>
Other Originating Communications Providers		<p>Other Originating Communications Providers would have to either upgrade their systems (and incur the corresponding costs) in order to allow retail pricing at the 1k level or set retail prices at a more aggregated number block level. Either option is likely to have an adverse impact on their ability to engage in retail price competition. This is likely to exceed</p>

		the costs under Options 1(b) and 2(a).
Terminating Communications Providers	No need to migrate numbers in order to ensure a degree of revenue certainty by selecting new retail price points for their 1k number blocks, although (under the arrangements described in the September 2003 Consultation) Terminating Communications Providers would have to make decisions on opting out of BT's discount scheme at the 10k number block level.	Terminating Communications Providers lose the ability to be able to market their services (with care) as being priced at the standard BT local and national rates for BT customers.
NTS Service Providers	NTS Service Providers should also benefit from greater revenue stability without the need to migrate services to new number ranges.	NTS Service Providers lose the ability to be able to market their services (with care) as being priced at the standard BT local and national rates for BT customers.  Since large numbers of voice and data services coexist within 1k blocks, one retail price for the 1k block (selected by the Terminating Communications Provider) might suit some NTS Service Providers but not others. The extent to this problem will obviously be less than faces NTS Service Providers under Option 2(a) but dissatisfied NTS Service Providers still face the problem of having to accept the retail prices chosen by their Terminating Communications Providers or migrating their services to other number ranges. Again, this may reduce the extent of retail price competition available under this option.

### Option 3: Retail price setting by Ofcom

J.5 In this Option the geographic/non-geographic link is broken and Ofcom would set one retail price for 0845 calls on the BT network and another for 0870 calls on the BT network. Any future changes to the retail price of 0845/0870 calls would only arise from changes to the regulated price by Ofcom.

	Advantages	Disadvantages
Stakeholders		

<p>Consumers</p>	<p>Price transparency could be achieved if one price was set to cover the entire 0845 range and another for the entire 0870 range on BT's network.</p> <p>By deciding whether or not discounts would apply to the entire 0845 and the entire 0870 number ranges Ofcom could ensure that BT consumers were reasonably well aware of discount arrangements.</p>	<p>Since Ofcom would only set the retail price for 0845/0870 numbers on BT's network customers of other Originating Communications Providers may still be confused about the tariff they face.</p> <p>A single price on the BT network for the 0845 and 0870 ranges would limit the development of retail price competition. As a result retail prices would not fall on the BT network (and hence would be unlikely to fall on other networks) until Ofcom reviewed the price that it set. This means that those BT customers (and customers on other networks) who currently benefit from reductions in the prices of geographic standard prices would no longer see price reductions in their 0845/0870 calls.</p> <p>Consumers may face inconvenience and a degree of confusion about prices if their Terminating Communications Providers migrate their NTS services to 0844 and 0871 numbers in order to maintain their revenue in response to any Ofcom-imposed reduction in retail prices.</p>
<p>BT</p>	<p>No system development required</p>	<p>BT would have less scope to compete on the basis of 0845/0870 retail prices.</p>
<p>Other Originating Communications Providers</p>	<p>No system development required</p>	
<p>Terminating Communications Providers</p>	<p>Terminating Communications Providers could achieve greater revenue stability without incurring the costs of migrating. Once Ofcom set retail prices, Terminating Communications Providers and NTS Service Providers would largely know the level of their revenue. This would only change if BT's origination costs changed. This is likely to lead to significantly fewer variations in terminating revenue than currently experienced by Terminating Communications Providers.</p>	<p>Terminating Communications Providers would have no freedom to select the retail prices for their allocated 0845/0870 number blocks. In order to set different retail prices Terminating Communications Providers would have to migrate their services to 0844/0871 number blocks, which would still be associated with migration costs.</p> <p>Even if Terminating Communications Providers use 0844/0871 numbers, they cannot achieve 100% certainty over their revenues since, once they have selected a retail price for their numbers, they cannot subsequently</p>

