



**RESPONSE BY BRITISH SKY BROADCASTING GROUP PLC
TO OFCOM'S CONSULTATION DOCUMENT "Simplifying Non-Geographic Numbers"**

1 April 2011

This is the response by British Sky Broadcasting Group PLC ("Sky") to Ofcom's consultation on "Simplifying Non-Geographic Numbers" (the "Consultation").

Summary

1. Sky broadly agrees with Ofcom's analysis that there would be benefit in simplifying and improving the structure of non geographic call services (NGCS) pricing, particularly at the wholesale level. However, Sky considers that there is already an adequate framework in place to ensure disclosure of price information to consumers and we do not therefore consider that additional communication obligations (such as new price disclosure obligations) are required in addition to the proposed changes to the structure of NGCS pricing.
2. Ofcom's strong preference is for the unbundled approach, and in the absence of any credible alternative, Sky agrees that this approach is preferable to the other options.
3. Sky notes that a number of the proposals contained in the Consultation are based on the expectation that Ofcom will be granted new powers following the transposition of the requirements of the revised EU telecoms framework into UK Law by the Government by May 2011. Consequently, Sky considers there is a lack of detail on the implications, in terms of the justification, costs and benefits as well as specification and timing of implementation, of some of the proposals. Further consultation as well as a detailed impact assessment will be required by Ofcom before it will be able to reach any final decisions. Indeed, Ofcom notes this at paragraph 1.47 of the Consultation. In particular, Sky considers that further consultation is essential to determine the specifics of how pricing detail might be structured or communicated as well as the specifics of setting actual price cap quantum and determination of new termination payment arrangements.
4. This response is structured as follows:
 - SECTION 1 reviews Ofcom's evidence and analysis supporting the need for intervention;
 - SECTION 2 considers Ofcom's suggestions for simplifying the existing number ranges;

- SECTION 3 addresses Ofcom’s proposal to price regulate freephone numbers;
- SECTION 4 responds to Ofcom’s suggestion for the introduction of an “unbundled” approach to NGCS; and
- SECTION 5 responds to Ofcom’s potential communication and price disclosure obligations.

SECTION 1. Evidence and Analysis supporting the need for intervention

1.1 Ofcom notes that there are a number issues that have beleagued the operation of number translation services (NTS), premium rate services (PRS) and directory enquiries (DQ), for some time, leading to an overall dysfunctional regime not serving consumers of market participants well.

*“The existing regime for the operation of Number Translation Services (NTS), Premium Rate Services (PRS), Directory Enquiries (DQ) and other non-geographic numbers **is under significant strain.**”¹ (emphasis added)*

- 1.2 Ofcom identifies three sets of issues that support its need to intervene, being:
- i. the reliance on historic **regulation of BT** partly based upon a previous finding of retail SMP which has subsequently been removed;
 - ii. the **breakdown in commercial wholesale arrangements** for the agreement of termination rates, as evidenced by a growing number of disputes; and
 - iii. a lack of consumer confidence in using the system resulting in a fall of use and hence **consumer detriment.**

Broadly Sky agrees with Ofcom’s analysis. There is a need for simplification and improvement in the structure of NGCS pricing, particularly at the wholesale level. We address each of the sets of issues identified by Ofcom below.

Regulation of BT

1.3 Currently retail prices charged by originating communications providers (OCPs)² for NGCS are unregulated with the exception of BT whose retail charges are capped by the National Telephone Numbering Plan (NTNP). In addition, the termination rates payable by BT are heavily influenced by regulation as a result of the ‘NTS (number translation service) Call Origination Condition’. This also influences the amount other OCPs choose (a commercially negotiated amount) to pay for termination except, where those OCPs interconnect directly with terminating communications providers (TCPs) other than BT. While the constraints and guidance imposed on BT have had an indirect disciplining

¹ Ofcom Simplifying Non-Geographic Numbers Consultation Document, 16 December 2010 (the “Consultation”), paragraph 2.22

<http://stakeholders.ofcom.org.uk/binaries/consultations/nongeo/summary/non-geo.pdf>

² When a caller “A” makes a call to party “B”, caller A’s call originates on the OCP network and terminates on the network on which party B is connected to: the terminating or TCP network. The OCP charges caller A for making the call, keeps some of that payment to cover its costs, and pays a termination charge to the TCP for completing the call to party B.

effect on the pricing behaviour of other OCPs, it has proven insufficient to constrain retail prices to common levels, particularly with regards to pricing of calls from mobiles, nor has it supported competitive rivalry.

