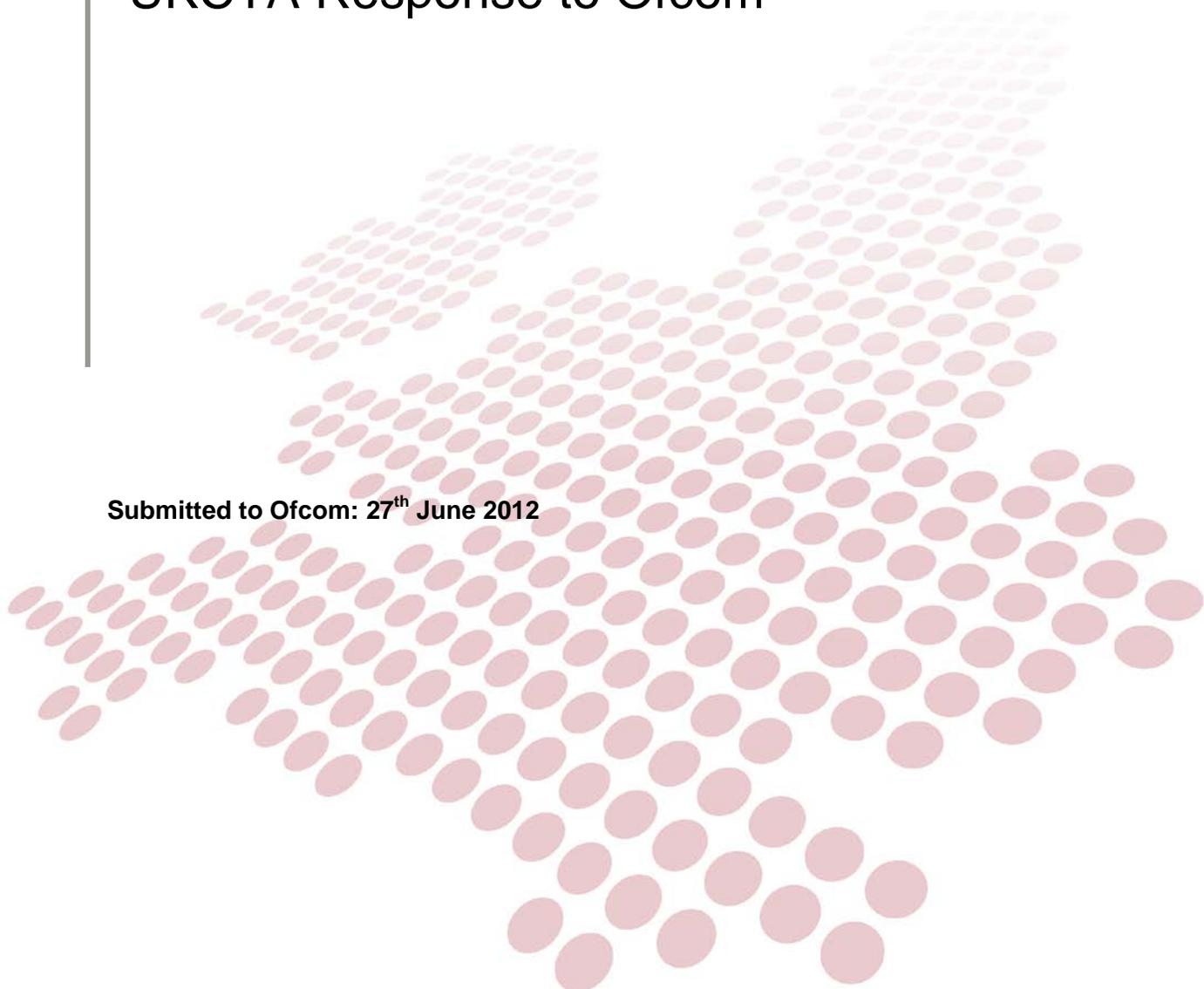


Simplifying Non-Geographic Numbers – 2nd Consultation

UKCTA Response to Ofcom

Submitted to Ofcom: 27th June 2012



UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.com.

UKCTA welcomes Ofcom's second consultation into simplifying Non-geographic numbers and supports the objective of trying to improve consumer confidence in this important sector of the communications market, while providing stability and certainty to the many businesses and organisations that rely on these services. Number Translation Services are a real UK success story, with a highly competitive service provider market giving rise to innovative services and ensuring that UK businesses, large and small have an effective means to communicate with their customers.