		<p>change this without changing their 0844/0871 numbers.</p> <p>Although Terminating Communications Providers gain revenue certainty once the retail prices have been set, Terminating Communications Providers face uncertainty about the initial level and any changes that might be made to the level (e.g. as a result of a complaint or as a result of regular re-assessments being made by Ofcom). In other words Terminating Communications Providers face regulatory uncertainty.</p> <p>Terminating Communications Providers lose the ability to be able to market their services as being priced at the standard BT local and national rates for BT customers.</p>
NTS Service Providers	NTS Service Providers should also benefit from greater revenue stability without the need to migrate services to new number ranges.	<p>NTS Service Providers lose the ability to be able to market their services as being priced at the standard BT local and national rates for BT customers.</p> <p>Since Terminating Communications Providers would have no freedom to select the retail prices for their allocated 0845/0870 number blocks, NTS Service Providers would have to migrate their services to 0844/0871 number blocks if they wished to choose a particular retail price point and guarantee their revenues, which would still be associated with migration costs.</p> <p>Even if NTS Service Providers use 0844/0871 numbers, they cannot achieve 100% certainty over their revenues since, once they have selected a retail price for their numbers, they cannot subsequently change this without changing their 0844/0871 numbers.</p> <p>As noted above NTS Service Providers also face regulatory uncertainty (and as a result possible revenue instability) related to the initial level of retail prices and in terms of any changes that might be made to the level (e.g. as a result of a complaint or as a result of regular re-assessments being made by Ofcom).</p>



**Option 4: Ofcom sets the terminating payments (proposed by UKCTA and others)**

J.6 Under Option 4, proposed by UKCTA and other respondents to the consultation, Ofcom would break BT's geographic/non-geographic price link and set the level of payments to Terminating Communications Providers payable by BT. In theory BT would be able to vary its retail price for calls to 0845/0870 numbers, although any future retail pricing decisions made by BT which led to reductions in the actual retail price paid by BT customers would not impact on the terminating payments. (In practice, in setting the level of the termination payment, Ofcom would also be setting the minimum retail price for 0845 and 0870 calls under this option, since BT has an obligation under its SMP Basis of Charges Condition to recover its costs for network access for example NTS call origination.)

	<b>Advantages</b>	<b>Disadvantages</b>
Stakeholders		
Consumers	<p>Price transparency could be achieved if one terminating payment was set to cover the entire 0845 range and another for the entire 0870 range on BT's network.</p> <p>By deciding whether or not discounts would apply to the entire 0845 and the entire 0870 number ranges Ofcom could ensure that consumers were reasonably well aware of discount arrangements.</p>	<p>Since Ofcom would only set the termination payments for 0845/0870 numbers on BT's network (and hence, to a large extent the likely retail price), customers of other Originating Communications Providers may still be confused about the tariff they face.</p> <p>Fixed termination payments would restrict the extent of retail price competition since Originating Communications Providers would have limited margins which they could reduce to reduce their retail prices. As a result, retail prices would not fall until Ofcom reviewed the termination payment that it set. This means that those BT customers who currently benefit from reductions in the prices of geographic standard prices would no longer see price reductions in their 0845/0870 calls. Similarly consumers of other originating Communications Providers would not benefit from the retail price competition that this would stimulate.</p> <p>Consumers may face inconvenience and a degree of confusion about prices if their Terminating Communications Providers migrate their NTS services to 0844 and 0871 numbers in order to maintain their revenue in response to any Ofcom-imposed reduction in termination payments.</p>
BT	<p>No system development required.</p> <p>BT would have slightly</p>	

	more scope to vary its retail price than under Option 3 (subject to its SMP NTS Call Origination obligations).	
Other Originating Communications Providers	No system development required	
Terminating Communications Providers	Terminating Communications Providers could achieve greater revenue stability without incurring the costs of migration. Once Ofcom sets the termination payments, Terminating Communications Providers and NTS Service Providers would know that their revenue was fixed until changed by Ofcom.	<p>Terminating Communications Providers would have no freedom to select the retail prices for their allocated 0845/0870 number blocks. In order to set different retail prices Terminating Communications Providers would have to migrate their services to 0844/0871 number blocks, which would still be associated with migration costs.</p> <p>Although Terminating Communications Providers gain revenue certainty once termination payments have been set by Ofcom, they face uncertainty about the initial level and changes that might be made to the level (e.g. as a result of a complaint or as a result of regular re-assessments being made by Ofcom). In other words Terminating Communications Providers face regulatory uncertainty.</p> <p>Terminating Communications Providers lose the ability to be able to market their services as being priced at the standard BT local and national rates for BT customers.</p>
NTS Service Providers	NTS Service Providers should also benefit from greater revenue stability without the need to migrate services to new number ranges.	<p>NTS Service Providers lose the ability to be able to market their services as being priced at the standard BT local and national rates for BT customers.</p> <p>Since Terminating Communications Providers would have no freedom to select the retail prices for their allocated 0845/0870 number blocks, NTS Service Providers would incur the costs associated with migrating their services to 0844/0871 number blocks if they wished to choose a particular retail price point and guarantee their revenues, which would still be associated with migration costs.</p> <p>As noted above NTS Service Providers also face regulatory</p>

		uncertainty (and as a result possible revenue instability) related to the initial level of termination payment and any changes that might be made to the level (e.g. as a result of a complaint or as a result of regular re-assessments being made by Ofcom).