Additionally, Ofcom suggests that given increased competition in retail call origination it is no longer appropriate for BT to be constrained by regulation. This follows from the removal of BT's SMP designation in retail call origination in 2009 following the Narrowband Wholesale Markets Review. In that Consultation, Ofcom noted that its *"recent review of the fixed retail narrowband market concluded that there was no party with SMP in the provision of fixed retail calls....[we] have also concluded that no [mobile] retail operator has market power which is a threat to competition."*³

- 1.4 Ofcom also considered that continued wholesale regulation which blends retail and wholesale controls is *"...inconsistent with a policy view that BT should be able to operate under the same constraints as other communications providers in its retail operations."* Ofcom also recognises that the current regulation, targeting BT as it does, *"does not address the behaviour of other market participants, thus it is of limited effectiveness"*⁴.
- 1.5 Sky concurs with Ofcom's views that the continuing focus of regulation primarily on BT is inappropriate and diminishing in effectiveness. It is a contributing factor supporting the need for regulatory reform.

Breakdown in commercial wholesale arrangements

- 1.6 Ofcom notes that there has been a *"..series of disputes (plus legal appeals of some of [Ofcom's] decisions on these disputes"*⁵ in relation to the commercial arrangements governing the termination rates for NGC numbers. One of the consequences of these disputes is that decisions are made regarding wholesale remedies which are piecemeal and lacking in regulatory consistency. Addressing systemic market problems, particularly if the result is the imposition of regulation, is better done through a wide stakeholder inclusive, open regulatory consultation, than through the dispute process.
- 1.7 At the heart of the disputes is the disagreement between both TCPs and OCPs, and BT, on the payments that BT is to make to the TCPs (or OCPs in the case of freephone origination) and the monies that BT is to retain. The disagreements arise largely because while the retail end-to-end charge is set via regulation of BT and the NTNP, aspects of the division of that revenue are ill defined. With the removal of the legacy regulation on BT, the division of retail revenue without any agreed approach will likely give rise to further disputes. Those disputes will likely grow beyond being just with BT.
- 1.8 Sky considers that in the interest of greater regulatory certainty and improved regulatory efficiency, regulatory reform and guidance that addresses the wholesale arrangements is desirable.

³ Paragraph 3.14 of the Consultation

⁴ Paragraph 2.25 of the Consultation

⁵ Paragraph 2.27 of the Consultation.

Consumer detriment

- 1.9 Ofcom notes that there are broadly two sets of customers to be considered when considering NGCS: service providers and callers. Ofcom considers that both suffer under the current NGCS regime.
- 1.10 Service providers suffer in that they are unable to communicate unambiguously the price at which they offer their services and hence are not able to differentiate or compete on price. This is particularly acute with directory assistance (DQ) services. Additionally, while mobile operators choose to charge for freephone calls, a large sector of the calling public is confused by what is and what is not “free” and, where the caller does not have access to a fixed line, they are unable to make free calls to freephone numbers. While some work arounds have been accommodated for freephone access to key public services, these are at best messy.
- 1.11 Sky considers that Ofcom’s proposed unbundling approach will provide greater clarity around the service provider costs of NGCS and support greater price differentiation and price based competition.
- 1.12 Ofcom places greater emphasis on the supposed detriments experienced by callers. It considers that consumer’s poor awareness of prices has a number of harmful consequences for callers and lists them as being:
- *A reduction in demand for non-geographic calls, particularly from mobile phones;*
 - *Relative prices of geographic and non-geographic calls not reflecting consumer preferences;*
 - *Burdensome avoidance strategies and, loss of, or reduction of access to service, particularly for low income households;*
 - *Increased risk of fraud; and*
 - *Finally, consumers suffer the loss of service diversity and innovation as SPs lack the incentives to invest in the market.*⁶
- 1.13 Ofcom presents a range of evidence from surveys and interviews with consumers that it purports substantiates a significant consumer problem. Our reading of that evidence is different. Sky concludes that for most consumers the cost of NGCS calls, their cognisance of the price, and the impact of the price to them is of little importance. To pick just one representative quote from Ofcom’s own evidence:

“Calls to non-geographic numbers did not appear to be ‘front of mind’ for most consumers in the focus groups, with several commenting that they had never considered these numbers before being prompted in the discussion.”⁷

⁶ Paragraph 4.38 of the Consultation.

⁷ Ofcom Non Geographic Call Services Review, October 2010 page 4
<http://stakeholders.ofcom.org.uk/binaries/consultations/nongeo/annexes/nts.pdf>

1.14 While not agreeing with Ofcom's view as to the extent of consumer detriment, Sky does acknowledge there may be some benefit in improved price transparency, largely through simplification. Price simplification will also have the benefit to Sky and our customers of reducing the voluminous pricing tables in our customer Tariff Guide.

Options for reform

1.15 Ofcom has considered four alternatives for reform:

- i. deregulation;
- ii. reliance on improved price information measures (largely pre-call announcements (PCA));
- iii. setting of maximum retail prices; and
- iv. unbundled approach.

1.16 Ofcom's strong preference is for the unbundled approach, and in the absence of any credible alternative, Sky agrees that this approach is preferable to the other options. The remainder of this submission focuses on the elements supporting the unbundled approach. However, it is worth noting that Ofcom appears to have undertaken no consumer research into the strength of the asserted consumer benefits of the unbundled approach.

1.17 While Sky accepts that regulatory reform of NGCS is desirable, we consider the primary issues are at the wholesale level. Resolving the wholesale issues will deliver greater retail competition and retail price clarity, contributing to significant consumer benefits. Ofcom's own consumer research does not support any additional requirement for the imposition of expensive and complex detailed billing and pre call announcements.

SECTION 2. Ofcom's suggestions for simplifying the existing number ranges

2.1 Ofcom makes a number of suggestions to simplify the various number ranges, that collectively provide access to non-geographic call services, being:

- i. **03** – be retained as current, with the retail price continuing to be linked to the price of geographic calls;
- ii. **050 & 080 & 116 (“freephone”)** – retail price cap these at zero for all calls from any network;
- iii. **070 & 076** – fall within the proposed unbundled approach with the retail Service Charge (SC) being rate capped at or near the price of calls to mobile and possibly the vacating of some number ranges;
- iv. **084 & 087** – fall within the proposed unbundled approach with some rationalisation and possibly the vacating of some number ranges;
- v. **09** – fall within the proposed unbundled approach with the setting of the service charge (SC) being governed by PhonepayPlus and the SC being increased to reflect inflation; and

- vi. **118 (DQ)** – fall within the proposed unbundled approach.

We address these proposals below.

