

RESPONSE TO SIMPLIFYING NON- GEOGRAPHIC NUMBERS

Cable&Wireless
Worldwide

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NON-CONFIDENTIAL

INTRODUCTION

Cable&Wireless Worldwide (CWW) welcomes the opportunity to respond to Ofcom's latest consultation on "Simplifying Non-Geographic Calls Services".

In its previous response Cable&Wireless Worldwide stated that it was broadly supportive of Ofcom's Unbundled Tariff proposal, provided that Ofcom's proposals resulted in a new industry structure which allows Terminating Communications Providers (TCPs) to receive revenue neutral Service Charge (SC) payments when compared to today's wholesale (POLO) payments. We support Ofcom on the way it has sought to balance its consumer protection duties through the promotion of competition and availability of services in what is a highly successful and dynamic part of the UK telecommunications industry.

The Unbundled Tariff methodology in our assessment represents an effective consumer and wholesale model which will resolve many of the current market failings which Ofcom has explored in some detail during the latest consultation. The basic premise that if pricing is clarified and simplified, the outcome will be better informed consumers who are able to make informed buying decisions, is one that CWW fully supports.

Assuming that consumers place value on knowing the cost of Non-Geographical Calls Services (NGCS) calls, then the Unbundled Tariff will stimulate competition and Communication Providers (CP) that both originate and terminate traffic stand to benefit from the greater consumer pricing transparency offered under the Unbundled Tariff, and the potential for greater call volumes to Service Providers (SP) as a result. SPs themselves will also gain far greater control over the prices they choose to set for their callers and crucially will benefit from the certainty and transparency provided by stable, predictable termination charges that are not subject to the retail pricing decisions of Originating Communication Providers (OCPs) with whom they may have no direct relationship, let alone control.

From a commercial perspective the deciding factor as to whether the Unbundled Tariff will prove a success is likely to be determined by the Access Charge's (AC) inclusion (or indeed in some cases even the SC), or not, within retail operators' inclusive bundled minutes. CWW sees no reason why

both the AC and SC, particularly in relation to the more popular ranges of 0845 and 0870, should be incompatible with such inclusion, although we stress that in such circumstances the OCP must still pass the full SC through to the TCP and ultimately SP.

Ofcom is proposing to undertake structural changes to the NGCS regime, which will undoubtedly generate large-scale upheaval and significant costs across industry. CWW welcomes Ofcom's understanding of this fact and the changes that have been made to the 2010 consultation proposals in recognition of some of the measures displaying disproportionate costs versus lower levels of benefit. Close engagement with industry has allowed Ofcom to better appreciate the cost and implementation implications of its proposals and we welcome the steps taken to mitigate these wherever possible; particularly in relation to the billing presentation requirements. We look forward to continuing to work with Ofcom to achieve its NGCS policies with a similar focus on the proportionality and costs of the relevant measures.

As we move into this next phase CWW would caution that Ofcom must be prepared to provide clear guidance in certain areas if it wishes to keep to its ambitious timescales. There are a number of areas, such as transit and undoubtedly 080 call origination payments, where industry is unlikely to agree. Indeed not only are a number of these entrenched positions reflecting the differing market positions of respective companies, but even during the generally constructive industry working groups it has not been possible to reach any form of consensus position. Ofcom should be under no illusion that agreement will be readily forthcoming through commercial negotiations nor that even with the best will of all parties involved should there be an expectation that Ofcom will not have to intervene through its dispute resolution powers. Accordingly final timescales for items such as making 080 truly free-to-caller must make provisions for the need for regulatory intervention and Ofcom should be prepared to intervene quickly and decisively.

The major area of contention CWW has with the consultation proposals is in relation to transit. We do not believe that Ofcom's proposals here are correct and we maintain that a regime where the OCP pays transit is the correct one to incentivise routing efficiency, reward network investment and ensure that the costs of using a third-party transit provider are borne by the party that causes those costs to be incurred. However, within this response we also set out proposals for how a TCP pays regime could be more fairly implemented.