**Option 5: Ofcom obliges all Originating Communications Providers to charge local/national rate for 0845/0870 calls**

J.7 Under this option Ofcom would force both BT and non-dominant Originating Communications Providers to price 0845 calls at their local geographic rate and 0870 calls at their national geographic rate.

	Advantages	Disadvantages
Stakeholders		
Consumers	<p>Price transparency could be achieved.</p> <p>All consumers would benefit as the reduction in typical local or national geographic retail prices would drive down the prices of 0845 and 0870 calls.</p>	<p>Consumers may face inconvenience and a degree of confusion about prices if their Terminating Communications Providers migrate their NTS services to 0844 and 0871 numbers in order to maintain their revenue.</p> <p>The potential for increased use of 0844 and 0871 numbers in future may be confusing for BT consumers who are accustomed to the link between 0845/0870 numbers and geographic prices.</p> <p>The link between geographic and non-geographic prices could feasibly limit reductions in geographic prices for all Originating Communications Providers (since the impact on 0845/0870 retail prices has to be taken into account when geographic retail price reductions are made).</p>
BT	<p>Can continue to make the link between 0845/0870 and standard geographic prices.</p> <p>No additional system development costs incurred.</p>	
Other Originating	No additional system	Highly interventionist for

<p>Communications Providers</p>	<p>development costs incurred.</p> <p>Can advertise the link between 0845/0870 and standard geographic prices.</p>	<p>Originating Communications Providers that do not have SMP.</p> <p>Non-BT Originating Communications Providers would have less scope to compete on the basis of 0845/0870 retail prices.</p> <p>Some Originating Communications Providers would face costs since they do not use geographic rates in the same way as BT does. Hence they do not have prices equivalent to BT's local and national prices.</p>
<p>Terminating Communications Providers</p>	<p>Terminating Communications Providers along with NTS Service Providers able to more meaningfully market their services as being priced at the standard local and national rates on all networks.</p> <p>Terminating Communications Providers have the ability to migrate their NTS services to 0844 and 0871 numbers, thereby choosing the retail price on the BT network and whether or not BT discount schemes will apply, to give control over their revenue.</p>	<p>The link between 0845/0870 prices and standard local/national prices will cause revenue uncertainty for Terminating Communications Providers continuing to use 0845/0870 numbers.</p> <p>Terminating Communications Providers will incur costs associated with switching to 0844/0871 numbers in order to achieve certainty over their revenue streams.</p> <p>Even if Terminating Communications Providers use 0844/0871 numbers, they cannot achieve 100% certainty over their revenues since, once they have selected a retail price for their numbers, they cannot subsequently change this without changing their 0844/0871 numbers.</p>
<p>NTS Service Providers</p>	<p>NTS Service Providers able to more meaningfully market their services as being priced at the standard local and national rates on all networks.</p>	<p>The link between 0845/0870 prices and standard local/national prices will cause revenue uncertainty for NTS Service Providers continuing to use 0845/0870 numbers.</p> <p>NTS Service Providers will incur costs associated with switching to 0844/0871 numbers in order to achieve certainty over their revenue streams.</p> <p>Even if NTS Service</p>

		Providers use 0844/0871 numbers, they cannot achieve 100% certainty over their revenues since, once they have selected a retail price for their numbers, they cannot subsequently change this without changing their 0844/0871 numbers.

## Annex K

# Notification: proposal to modify the Plan under section 60(3) of the Act

## Proposal for making a Modification under section 56(2) of the Act relating to Part A of the Plan

1. The Office of Communications (“OFCOM”) hereby makes the following proposal for a Modification to the provisions of the Plan under section 56(2) of the Act.
2. The draft Modification is set out in the Schedule to this Notification.
3. The effect of the draft Modification is set out in Section 6 of the accompanying document.
4. The reasons for making the proposal for the Modification are set out in Sections 4 and 5 of the accompanying document.
5. Representations may be made to OFCOM about the proposed draft Modification by **31 May 2004**.
6. A copy of this Notification has been sent to the Secretary of State.