- 2.2 **03:** Sky agrees with the desirability of having an NGCS number range priced at geographic number range rates. The current multiple number ranges rated at geographic rates are unnecessary and simplifying them to just one range – 03 – will be beneficial. It needs to be acknowledged that with the likely withdrawal of the current regulation of BT in this space, a new arrangement for determining the termination payment will be needed. We would suggest that the TCP payment arrangements be struck with reference to geographic termination rates and vary depending on where the call is handed over to the TCP.
- 2.3 **050 & 080 & 116 (“freephone”):** see the discussion in Section 3 below.
- 2.4 **070 & 076:** we are aware of the issues related to misuse and fraudulent charging for calls made to these number ranges. We understand that within the proposed unbundled approach, the proposal is to regulate the retail price of the Service Charge (SC) for calls to these number ranges to a rate similar to the retail cost of calls to mobiles. Sky agrees with this proposal. We address the specifics related to the unbundled approach in Section 4 below.
- 2.5 **084 & 087, 09 and 118 (DQ):** see the discussion on the unbundled approach in Section 4 below. All these number ranges should be permitted to include an element of revenue sharing.
- 2.6 **09:** we support the proposal to increase the retail price cap on calls to 09 “premium” number ranges in recognition of: a) the recent rise in VAT and b) general cost/price inflation. It may be desirable at this time to introduce some differential into the regulated maximum price caps, by sub-09 number range.
- 2.7 While generally supporting a simplification of the number range use as detailed above, Sky does not see the need nor benefit of closing number ranges and forcing migration of customers off existing numbers. If there was some alternate use envisaged for a number range where there were currently few numbers in use, then that might support the eviction of current users given an appropriately long notice period, but only after full consultation supported by a cost benefit analysis. If that were a condition thought likely to be experienced in the future, then it may be desirable to close a number range (eg 070 or 076) to further allocations.

SECTION 3. Ofcom’s proposal to price regulate freephone numbers

- 3.1 The Freephone number ranges include: 080, 050 and 116. Ofcom notes:

“In general, fixed line providers offer Freephone as “free-to-caller”. However, most mobile providers charge for most Freephone calls. Compared to prices for geographic calls, prices for Freephone calls from some mobiles can be very high ..”⁸

⁸ Paragraph 6.110 of the Consultation.

- 3.2 Sky agrees with Ofcom's proposal to set a retail price cap of zero for calls to these number ranges, irrespective of the network (fixed or mobile) from where the call originates. This would effectively make calls to these freephone number ranges free to the caller in all instances.
- 3.3 The OCP should be compensated by the TCP for originating calls to these number ranges and conveying the call to an agreed hand over point. The amount of payment from the TCP to the OCP should be different for fixed and mobile OCPs to reflect the difference in costs as similarly recognised in the higher price for terminating calls to mobiles.

SECTION 4. Ofcom's suggestion for the introduction of an "unbundled" approach to NGCS

- 4.1 Ofcom's proposed preferred approach to simplifying NGCS is given the name "unbundled tariff". Ofcom describe it thus:

*"An unbundled tariff for NGCs would separate the retail price of a non-geographic call into two parts: a Service Charge [SC] set by the service provider (usually through a TCP intermediary) and an Access Charge set by the OCP."*⁹

- 4.2 Ofcom suggests that there are a number of benefits that would be derived through the unbundled approach. These include:

- heightened price awareness amongst callers provided through an overall simplified pricing structure;
- simpler communication of NGCS pricing by OCPs as they would only need to include their access charge and the maximum price cap for each number range in retail tariff notices;
- greater competition amongst OCPs in the setting of the access charge as it would be much more easily compared;
- simpler communication of the price of the service through a simple SC; and
- price competition between service providers of similar services due to directly comparable SCs.

- 4.3 Generally, Sky agrees with the asserted benefits, although we consider the value of the benefits to be derived by consumers through heightened price transparency is more limited. In Ofcom's own research, consumers stated that they paid little attention to the price of calls to NGCS in their consideration of which operator to take service with¹⁰, what calls to make, nor between services to be accessed. We consider that the

⁹ Paragraph 6.69 of the Consultation.

¹⁰ Paragraph A5.125 of the Consultation.

main benefit of the unbundled approach is that it removes the need for OCPs and TCPs to negotiate and agree the division of retail revenues and payment of origination and termination costs. There are additional benefits related to the specifics of each of the proposed Access Charge and Service Charge, which we discuss below.

