



**OFCOM'S CONSULTATION DOCUMENT "Simplifying Non-geographic Numbers: Detailed proposals on the unbundled tariff and Freephone"**

**RESPONSE BY BRITISH SKY BROADCASTING GROUP PLC**

**27 June 2012**

1. This is the response by British Sky Broadcasting Group PLC ("Sky") to Ofcom's consultation on "Simplifying non-geographic numbers" of 4 April 2012 (the "Consultation").<sup>1</sup>
2. Sky is in broad agreement with Ofcom's proposed approach to reforming the regulations relating to non-geographic call services (NGCS). We agree that aspects of the presentation, structure and charging for these calls may be confusing to consumers and can give rise to disputes between originating communications providers (OCPs) and terminating communications providers (TCPs) as they seek to commercially negotiate their share of a given retail revenue.

**Proposed treatment of the different types of non-geographic numbers**

3. Ofcom's proposed approach to regulating specific number ranges and Sky's comments are as follows:
  - i. **080 & 116 ('Freephone') numbers:** retail price cap these numbers at zero for all calls from all networks and impose an access condition on all TCPs<sup>2</sup>. Sky supports this approach.
  - ii. **084 & 087 numbers:** introduce a new tariff structure for these number ranges by splitting (and making transparent to consumers) the money a consumer pays to their phone company and the money that is paid to cover the costs of routing and managing the non-geographic numbers, the cost of receiving the call service and, where this occurs, payment for the service the consumer is receiving (the "unbundled tariff")<sup>3</sup>. Sky supports the unbundled tariff approach but has some concerns and suggestions regarding the structure of

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<sup>1</sup> Ofcom consultation, "Simplifying non-geographic numbers. Detailed proposals on the unbundled tariff and Freephone", 4 April 2012, [http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/?utm\\_source=updates&utm\\_medium=email&utm\\_campaign=non-geo-no-condoc](http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/?utm_source=updates&utm_medium=email&utm_campaign=non-geo-no-condoc)

<sup>2</sup> Paragraph 16.281 and 17.72

<sup>3</sup> Paragraph 1.10

the access charge (AC) that OCP may set. This is explained in more detail further on in this response.

- iii. **0845 & 0870 numbers:** delink the current pricing of calls to these numbers from the price of geographic calls and integrate the number ranges into the structure for the other 084 & 087 numbers. Sky supports this approach.
- iv. **03 numbers:** retain the current regulatory structure with 03 being the only geographically rated non-geographic number range, with the retail price continuing to be linked to the price of geographic calls<sup>4</sup>. Sky supports the regulation of 03 numbers in this fashion.
- v. **05 including 050 (Freephone), 055 & 056, 070 & 076 numbers, options for raising the premium rate service (PRS) cap and consideration of a cap for 118:** address these specific number ranges and all these issues in subsequent small specific consultations ahead of the final statement of the NGCS review.<sup>5</sup> Sky concurs with this approach, agrees with the need to implement all changes concurrently for technical and consumer reasons, but notes that the benefits of an improved, simplified approach for the other number ranges must not be unduly delayed.

#### **Proposed structure of the Access Charge (AC)**

4. In Ofcom's proposed unbundled tariff structure for NGCS, it proposes the setting of the quantum of the AC by OCPs be unregulated and that it need not set any maximum price cap<sup>6</sup>. Sky considers this is appropriate.
5. Ofcom go on to propose detail tariff principles for the regulation of the AC as follows :
  - i. **A single price per minute (ppm) rate** for all NGCS calls, irrespective of the NGCS call type<sup>7</sup> (ie regardless of whether the call is to a number in the 084/087 or 09 range). Sky considers that OCPs should be permitted to strike two different ppm rates; one for calls to the higher priced 09 and 118 DQ services and another rate for calls to all other NGCS numbers. This would more accurately reflect the different underlying costs of servicing the different call types. To require a single ppm rate for all NGCS is likely to force OCPs to set an average AC higher than that which would otherwise be set for calls to the 084 & 087 numbers, being the majority of NCGS calls. Consumers will be required to pay higher prices.
  - ii. **A minimum call charge** equivalent to the price of a one minute call<sup>8</sup> be permitted. Given that many of the major fixed CPs, including Sky, routinely charge for a minimum of one minute for any call, this approach will support consistency of charging and simplicity for the consumer.

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<sup>4</sup> Paragraph 11.4, 11.61 (All paragraph references are to Ofcom's consultation document, unless otherwise stated).

<sup>5</sup> Paragraph 6.47

<sup>6</sup> Paragraph 10.145

<sup>7</sup> Paragraph 10.82 – 10.85

<sup>8</sup> Paragraph 10.113

- iii. **A price per-call (ppc) set up charge**, in addition to a common ppm charge for NGCS, appears not to be supported by Ofcom who favour a single charging structure, subject to a minimum call charge (as noted above)<sup>9</sup>. Ofcom note that several respondents to the first consultation, including Sky<sup>10</sup>, proposed permitting a call set up charge where the CP's current calling packages included a call set up charge for all calls, irrespective of call type. Disallowing a call set up fee for NGCS calls, where it was included for other call types within a tariff package, will introduce a complication likely to confuse consumers. Additionally, removing the opportunity to charge a ppc set up fee will also almost certainly lead to higher ppm rates for NGCS calls as OCPs seek to recover revenues normally achieved through a ppc charge. This will likely lead to consumers paying overall higher prices for NGCS calls, particularly for long duration calls. Sky recommends that Ofcom review its proposal and permit the inclusion of a ppc set up fee where the OCP charges a standard ppc set up charge for all calls within a particular calls tariff plan.
- iv. **The AC should be charged on a uniform basis at all times of the day**.<sup>11</sup> Sky supports this principle.
- v. **The AC (single ppm rate) may vary between different tariff packages**.<sup>12</sup> Sky supports this principle.
- vi. **The AC be permitted to be included in call bundles**.<sup>13</sup> Sky supports this principle.