Signed by Sean Williams

Partner, Competition and Investigations

On behalf of OFCOM

29 April 2004

## Schedule

### Draft Modification to Part A of the Plan

#### WHEREAS:

- A. section 56(2) of the Act provides that it shall be Ofcom's duty from time to time review the Plan and make such revisions that they think fit, provided such revisions are made in accordance with section 60 of the Act;
- B. section 60 of the Act applies whereby General Condition 17 is a numbering condition for the time being having effect by reference to provisions of the Plan;
- C. by virtue of the Transitional Provisions, references to the Director in General Condition 17 should be read as references to OFCOM;
- D. Part A1 of the Plan states, amongst other things,:

084	Special Services: up to 5p per minute or per call, set by Terminating Communications Provider, or at Originating Communications Provider's 'Local Rate' (inclusive of value added tax)
087	Special Services: up to 10p per minute or per call, set by Terminating Communications Provider, or at Originating Communications Provider's 'National Rate' (inclusive of value added tax)

- E. OFCOM wishes to make a Modification to the sections of Part A1 of the Plan identified in recital C above;
- F. for the reasons set out in the Statement accompanying this Modification OFCOM are satisfied that, in accordance with section 60(2) of the Act, this Modification is:
  - € objectively justifiable in relation to the matters to which it relates;
  - € not such as to discriminate unduly against particular persons or against a particular description of persons;
  - € proportionate to what the Modification is intended to achieve;
  - € in relation to what it is intended to achieve, transparent;
- G. for the reasons set out in the Statement accompanying this Modification OFCOM are satisfied that they acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- H. a notification of a proposal to make this Modification was given under section 60(3) of the Act on **29 April 2004**] ('the Notification');
- I. a copy of the Notification was sent to the Secretary of State;
- J. in the Notification and accompanying consultation document OFCOM invited representations about any of the proposals therein by **31 May 2004**;
- K. by virtue of section 60(5) of the Act, OFCOM may give effect to the proposal set out in the Notification, with or without Modification, only if-
  - € i. they have considered every representation about the proposal that is made to them within the period specified in the notification; and
  - € ii. they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- L. OFCOM received responses to the Notification and have considered every such representation made to them within the period specified in the Notification and accompanying consultation document and these representations are discussed in Section [X] of the Statement accompanying this Modification; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;

NOW, THEREFORE, OFCOM, PURSUANT TO SECTION 56(2), HEREBY MAKES THE FOLLOWING MODIFICATION-

1. In paragraph 1 of the Definitions and Interpretation section of the Plan the following definitions shall be deleted:

'Local Rate' means an indication the price for the call is equivalent to the rate for a Local Call as set by the relevant Originating Communications Provider, where such a rate exists.

'National Rate' means an indication the price for the call is equivalent to the rate for a geographic National Call set by the relevant Originating Communications Provider, where such a rate exists.

'Special Service' means a service paid for through the telephone bill of a Subscriber, and charged at rates set out in Part A of this document up to 10p per minute or National Rate, whichever is highest. The cost of the call to an 08 numbers may be paid by the Called Party (eg 080 Freephone Numbers), shared between the Customer and the Called Party (eg, 0845 Local Rate numbers), or paid wholly by the Customer (eg 0870 National Rate Numbers)

2. In paragraph 1 of the Definitions and Interpretation section of the Plan the following definitions shall be inserted (in alphabetical position) -

'BT's Standard Local Call Retail Price' means the retail price for a Local Call made by BT customers which operates as the standard retail price before the application of calling packages and discounts as shown on BT's retail price list.

'BT's Standard National Call Retail Price' means the retail price for a National Call made by BT customers which operates as the standard retail price before the application of calling packages and discounts as shown on BT's retail price list.

'Special Service' means a service paid for through the telephone bill of a Subscriber, and charged for BT customers (before the application of calling packages and discounts) at rates set out in Part A of this document.

3. The following shall be inserted after the heading in Part A of the Plan -

The designations set out in this section are not intended for pricing information for the purposes of advertising. Communications Providers should check actual prices with Originating Communications Providers.

4. In Part A1 of the Plan the following sections shall be deleted –

084	Special Services: up to 5p per minute or per call, set by Terminating Communications Provider, or at Originating Communications Provider's 'Local Rate' (inclusive of value added tax)
-----	--



087	Special Services: up to 10p per minute or per call, set by Terminating Communications Provider, or at Originating Communications Provider's 'National Rate' (inclusive of value added tax)
-----	--

5. In Part A1 of the Plan the following sections shall be inserted (in numerical position) -

0844	Special Services basic rate: charged at up to 5p per minute or per call for BT customers, set by Terminating Communications Provider inclusive of value added tax (the price charged by other Originating Communications providers may vary)
0845	Special Services basic rate: charged (before discounts and call packages) at BT's Standard Local Call Retail Price for BT customers inclusive of value added tax (the price charged by other Originating Communications providers may vary)
0870	Special Services higher rate: charged (before discounts and call packages) at BT's Standard National Call Retail Price for BT customers inclusive of value added tax (the price charged by other Originating Communications providers may vary)
0871	Special Services higher rate: charged at up to 10p per minute or per call for BT customers, set by Terminating Communications Provider inclusive of value added tax (the price charged by other Originating Communications providers may vary)

6. In this Modification:

- € 'the Act' means the Communications Act 2003;
- € 'the Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
- € 'General Condition 17' means General Condition 17 of the General Conditions of Entitlement set by the Director on 22 July 2003 pursuant to section 45 of the Act by way of publication of a Notification pursuant to section 48(1) of the Act;
- € 'OFCOM' means the Office of Communications;
- € 'the Plan' means the National Telephone Numbering Plan published by the Director on 22 July 2003 pursuant to section 56 of the Act;
- € 'Transitional Provisions' means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.

7. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them otherwise any word or expression shall have the meaning it has in the Act, or if it has no meaning there, in the Plan.

8. The Interpretation Act 1978 shall apply as if this Modification were an Act of Parliament.

9. Headings and titles shall be disregarded

[Signed]

On behalf of OFCOM

## Annex L

# Notification: proposal for a direction to amend the application form for 08 numbers under section 49(4) of the Act

Proposal for making a Direction under paragraph 17.9(a) of the Condition relating to an application form for 08 numbers

1. The Office of Communications ('OFCOM') hereby makes the following proposal for a Direction to be given under paragraph 17.9(a) of the Condition.
2. The draft Direction is set out in the Schedule to this Notification.
3. The effect of the draft Direction is set out in Section 7 of the accompanying Consultation document.
4. The reasons for making the proposal for the Direction are set out in Section 7 of the accompanying document.
5. Representations may be made to OFCOM about the proposed draft Direction by **31 May 2004**.
6. Copies of this Notification have been sent to the Secretary of State.

Signed by Sean Williams

Partner, Competition and Investigations

On behalf of OFCOM

29 April 2004

## **Schedule**

Draft Direction under paragraph 17.9(a) of the Condition

### **WHEREAS-**

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

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

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

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

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

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

**F.** a notification of a proposal to give this Direction was given under section 49(4) of the Act on **29 April 2004** (the 'Notification');

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

**H.** in the Notification and accompanying consultation document OFCOM invited representations about any of the proposals therein by **31 May 2004**;

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

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

**J.** OFCOM received responses to the Notification and have considered every such representation made to them within the period specified in the Notification and accompanying consultation document and these representations are discussed in Section [X] of the Statement accompanying this Direction]; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;

NOW, THEREFORE, OFCOM, PURSUANT TO PARAGRAPH 17.9(a) OF THE CONDITION, HEREBY DIRECT THAT-

1. for the time being the application form in the Annex to this Direction shall be used by Communications Providers when applying for an Allocation or reservation of Telephone Numbers starting '08' for Special Services.
2. in this Direction-
  - € 'the Act' means the Communications Act 2003;
  - € 'Allocation' shall have the same meaning as in the Condition;
  - € 'Communications Provider' shall have the same meaning as in the Condition;
  - € 'the Condition' means General Condition 17 of the General Conditions of Entitlement set by the Director on 22 July 2003 pursuant to section 45 of the Act by way of publication of a Notification pursuant to section 48(1) of the Act;
  - € 'the Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
  - € 'OFCOM' means the Office of Communications;
  - € 'Telephone Number' shall have the same meaning as in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act;
  - € 'Transitional Provisions' means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.
3. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them. Otherwise, any word or expression shall have the same meaning as it has-
  - i. in the National Telephone Numbering Plan published by the Director on 22 July 2003 pursuant to section 56 of the Act [stakeholders note that this is proposed to be modified as set out in Annex K of this consultation document];
  - ii. if, and only if, it has no meaning ascribed as mentioned in (i) above, and only if the context so permits, in General Condition 17 (entitled 'Allocation, Adoption and Use of Telephone Numbers') in Part 2 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act;
  - iii. if, and only if, it has no meaning ascribed as mentioned in (i) and (ii) above, and only if the context so permits, in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act; and
  - iv. if, and only if, it has no meaning ascribed as mentioned in (i), (ii) and (iii) above, and only if the context so permits, in the Act.
4. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
5. Headings and titles shall be disregarded

[Signed]

On behalf of Ofcom

## Annex to Direction

## Form S8

SPECIAL SERVICES APPLICATION - NUMBERS STARTING '08'