Access Charge (AC)

- 4.4 Under the unbundled tariff approach, the OCP sets the AC for calls from its network to all NGCS. Ofcom considered a number of policy options in relation to the structure of the AC¹¹ and noted that the more complex the AC pricing structure, the less transparent it is to callers and hence the competitive constraint on its level will be weaker¹². Ofcom suggests that to achieve the greatest benefit to the caller, for each calling plan offered by an OCP, the AC should comprise only a single pence-per-minute (ppm) price for all calls¹³. Sky accepts the concept that a single price is easier to remember than multiple prices, but is sceptical of the value of this benefit due to consumers' own admission that they pay little or no attention to the price of the call¹⁴.
- 4.5 Sky considers that the AC should be structured to include:
- i. up to two different ppm AC rates should be allowed: one for "business NGCS" and another for "premium rate NGCS"; and
 - ii. a connection charge should be permitted where the OCP charges a connection charge for all calls within the calling plan, for both geo and non-geo numbers (not otherwise included in inclusive baskets);

and that:

- iii. the AC should not be regulated;
- iv. OCPs should be required to inform their customers only of a) the AC charge(s) (including any connection charge) and b) the price capped SC for each number range; and
- v. OCPs should have flexibility in how they itemise the customer bill for NGCS calls.

We expand on these points below.

- 4.6 **Two different ppm AC rates:** there should be some price setting flexibility afforded to the OCP in order that they might set ACs to reflect more accurately the underlying costs. It is expected that 09 'premium rate' numbers and 118 DQ services will continue to be priced considerably higher than other NGCS calls. Additionally, some premium rate calls are required to provide a pre call announcement (PCA), offering the caller the option to terminate the call at no charge to the caller. Such abandoned calls nevertheless generate costs for the OCP. To reflect the higher potential bad debt and administrative costs associated with these higher priced calls, and higher network costs

¹¹ Paragraphs A5.46- A5.95 of the Consultation.

¹² Paragraph A5.50 of the Consultation.

¹³ Paragraph A5.61 of the Consultation.

¹⁴ Table A2.11 of the Consultation.

associated with abandoned calls, Sky proposes that two ppm AC rates be permitted: A 'premium rate AC' for use in accessing 09 and 118 numbers and a lower 'business rate AC' for accessing all other NGCS (070, 076, 084 and 087 numbers).

- 4.7 **Connection charge:** for consistency, where an OCP charges a 'connection charge' for all calls within a specific call plan (outside of calls within an all-inclusive call basket and calls to freephone numbers), they should be permitted to continue to include a connection charge in their AC (both their premium and business rate AC). The inclusion of a connection charge can best reflect the underlying network costs of originating a call and are thus an efficient pricing element.
- 4.8 Ofcom seeks to address the option of multiple ACs to better reflect underlying costs, but suggests that a preferred approach would be to use a blended AC. Sky does not support the use of a blended single ppm AC. If we were to conservatively derive a single ppm AC that accounted for our current call connection charge and higher origination charges for premium numbers, we consider that charge would unduly penalise callers accessing the 084 and 087 NGCS and this would not be a favourable outcome for consumers. These number ranges are used to access the likes of doctors, banks, customer service lines, etc; calls to which, callers usually have little or no discretion to make.
- 4.9 **Regulation of AC:** Sky considers there is no justification to regulate the price of the AC. Ofcom acknowledges that no OCP has significant market power (SMP) in the provision of fixed or mobile calls¹⁵. The provision of calls services is competitive today and with the added pricing transparency of NGCS calls to be achieved through the unbundled approach, competition will remain equally vibrant or be enhanced.
- 4.10 **Publishing of tariffs:** presently OCPs are required to publish pages of tariff tables which outline the different price bands per number range and the number blocks within each number range and their related price bands. In the simplified unbundled approach, Ofcom is proposing that OCPs publish their AC charge(s) and the maximum capped price of each NGCS number range. Sky supports this approach and considers it will assist in delivering greater transparency to the overall price of NGCS calls.
- 4.11 **Billing flexibility:** Today OCPs are not required to break out and separately list the elements of the price of a NGCS call. Some OCPs report the aggregate cost of multiple calls to the same NGCS rather than report the cost per individual call made. Many customers choose not to receive a paper bill, choosing to review their bill on-line and perhaps print it only on an exceptions basis. Some OCPs offer a price saving or charge a premium depending on the customer's billing preference. Sky is not aware of any material consumer concerns regarding the quality of bill presentation today. Under an unbundled approach, Sky would wish for a similar level of flexibility to be extended to OCPs in how they present the charges that go into making up the total amount billed to a particular number – whether that is on a call by call basis or an aggregate of all calls for the period to a particular number. It would be very costly to have to disaggregate and present the AC and the SC separately on the bill; on a call by call basis or as an aggregate of all calls for the period to a particular number. It would be totally