UKCTA members have experience in all sides of the market, fixed and mobile origination, transit provision and the termination of non-geographic numbers and we know just how important a market this is. The framework for the non-geographic services can't be left to chance as the consequences of prolonged uncertainty will be far reaching, leading to protracted disputes, stifling innovation and have economic consequences wider than the communications sector.

BT remains a very large originator and a significant terminator of non-geographic minutes and as such an appropriate remedy or framework is required in order to guard against the effects of market power, thus encouraging competition and service innovation. Should the NTS call origination condition fall away, it would be reckless to leave a regulatory vacuum, hence the need for a robust regime that is both consumer friendly and delivers for UK business.

In this response we discuss the main themes set out in Ofcom's consultation, taking each issue in turn:

Access Charge

As set out in UKCTA's response to Ofcom's first consultation on Simplifying Non-Geographic Numbers, UKCTA considers that OCPs, TCPs and service providers will potentially benefit from transparency of setting access and service charges ("ACs" and "SCs") and giving service providers greater control over the prices its customers are charged for calling their numbers, as well as from more clear and stable termination charges tied to specific number ranges

However, as acknowledged by Ofcom in both of its consultation documents, there will be significant cost and resource implications associated with implementing the unbundled approach, which the industry will be expected to absorb. In this respect, UKCTA appreciates the steps that Ofcom has taken in terms of its current preferred approach to ensure that the proposed measures are effective and proportionate. UKCTA still believes that further feasibility studies are likely to be required, to fully understand costs and benefits from a practical implementation perspective and also to further consider the implications that this might have on the current proposed implementation timescales. In addition, the potential impact on costs, benefits and timescales of the many detailed implementation issues that the consultation leaves open for further discussion and agreement by relevant stakeholders needs to be fully appreciated and understood by Ofcom. At all times Ofcom should be seeking in this regard to mitigate the cost and resource burdens on industry where possible. Ofcom also needs to make it clear when and how it proposes to step in to ensure that its desired policy outcomes are achieved, in the absence of industry agreement on any particular issue.

UKCTA accepts that, the more complex the AC pricing structure, the greater the risk that it will not be transparent to callers. UKCTA also accepts the concept that a single price may be easier for callers to remember than multiple prices. However, callers are already able to remember several different prices for their telephone calls, depending on the category of the

call – calls to geographic numbers, calls to mobile numbers, calls to emergency services numbers etc.

UKCTA therefore does not believe that it is essential that all types of calls to non-geographic numbers should be considered to fall in the same category, and hence be charged at the same price by OCPs, just because the calls fall within the scope of Ofcom’s current review. Indeed, Ofcom has already proposed that there will be three distinctly charged categories of such calls, with 03 numbers continuing to be charged like geographic calls, 080 numbers free to caller, and only the other types of non-geographic calls subject to the “single” AC. Furthermore, in Ofcom’s proposed illustrative guide to the number ranges (Figure 1.1), Ofcom clearly and transparently lists out 3 different categories of non-geographic calls that will be subject to an AC – “08 numbers”, “09 Premium Rate numbers” and “Directory Enquiries”.

UKCTA accordingly remains of the view that it will not materially impair Ofcom’s transparency objectives nor the ability of customers to remember the relevant charges if OCPs are given the flexibility to set a different level of AC for distinct categories of NGCS calls (e.g. one for 08x calls and one for 09/118 calls).

At the same time, UKCTA remains of the view that this approach would bring clear consumer benefits. In particular, this would enable OCPs to more accurately reflect their underlying costs when setting the AC.

It is expected that calls to “09 Premium Rate numbers” and potentially also calls to “Directory Enquiries” will continue to cost considerably more to the caller than calls to “08 numbers”. As acknowledged by Ofcom with the PRS Bad Debt Surcharge of 5.2% afforded to BT as an OCP in relation to premium rate calls and as accepted by Ofcom in the consultation, there is accordingly a materially higher risk of bad debt in relation to these calls.

Additionally, for some premium rate calls there is a mandatory pre-call announcement, offering the caller the option to terminate the call at no charge to the caller. Such aborted calls nevertheless generate costs for the OCP. The mere fact that BT has not sought to recover these costs under the PRS bad debt surcharge does not negate the existence of these costs.

UKCTA remains of the view that it is both efficient and appropriate to allow OCPs to reflect the different potential bad debt costs, administrative costs and network costs associated with these different categories of NGCS calls when setting the AC.