Service Type:	Number range starting:	Number block size:
Freephone Numbers	0800 XXXX	1000
	080 80XX to 080 87XX	10,000
Special Services <u>basic rate</u> : up to 5p <u>for BT customers</u> (non-internet)	0844 2XX to 0844 9XX	10,000
<u>Special Services basic rate: BT's Standard Local Call Retail Price for BT customers</u>	0845 XXX	10,000
Special Services <u>higher rate</u> : up to 10p <u>for BT customers</u> (non-internet)	0871 2XX to 0871 9XX	10,000
<u>Special Services higher rate: BT's Standard National Call Retail Price for BT customers</u>	0870 XXX	10,000
Internet Services Free to Caller	0808 90XX	1000
Internet Services Free to Caller – Flat Rate Internet Access Call Origination (FRIACO) product	0808 99XX	1000
Internet Services incorporating un-metered access up to 5p <u>for BT customers</u>	0844 04XX	1000
Non 'BT Discount Scheme' - Internet Services incorporating un-metered access up to 5p <u>for BT customers</u>	0844 00XX	1000
Internet Services metered access up to 5ppm <u>for BT customers</u>	0844 09XX	1000
Non 'BT Discount Scheme' - Internet Services metered access up to 5ppm <u>for BT customers</u>	0844 05XX	1000
Internet Services incorporating un-metered access up to 10p <u>for BT customers</u>	0871 04XX	1000
Non 'BT Discount Scheme' - Internet Services incorporating un-metered access up to 10p <u>for BT customers</u>	0871 01XX	1000
Internet Services metered access up to 10ppm <u>for BT customers</u>	0871 09XX	1000
Non 'BT Discount Scheme' - Internet Services metered access up to 10ppm <u>for BT customers</u>	0871 05XX	1000
Internet for Schools (1 block required per Service Provider)	0820 XXXX	10,000
Inbound Routing Codes	08993 XX to 08999 XX	10,000

## Definitions and Interpretation

1. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them. Otherwise, any word or expression shall have the same meaning as it has-

- (i) in the National Telephone Numbering Plan published by the Director on 22<sup>nd</sup> July 2003 pursuant to section 56 of the Communications Act 2003 (the 'Act');
- (ii) if, and only if, it has no meaning ascribed as mentioned in (i) above, and only if the context so permits, in General Condition 17 (entitled 'Allocation, Adoption and Use of Telephone Numbers') in Part 2 of the Schedule to the Notification published by the Director on 22<sup>nd</sup> July 2003 under section 48(1) of the Act;
- (iii) if, and only if, it has no meaning ascribed as mentioned in (i) and (ii) above, and only if the context so permits, in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22<sup>nd</sup> July 2003 under section 48(1) of the Act; and
- (iv) if, and only if, it has no meaning ascribed as mentioned in (i), (ii) and (iii) above, and only if the context so permits, in the Act.

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

3. FRIACO (Flat Rate Internet Access Call Origination) means the provision of Flat Rate Internet Access Call Origination via a wholesale unmetered internet access product.

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

<p><b>1. <u>Your reference (optional):</u></b></p>	
<p><b>2. <u>Applicant details and date of application:</u></b></p> <p>Your name, company name, address, direct telephone, direct fax, direct e-mail, mobile.</p> <p><i>(Where you are acting on behalf of a Communications Provider (eg a consultant, solicitor, etc), and if you have not previously supplied one, you should enclose a letter from that Communications Provider confirming that you are authorised to represent it).</i></p>	<p><b><u>Date of application:</u></b></p>
<p><b>3. <u>Communications Provider details:</u></b></p> <p>If different from 2. above (eg where you are a consultant, solicitor, etc), provide the name and address of the Communications Provider on behalf of whom you are applying for Telephone Numbers.</p>	

**4. Declaration of ‘Public Electronic Communications Network’ or ‘Public Electronic Communications Service’**

The information requested in Annex A helps Ofcom to assess your eligibility to be allocated Telephone Numbers.

If you are a provider of a Public Electronic Communications Network:

confirm whether you have previously supplied the information requested in Annex A (or information equivalent to it), to Ofcom’s Numbering Unit; or

if not, you must complete in full all relevant questions in Annex A and submit it along with this form.

If you have previously supplied the information in Annex A, then move onto the next question – you do not need to submit Annex A with this form.

If you are a provider of Public Electronic Communications Services:

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

*(For providers of Public Electronic Communications Networks, please ensure you have previously supplied the information requested, before you confirm this – your application may be rejected if this is not the case).*

### 5. Telephone Numbers required:

When completing the table below, you should:

- i) give a 1<sup>st</sup> and 2<sup>nd</sup> choice for each type of Telephone Number block applied for in case the block you have applied for is not available at the time the application is processed;
- ii) where applying for **0844 and 0871 (non-internet)** blocks, select those within the appropriate tariff as indicated on the web site. If there are no available blocks, you should indicate this below alongside the tariff you require (*note that from a certain date – of which Ofcom will advise you – tariffs for 0844 numbers will no longer appear on the web site but you will still need to indicate the tariff you intend to use for BT customers for these blocks*). The Numbering Unit will open a new range and then contact you; and
- iii) ensure that a maximum of 15 blocks are entered on this Application Form. A new Form S8 should be completed for further blocks.