#### **Proposed approach to retail billing by OCP**

- 6. Ofcom have revised their proposal on retail billing. The additional flexibility provided to the OCP, along with the retained requirement for the OCP to clearly identify the AC along with any billed NGCS calls is proportionate, will minimise what is likely to be a significant cost to some OCPs and will ensure the appropriate level of clarity is provided to the consumer. Sky supports the proposed approach.

#### **Proposed approach to the service charge (SC)**

- 7. Ofcom have suggested a number of constraints to the setting of the SC, including that service providers should not be free to set bespoke SCs for different OCPs.<sup>14</sup> Sky considers the detailed elements of the setting of the SC Ofcom have proposed, particularly to not permit bespoke pricing, are sensible.
- 8. Ofcom makes the case that much of the detail of agreeing SC price points and other elements of the operation of SCs, including the way that OCPs will be able to have certainty in the accuracy of billing their customers, should be led and developed by industry. Sky agrees with this approach and looks forward to working with other CPs.

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<sup>9</sup> Paragraph 10113

<sup>10</sup> Paragraph 10.95

<sup>11</sup> Paragraph 101.29

<sup>12</sup> Paragraph 10.25

<sup>13</sup> Paragraph 10.145

<sup>14</sup> Paragraph 10.221 and 10.390

9. Ofcom notes that under the unbundled tariff structure, it makes no sense for OCPs to publish a list of all charges to non-geographic numbers<sup>15</sup>. Sky agrees with the new approach and supports the development of a single authoritative customer facing database that will also support wholesale billing.

### **Proposed approach to ancillary matters**

10. Ofcom have proposed an approach to defining the assumed point of handover (AHP)<sup>16</sup>, necessary for agreeing the wholesale billing between OCP and TCP. Sky supports this approach

### **Publicising and Advertising SCs and ACs**

#### **Price Disclosure Obligations**

11. Ofcom has proposed a co-ordinated awareness campaign by Ofcom, CPs and the media to inform consumers of the proposed changes to NGCS. Sky considers that a national information campaign would be an effective way of informing consumers of such changes and that Ofcom is best placed to undertake such a campaign.
12. Ofcom has noted that it will review the existing price disclosure obligations in the General Conditions of Entitlement as it believes that some of the General Conditions may require amendment in order to ensure that OCPs provide clear information on the AC for their tariff packages. Our view remains that the AC is no different to any other tariff which informs a consumer's purchase decision and, therefore, the existing price disclosure obligations which apply to such other tariffs (including pursuant to the General Conditions, the Consumer Protection from Unfair Trading Regulations 2008 ("CPRs") and the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing and the UK Code of Broadcasting Advertising) are sufficient to ensure that pricing information is provided for non-geographic numbers where necessary.
13. In particular, 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. In addition, as we mentioned in our response to Ofcom's December 2010 consultation, there is guidance issued by the Committee of Advertising Practice's Copy Advice Team, which sets out when it is necessary to state the cost of calls in advertising so that the advertisement is not misleading. 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.
14. Furthermore, we would like to re-iterate that any proposed regulation of matters under the remit of the CPRs, cannot impose any greater restriction than is required

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<sup>15</sup> Paragraph 12.131

<sup>16</sup> Paragraph 10.393 and 10.395

by the CPRs, due to the maximum harmonisation obligation under the Unfair Commercial Practices Directive.

15. Notwithstanding the fact that Sky does not consider that it is necessary to make any amendments to the General Conditions, in the event that Ofcom chooses to amend the General Conditions in respect of the disclosure of ACs, Sky reserves the right to comment once further detail is published on Ofcom's proposed amendments.

#### **Depiction of an icon in advertising**

16. Sky notes that Ofcom does not propose to place a mandatory requirement on CPs to use Ofcom's proposed price guide icons in their advertising. Sky considers that it is correct that there should be no such mandatory requirement as such an obligation would go beyond the requirements of the CPRs and unnecessarily impinge on advertisers' creative use of advertising space.

#### **Transitional arrangements**

17. Sky notes that Ofcom has proposed an implementation period of 18 months<sup>17</sup> which Sky supports. However, Ofcom has not addressed the very real likelihood that due to the introduction of the unbundled tariff, consumers may pay higher prices for NGCS calls. Ordinarily under GC9.6 such price increased would trigger an opportunity for customers to terminate their contract without penalty. Such an outcome, on the back of a regulatory imposition would be quite unjust. Sky considers that Ofcom needs to work with industry to ensure a more appropriate and fair (for both consumers and CPs alike) accommodation of the proposed regulatory changes is provided for.

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<sup>17</sup> Paragraph 12.113