Otherwise, if OCPs are required to use a blended single pence per minute AC to cover the higher costs associated with calls to “09 Premium Rate numbers”, the AC is likely to unduly penalise callers accessing “08 numbers”, which would not be a favourable outcome for consumers – especially when “08 numbers” are some of the most popular in the entire range of non-geographic numbers, used to contact a wide range of both socially important and commercially significant service providers in the UK. The likely impact as predicted by Ofcom is as set out in Table 10.2 (e.g. fixed 08x callers may be expected to pay an unnecessary premium on their AC of 0.5ppm and mobile 08x callers an extra 1.3ppm).

In relation to Ofcom’s concerns that the 09/118 AC would not be set efficiently; we believe that these concerns are overstated. Whilst it is true that a higher proportion of customers never make 09 calls as compared to 08x calls, of the customers who do make these calls, in both cases the overwhelming majority of callers make these calls either only sometimes or rarely (i.e. even in the case of 08x calls, less than 10% of the customers who call these numbers call them regularly). We therefore do not believe that customers are relevantly less likely to remember an 09/118 AC as compared with an 08x AC or single AC.

In either case (i.e. whether a single or multiple ACs is/are permitted), Ofcom will be able to monitor the level of the AC being set by OCPs in order to ensure the achievement of Ofcom’s relevant statutory objectives.

In response to Ofcom’s initial consultation UKCTA raised a concern that, if CPs were to conservatively derive a single pence per minute AC that accounted for their current call connection charge, that charge would unduly penalise callers (i.e. who make longer calls), which would not be a favourable outcome for consumers. UKCTA support Ofcom’s proposal to allow OCPs to set a minimum call charge, however it does not address the issues previously raised regarding the need to retain a connection charge 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). UKCTA is keen to avoid a situation where

consumers become confused as connection charges would apply for non NGCS calls, but not for NGCS calls.

UKCTA welcomes the flexibility proposed to be offered to OCPs to include the AC within their inclusive bundle, should they commercially decide to do this. In practice, however, we suspect that it is unlikely that OCPs will include just the AC for NGCS calls in-bundle – as leaving the SC outside of the bundle will expose the customer to overall call-charge uncertainty, and it is certainty and simplicity of pricing that tends to make bundled pricing so attractive to consumers (cf para 10.130). It is unclear from the consultation whether or not OCPs will be allowed to “absorb” the cost of the SC and thus to offer the full cost of calls to particular non-geographic number ranges in their bundles (e.g. for OCPs to be able to offer calls to certain number ranges for “free” within their allowance of total minutes or at particular times of day). UKCTA believes that Ofcom’s proposals will limit retail pricing flexibility and competition to the detriment of the interests of consumers if OCPs are not given this flexibility. UKCTA is also concerned by Ofcom’s proposal to limit this flexibility so that the AC could only be included in a bundle if there was no differentiation by number range (para 10.142). Following current practices, UKCTA envisages that there may be OCPs who would, for example, potentially look to include calls to 084/087 numbers in their bundles of calls to geographic and mobile numbers, but who may not also wish to include the lesser used and generally more expensive 09 numbers in these bundles. Again UKCTA considers that it is likely to be detrimental to retail pricing flexibility and innovation and the interests of consumers for Ofcom to limit OCPs’ retail pricing offers in this fashion.

UKCTA agrees with Ofcom’s ongoing preference that the AC should not be regulated. UKCTA does not support the need to regulate the price of the AC and considers that the transparency achieved through the unbundled approach will ensure sufficient competition amongst OCPs to moderate the setting of the AC.

In Ofcom’s revised stance on billing disaggregation, Ofcom is no longer proposing to mandated detailed disaggregation on retail bills of ACs and SCs, on a call by call basis (para 12.33). Instead, Ofcom proposes to leave OCPs the flexibility to decide the best way to present these charges to their customers on bills, provided that they meet the minimum requirement of setting out the AC on the bill and enabling customers to understand that the

price for a NGC to the relevant number ranges is made up of two separate elements. UKCTA welcomes these changes in the interests of proportionality and reducing unnecessary cost and burden to industry. Along the same lines, UKCTA also looks forward to a lessening of the current burden on OCPs 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.

UKCTA welcomes Ofcom's revised preferences in relation to billing itemisation, so as to allow OCPs flexibility in how they itemise the customer bill for NGCS calls. Today OCPs are not required to breakout 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. UKCTA is not aware of any material consumer concerns regarding the quality of bill presentation today. Under an unbundled approach, UKCTA agrees with Ofcom that, so long as the AC is clearly presented to customers, OCPs should be afforded a similar level of flexibility in how they present the costs 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. Due to current billing system limitations for many OCPs, it would be disproportionately costly (as well as requiring extensive implementation lead times) to have to breakout 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.