		Number block Type?  e.g. Freephone, Internet Freephone, <u>BT Standard Local Call Retail Price</u> , <u>BT Standard National Call Retail Price</u> , Internet FRIACO, etc.  (state which)	Code - first 4 digits after initial '0'  e.g. 8004 - Freephone, 8456 – <u>BT Standard Local Call Retail Price</u> , 8703 – <u>BT Standard National Call Retail Price</u> , etc.  (SABC)	Next 2 digits of number  e.g. 34  (DE)	Next digit of number (F digit)  only required for blocks that are issued in blocks of 1000 numbers – see top of Form  (F)	Tariff for each number block (including VAT):  for 0844 and 0871 (non-internet) blocks show tariff (to nearest 1p <u>for BT customers</u> ) from those tariffs on web site	Confirm if BT Discount Scheme or Non 'BT Discount Scheme' will apply to block (where relevant)  (see <a href="#">Oftel Direction</a> )	Planned 'In-Service' Date  (applications should not be submitted more than 6 months prior to in-service date)	Forecast of expected Adoption in 1 <sup>st</sup> 12 months  (%)	Forecast of expected Adoption in 2 <sup>nd</sup> 12 months  (% cumulative)
e.g. 1 <sup>st</sup> Block	1 <sup>st</sup> Choice	Freephone	8006	21	3	free to caller		mid Oct 2003	20	80
	2 <sup>nd</sup> Choice	Freephone	8005	36	2	free to caller		mid Oct 2003	20	80
e.g. 2 <sup>nd</sup> Block	1 <sup>st</sup> Choice	Internet Freephone	8089	02	2	free to caller		beg. Sep 2003	40	100
	2 <sup>nd</sup> Choice	Internet Freephone	8089	05	5	free to caller		beg. Sep 2003	40	100
e.g. 3 <sup>rd</sup> Block	1 <sup>st</sup> Choice	Up to <u>10p for BT customers</u> (Non-Internet)	<u>8713</u>	<u>60</u>		<u>7ppm</u>	Non 'BT Discount Scheme'	end Nov 2003	15	90
	2 <sup>nd</sup> Choice	Up to <u>10p for BT customers</u> (Non-Internet)	<u>8714</u>	<u>83</u>		<u>7ppm</u>	Non 'BT Discount Scheme'	end Nov 2003	15	90
1 <sup>st</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
2 <sup>nd</sup> Block	1 <sup>st</sup> Choice									



Calls to 0845 and 0870 numbers: review of retail price and numbering arrangements

	2 <sup>nd</sup> Choice									
3 <sup>rd</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
4 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
5 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									

5. continued

		Number block Type?  e.g. Freephone, Internet Freephone, <u>BT Standard Local Call Retail Price</u> , <u>BT Standard National Call Retail Price</u> , Internet FRIACO, etc.  (state which)	Code - first 4 digits after initial '0'  e.g 8004 - Freephone, 8456 – <u>BT Standard Local Call Retail Price</u> , 8703 – <u>BT Standard National Call Retail Price</u> , etc.  (SABC)	Next 2 digits of number  e.g. 34  (DE)	Next digit of number (F digit)  only required for blocks that are issued in blocks of 1000 numbers – see top of Form  (F)	Tariff for each number block (including VAT):  for _0844 and 0871 (non-internet) blocks show tariff (to nearest 1p <u>for BT customers</u> ) from those tariffs on web site	Confirm if BT Discount Scheme or Non 'BT Discount Scheme' will apply to the block (where relevant)  (see <a href="#">Oftel Direction</a> )	Planned 'In-Service' Date  (applications should not be submitted more than 6 months prior to in-service date)	Forecast of expected Adoption in 1 <sup>st</sup> 12 months  (%)	Forecast of expected Adoption in 2 <sup>nd</sup> 12 months  (% cumulative)
6 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
7 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
8 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
9 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
10 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
11 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
12 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
13 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
14 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
15 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									

**6. Service and Market:**

For each of the Telephone Number blocks applied for above, give a brief description of the type of Public Electronic Communications Service for which the Telephone Numbers applied for will be Adopted, and the market to be served by the service e.g. calling-card for UK customers, e-fax, internet access, etc.