¹⁵ Paragraph 3.14 of the Consultation

disproportionate to impose such a requirement and no evidence has been presented to justify such an imposition.

Service Charge

4.12 Ofcom proposes that the Service Provider (SP) sets the SC sufficient to cover the costs of termination, hosting of the service and cost of service provision¹⁶. Sky largely agrees with the arguments presented by Ofcom and proposes that the SC should be:

1. priced the same irrespective of which OCP network the caller is calling from;
2. able to include time of day variations;
3. able to be a single price per call (rather than a price per minute), where the number is within a specific 09x or 118 number range (e.g., for the likes of voting, donation or DQ services);
4. price capped by number range, enforced through the NTNP as proposed. Whether price capping should differentiate on the third or fourth digit (fourth digit differentiation would permit the price cap of number range 0844 to differ from 0845) should be driven by consumer utility and needs to be determined via more detailed consumer research. In setting the maximum SC price cap, Ofcom will need to be mindful of the need to accommodate the current pricing (including call set up costs, where they exist e.g., 0845), commercial arrangements and the effects of inflation since the current price bands were set for BT, so as to not force large scale exiting of number ranges by SPs;
5. only accommodating whole ppm price differences in order to enhance transparency and consumer price awareness and also to make the wholesale arrangements workable;
6. the only price chargeable to the OCP by the TCP for terminating the call;
7. (price) published along with each instance of publication of the NGCS number; and
8. OCPs should only be required to publish the maximum priced service within each number range in their calling tariffs, rather than the prices for each SC.

4.13 Sky welcomes Ofcom's proposal to review the current maximum limit of 09 PRS calls and would support a raising of these limits subject to PhonepayPlus safeguards. However, we do not support the suggestion to extend the oversight of PhonepayPlus to include numbers other than those in the 09 premium rate range. The improved clarity achieved through the unbundled AC and SC and the price cap by number range, should provide all the necessary price clarity and certainty desired by the consumer. Adding an additional layer of governance and micro management by PhonepayPlus, is entirely disproportionate and not justified by any evidence.

¹⁶ Paragraph 6.72 of the Consultation.

SECTION 5. Communication and Price Disclosure Obligations

- 5.1 Ofcom considers that the effectiveness of the new structure relies strongly on consumer understanding of how the tariff structure would operate and the choices that they would have¹⁷. Accordingly Ofcom has made a number of proposals in relation to the communication of the proposed changes to the tariff structure and the structure of and rules applying to the non-geographic call ranges, including as to the price disclosure and advertising obligations that would apply¹⁸. These proposals will be subject to separate consultation, however, Ofcom has invited preliminary comments on these.
- 5.2 We consider that further detail as to Ofcom's proposals is needed to respond fully and we welcome further consultation on the implementation of any proposed changes. Our preliminary views are set out below. As there is an overlap in the communications proposals for the potential implementation of maximum prices with the proposals for the implementation of an unbundled tariff structure, we have considered the proposals together.
- 5.3 Sky considers that a national information campaign would be an effective way of raising awareness of any changes to the charging and structure of non-geographic numbers, in particular as a means of giving consumers an overview of all the ranges and the pricing characteristics of each range.
- 5.4 However, Sky considers that the existing regulatory requirements (including pursuant to the General Conditions, the Consumer Protection from Unfair Trading Regulations 2008 (the "CPRs") and the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the "CAP Code") and the UK Code of Broadcasting Advertising (the "BCAP Code")) already provide a framework under which pricing information is provided for non-geographic numbers where necessary (for example by requiring advertisers to include pricing information in marketing communications where consumers are asked to dial an 0844 number).
- 5.5 Sky is not persuaded that the evidence of consumer harm presented so far justifies wholesale changes to CPs communications obligations.
- 5.6 Furthermore, the CPRs are subject to a maximum harmonisation obligation under the Unfair Commercial Practices Directive. Therefore, any proposed regulation of matters under the remit of the CPRs, cannot impose any greater restriction than is required by the CPRs.
- 5.7 Considering Ofcom's specific proposals:
- i. **General Conditions:** Ofcom has proposed two new General Conditions¹⁹ and proposes to amend the existing General Conditions to reflect any changes to the structure of non-geographic number ranges. Sky reserves the right to comment on these in the future consultation once further detail is published on proposed amendments to the existing General Conditions, and once the interface between the two new proposed General Conditions and the