Service Charge

UKCTA welcomes the clarity that service charges will be set with current interconnect outpayments in mind. Universal service charge pricing is a key element of Ofcom's unbundled tariff proposals (with the service charge being the same regardless of the originating network).

While we have no doubt that chargeband consolidation can occur and appreciate that this may be necessary to keep the costs of OCP billing system changes to an acceptable level,

Ofcom should not be in a hurry to drop the number of chargebands down to too low a level, as this will have an adverse impact on consumer choice.

With a clear and consistent consumer pricing message, and number ranges themselves providing an indication of the service charge, the need to reduce the number of chargebands diminishes.

It remains important to have some maximum service charge level at a number range level (eg. 0844 up to 6ppm service charge and 0871 up to 12ppm).

The need for both pence per call and pence per minute service charges is real and we welcome Ofcom's desire to support this flexibility.

We understand that it is Ofcom's intention to allow originators to bundle both the access and service charges into inclusive packages if they so wish. UKCTA supports this pricing freedom, providing it does not alter the wholesale arrangement for service charge payments between ONO and TNOs.

0845 / 0870

UKCTA members broadly welcome the pricing certainty that the proposed classification of 0845 as Special Services at a Basic Rate and 0870 as Special Services at a Higher Rate will bring. However, our counsel is that Ofcom needs to be absolutely certain that it can both achieve the predicted outcome and that the effects on consumers are, in the round, beneficial.

The proposed changes bring 0870 at least, full circle, in a period of around 3 years. The market reaction to both the policy preference for 0845 and the regulatory changes to 0870 were in many cases to see calls to these numbers included in bundles, which in turn influenced end user behaviour and service provider strategy. This has to be considered alongside the fact that many users of 0845 are large corporates that have utilised the numbers for a very long time and as such may incur disproportionate costs, both direct and indirect, in migrating.

Presently, it is unclear as to whether or not Ofcom intend for 0845 and 0870 to be mapped to a single chargeband in the existing or future structure. UKCTA members broadly support Ofcom determining (after input from industry) a single price point for simplicity and certainty, although Ofcom may have to intervene on 0845 given the pricing differential created by BT in NCCN 908. In any event, a clear migration plan will need to be established as soon as possible to allow CPs to engage with their value chain to minimise the disruption of any changes. In any migration, one of the objectives should be to set a sustainable POLO for 0845 and 0870, that takes into account the historic level of 0845/0870 in order to reduce the commercial impact on the organisations utilising these popular ranges.

The proposed changes both to 0845 and 0870 as well as the wider changes may incentivise some service providers to take up the option of using the equivalent 034 or 037 number. Whilst their status for allocation is very clear in the National Telephone Numbering Plan, Ofcom should consider making a statement as to the requirements for portability of these numbers. UKCTA members are likely to be reasonable in their approach to this absent a statement, however, in dealing with other operators in industry, it is important that artificial barriers (such as demands for Letters of Authority) to facilitating these migrations by a Recipient Communications Provider are not made by the Original Range Holder.

Freephone

UKCTA continues to support the concept of a genuinely free to caller freephone number range, available on all networks. We acknowledge that Ofcom plan to consult separately on 0500 yet urge that a similar approach be taken for 0500 as for 080 & 116.

We believe the same implementation period should apply to Freephone of 18 months as we consider TCPs agreement with mobile OCPs on an appropriate origination payment may encounter some debate. Many SPs consume multiple NGCS types from TCPs and it follows that implementation of changes for all types is easier to manage together and costs of such minimised.

UKCTA does not consider it appropriate for the proposed access condition to require TCPs to notify SPs of any initial revision to wholesale origination services within two months.

Variations in charges between a TCP and SP are subject to their contractual supply terms and maintenance of the relationship with the SP is paramount to a TCP.

We believe that many SPs will voluntarily promote calls are free when they can trust that will be the case thus negating the need to impose a requirement on SPs to publicise that 080 calls are free at the point of call.

Higher Rate PRS

UKCTA welcomes a future response on the merits of introducing higher rate PRS services. While the vast majority of services providers are responsible and work hard to ensure the confidence of consumers and in doing so provide real benefit, it is imperative the PRS retains the confidence of consumers with higher rate services launched in a responsible way.