**7. Adoption of existing Telephone Number blocks:**

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

Number block Type?  e.g. Freephone, Internet Freephone, <u>BT Standard Local Call Retail Price</u> , <u>BT Standard National Call Retail Price</u> , Internet FRIACO, etc.  (state which)	Code – first 6 or 7 digits after initial '0' – show as SABC DE F  (see top of Form for number of digits to specify)  (SABC) (DE) (F)			Tariff <u>for BT customers</u> (only needs to be entered for 0844 and 0871 (non-internet) blocks)	Confirm if BT Discount Scheme or Non 'BT Discount Scheme' applies to the block (where relevant)  (see Oftel Direction)	Total Numbers Allocated to End Users: ie, in use or ported out  (Numbers or %)	Total Numbers not in use but contracted out  (Numbers or %)
	Freephone	8005	28	6			942
Internet Services metered access up to 5p for BT customers	8440	95	4			860	35
Special Services up to 10ppm for BT customers (non-internet)	<u>8718</u>	<u>13</u>		<u>7ppm</u>	Non 'BT Discount Scheme'	6540	2050
BT Standard Local Call <u>Retail Price</u>	8459	56				7560	180

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

## FormS8 - Annex A

### **A1. Confirmation of Status:**

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

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

#### Providers of Public Electronic Communications Networks

It is not Ofcom's intention for a Communications Provider to be assessed more than once to determine whether or not it is a provider of a Public Electronic Communications Network.

Therefore, please now complete question A4. If you have answered 'yes' to question A4(a), you do not need to answer questions A1 (a) and (b) below.

If you have not registered i.e. you have answered no to question A4(a), Ofcom needs certain information from you in order to determine whether or not you are a provider of a Public Electronic Communications Network.

Please provide details of:

- a) the Electronic Communications Network on which the Telephone Numbers applied for are intended to be Adopted;  
(a diagram may be useful to assist Ofcom in assessing your eligibility for Telephone Numbers)
- b) the Electronic Communications Service which you are intending to provide over that network.

#### Providers of Public Electronic Communications Services

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

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

**A2. Applications from providers of Public Electronic Communications Services**

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

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

**A3. Interconnection arrangements**

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

**A4. Register of providers of Public Electronic Communication Networks**

Ofcom maintains a voluntary register of providers of Public Electronic Communications Networks.

- a) Is your company listed on this register?
- b) If so, under which name is your company registered?
- c) If different from b), what is the 'trading name' under which your company will sub-allocate the Telephone Numbers applied for in this application?

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

## Annex M

# Glossary

**CBA:** cost-benefit analysis. An economic tool used to assess the desirability of a certain course of action by attempting to place a financial value on all the consequences, and comparing the net costs with the net benefits.

**Communications provider:** a person who provides an Electronic Communications Network or provides an Electronic Communications Service.

**Dial-up internet access:** internet access that uses a dial-up connection over an analogue or ISDN telephone line.

**ICSTIS:** the Independent Committee for the Supervision of Standards of Telephone Information Services, the premium rate service watchdog.

**ISP:** Internet Service Provider. A company that provides individuals and other companies with access to the internet and other related services.

**National Numbering Scheme (the Scheme):** the day to day record of telephone numbers allocated by Ofcom in accordance with the National Telephone Numbering Plan, and as provided for in section 56(3) of the Communications Act.

**National Telephone Numbering Plan (the Plan):** a document setting out telephone numbers available for allocation and restrictions on the Adoption and other uses of those numbers, and as provided for in section 56(1) of the Communications Act.

**Network Charge Change Notification (NCCN):** a document Issued by BT to notify the industry of changes to BT's charges to the industry.

**NTS:** Number Translation Services. Telephone services using the following numbers: Special Service numbers (including freephone, special local rate and special national rate) and Premium Rate Services numbers (PRS) (services currently provided under 090 and 091 number ranges). Within these ranges calls to 0844 04 numbers for Surftime internet access services and calls to 0808 99 for FRIACO (Flat Rate Internet Access Call Origination) are excluded.

**NTS Service Provider:** a provider of voice or data services to third parties using NTS numbers.

**Operator Charge Change Notification (OCCN):** a document Issued by BT to notify the industry of changes to BT's payments to the industry.

**Originating Communications Provider:** the Communications Provider on whose network a call originates.

**POLO:** payment to other licensed operator. This is the payment made by an Originating Communications Provider to a Terminating Communications Provider for terminating an NTS call.

**Premium rate service (PRS):** a particular type of Number Translation Service currently provided on the 090 and 091 number ranges, at the time of writing subject to a separate Ofcom consultation see <http://www.ofcom.org.uk/consultations/current/prs1/prs.pdf?a=87101>.

SMP: Significant Market Power. The Significant Market Power test is set out in European case law, the new EU Communications Directives and the Commission's SMP Guidelines. It is used by the National Regulatory Authorities such as Ofcom to identify those Communications Providers who must meet additional obligations under the Access Directive.

Terminating Communications Provider: the Communications Provider on whose network a call terminates.