¹⁷ Paragraph 7.13 of the Consultation.

¹⁸ Section 7 of the Consultation

¹⁹ Paragraphs 7.64.1 and 7.64.2 of the Consultation

amendments to the existing General Conditions currently under consultation is clear. However, Sky considers that the CPRs already sufficiently address Ofcom's requirement to ensure that relevant information is clearly available to consumers where necessary. It is an unfair commercial practice prohibited by regulation 3 of the CPRs to omit material information in an advertisement or in the course of a sales process that as a result is likely to cause the average consumer to take a transactional decision he would not have taken otherwise. A requirement that the Access Charge must always be disclosed at the point of sale in a durable form is one way in which consumers could be informed, but there are others and such a requirement would be more restrictive than the requirements under the CPRs. It would also be disproportionate, as in some cases it may be sufficient that a consumer knows where to locate information about the access charge (e.g. in an OCP's tariff list).

Likewise, under existing advertising rules, guidance issued by the CAP Copy Advice Team sets out when it is necessary to state the cost of calls in advertising so that the advertisement is not misleading. Under current guidance, in respect of the cost of 084 and 087 calls, the advertiser should refer to BT's charges²⁰. In the event that the tariff structure of non-geographic numbers was to change to incorporate an Access Charge, it would be sufficient that the current guidance be updated to reflect this change.

- ii. **Depiction of an icon in advertising;** Ofcom's preliminary proposal is for the presentation of advertisements of non-geographic numbers to include an icon to represent the tariff characteristics applying to the number range²¹. Sky considers that such an obligation on advertisers to include an icon in addition to price information goes beyond the requirements of the CPRs and unnecessarily impinges on advertisers creative use of advertising space. Furthermore, the number range itself informs consumers of the relevant tariff characteristics of the number. At most, the use of any such icons should be optional.
- iii. **Communication of the Access Code:** Sky is concerned that proposals referred to in paragraphs 7.9(b) and (c), 7.14 and 7.15 of the Consultation have the potential to be unnecessarily prescriptive and go beyond what is required to address any perceived consumer detriment in light of existing regulation, as described above. For example, Sky's customer contracts do not include pricing information and it is impractical to do so as any price change would necessitate an amendment to the contract. The access charge is no different from any other tariff which informs a consumer's purchase decision and therefore it is disproportionate to require this charge to be included in customer contracts. Some of the communications proposals may be carried out by communications providers in the course of normal business in any case.
- iv. **Regulation of 0843/4 services.** Ofcom proposes that 0843/4 services are subject to regulation by PhoneyPayPlus, in particular by including an obligation on

²⁰ If the cost of calling an 084 or 087 number is more than the cost of a phone call to a landline (01 or 02) using BT's unlimited Weekend package, the advertisement should include pricing information that states the cost of a call to BT customers.

²¹ Annex 9 of the Consultation

providers to state the Service Charge in all advertising²². Oversight by PhonepayPlus is not required to address communication of pricing, the CAP Code already requires the price of 084 calls to be included in marketing communications.