PhonePayPlus

We support Ofcom's stance over the lack of a need for PhonePayPlus to regulate the 08 range. PPP involvement would be entirely disproportionate adding a cost burden the users of these number ranges. UKCTA looks to Ofcom to set clear guidance over what is permissible when notifying 08 tariff information, working with industry to agree a common stand to foster consumer confidence and awareness.

Based on the wording within the consultation and the fact that 0870 isn't subject to PPP control, we assume Ofcom's intension is to remove 0871 from PPP control. This is a sensible outcome, as PPP has done nothing to demonstrate value in the 0871 area since it took over responsibility for regulating the range. The low price point for 0871 makes PPP involvement disproportionate. The PRS conditions would need to be modified to reflect this, but this should be a straightforward task.

03 Range

We welcome maintain the status quo on the 03 range. 03 use is steadily growing and it would make no sense to modify the purpose of the range this early on.

BT Call Origination Condition

UKCTA believes that it is imperative that Ofcom takes action immediately to assure stakeholders that if there is a gap between the existing call origination condition lapsing (at the end of the current Market Review cycle in September 2013) and the commencement of the new NGCS unbundled regime, steps will be taken to ensure continuity the existing regime remaining in place until such time as the new unbundled regime takes over. To do otherwise would result in a raft of unnecessary disputes, distracting both Ofcom and CPs and generate unnecessary commercial uncertainty.

GC 9.6 Considerations

The consultation document is wholly unsatisfactory in its approach to the specific concerns raised by CPs around the implications of General Condition 9.6. As Ofcom is aware, this provision requires CPs to give customers 30 days' notice of any contractual change that is to the customer's material detriment and also to allow the customer to leave without penalty if they so wish (normally the latter requirement would mean that the customer would not be required to pay any early termination charges). Ofcom merely says (paragraph 12.113) that "we are consulting on an implementation period of 18 months, which should enable OCPs to notify the majority of customers of the potential changes prior to the end of their contracts." This statement misses the point completely in two respects:

- (i) The concern by OCPs is that they are being subjected to a regulatory change which may (or even will) force them to raise their current retail prices. Under unbundling, two significant changes to pricing must take place. First, there will be changes to the number of wholesale price points, with a consolidation of the number of SCs. As a result, some wholesale price points are likely to increase for at least some numbers. Secondly, OCPs will need to add their AC directly to this range of SCs. Currently, some OCPs band their retail charges for non-geographic calls into a lesser number of price points than there are wholesale price points, in order to simplify customer charging and billing, Under unbundling, this will not be possible. Again, simply as a result of implementing Ofcom's unbundling requirements, it is likely that some retail price points are likely to increase for at least some numbers. Assuming that OCPs, legitimately, seek to retain their current margins on non-geographic calls, the likelihood of retail price increases is even greater if Ofcom insists on requiring a single access charge for all numbers (within a tariff package). , On the current

wording of GC 9.6, this may well constitute a material detriment change which will affect large proportion of a CP's customer base. It would be entirely unreasonable of Ofcom to sit back in those circumstances and effectively require CPs to release customers from their minimum term contracts simply as a result of a regulatory change.

- (ii) It is important that this is not just a transitional issue. The envisaged regime whereby an OCP would be required to pass through the service charge to their customers. This means that the OCP will have to increase their retail price every time a particular service charge increases in price. Technically, under the current wording of GC.9.6, such a retail price increase may constitute a material detriment change which would trigger the customer's right to leave without penalty. It goes without saying that this is unreasonable. An OCP cannot be held responsible under GC9.6 for pricing decisions by third parties over which the OCP has no control whatsoever.

For the above reasons, UKCTA believes that Ofcom must either change the wording of GC9.6 (preferable because it offers complete legal certainty) or at the very least clearly state that it does not expect OCPs to follow GC9.6 in the above circumstances.

Modifying the Regulatory Framework

UKCTA notes that Ofcom has postponed the consultation to modify the existing General Conditions and the Numbering Plan which is necessary in order to effect the regulatory changes proposed in its consultation. UKCTA has for a period of time bilaterally called upon Ofcom to review the accessibility of the GCs in particular and whilst we welcome the news that this is now to be done, it is unfortunate that its timing has prevented a detailed examination of the changes pertinent to NGCS as part of this consultation. Ofcom has outlined its general plans in this respect, but the devil is in the detail and it is difficult to provide accurate estimations of impact and timescales without a full understanding of the regulatory framework under which CPs are to operate. UKCTA looks forward to working with Ofcom on this matter during 2012.

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