Whilst recognising the potential for commercial and regulatory failure should Ofcom seek to regulate the level of the AC, CWW considers that there's a greater risk that the Unbundled Tariff will be a failure if the AC is left unconstrained. We have previously recommended an interim measure which would restrict the AC to geographic call rate levels and we remain of the view that this is required, irrespective of the potential for Tariff Package Effect (TPE) rebalancing uncertainties. This area of regulation has been strewn with examples of failed regulatory exercises, the 0870 proposals being just the latest policy reversal. Ofcom will be forced to embark on another such exercise if the Unbundled Tariff approach fails and the cause will undoubtedly be a failure of competitive pressure to constrain the AC; thereby triggering an expensive failure for industry.

We call upon Ofcom to explicitly set out industry metrics as to what Ofcom considers 'good' to look like and how it intends to measure this outcome before acting to mitigate any failure to achieve its goals.

CWW agrees that the Unbundled Tariff should apply to both the 0845 and the 0870 ranges and that it represents the best option for the ranges in the long term. We also support the continuity provided in relation to 03 and that this should remain the only geographically linked non-geographic number range.

CWW supports the view that there is benefit to be had from making Freephone calls truly free to caller in all cases provided the price of origination is affordable to SPs; the billing solution is straight-forward and OCPs are obliged to continue to carry the calls. It is essential that Ofcom provides guidance as soon as possible to define what constitutes fair and reasonable call origination prices. Without this guidance in place it is highly unlikely that commercial negotiations between OCPs and TCPs and subsequently between TCPs and SPs can conclude. These negotiations are the cornerstone to a successful regime and will dictate the speed of travel towards implementation. Without the guidance there is a real threat to Ofcom's proposed 18 month implementation and we believe the idea of 12 months for Freephone is unrealistic.

CWW also calls upon Ofcom to 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 dispute, distracting both Ofcom and CPs and generate unnecessary commercial uncertainty.

CABLE&WIRELESS WORLDWIDE RESPONSES TO CONSULTATION QUESTIONS

PART A – NGCS MARKET ASSESSMENT AND SUMMARY OF APPROACH

SUMMARY OF CONCERNS

Q4.1 Do you agree that the analysis set out in Section 4 and the supporting annexes which draws on our initial assessment in the December 2010 review, stakeholder comments and the further research undertaken in 2011, appropriately characterises the market , the market failures and the effects on consumers? If not please set out your alternative views.

CWW agrees that Ofcom has drawn upon a wide ranging set of inputs in its analysis of the Non-Geographic market and the various issues that currently affect both consumers and CPs. We are satisfied that the additional evidence and information that has been gathered since the 2010 consultation is appropriate and that it has added to the context in which Ofcom is working.

EQUALITY IMPACT ASSESSMENT

Q5.1: Do you have any comments on our Equality Impact Assessment? In particular do you agree with our view that our proposals for changes to non-geographic numbers are likely to have an overall positive impact on the equality groups identified in Annex 15?

CWW agrees that the changes to NGCS are likely to have an overall positive impact on the equality groups that have been considered.

PART B - THE REVENUE-SHARING RANGES

SECTION 9 – REMEDIES TO ADDRESS THE MARKET FAILURES

Q9.1: Do you have any comments on our assessment, and in particular the additional evidence (gathered since the December 2010 Consultation) which we have used to support our assessment, on our provisional conclusion that the unbundled tariff should be applied to the revenue-sharing NGC number ranges?

CWW welcomes the additional wide-ranging material and evidence which Ofcom has sought to gather since the 2010 consultation. We appreciate the detailed engagement with industry and the additional evidence which has been sought from CPs as part of this process and note the welcome contrast in approach from previous work in this area of regulation.

The consumer evidence and behavioural studies appear to be similarly comprehensive, even if the conclusions drawn from the latter in particular were far from clear cut.

Overall the additional evidence and analysis from the 2010 consultation responses leads CWW to reiterate its support for the Unbundled Tariff as an effective consumer and wholesale model, which if successful will resolve many of the current market failings. The advantages it offers of allowing competition to shape prices rather than regulation and particularly in relation to providing certainty in the wholesale market are demonstrably superior to either the status quo or maximum price options. We wholly support the conclusion that the Unbundled Tariff is the preferred option.

SECTION 10 - DESIGN OF THE UNBUNDLED TARIFF

The Access Charge

Q10.1: Do you agree with our proposal that the AC should be allowed to vary between tariff packages but that OCPs should be subject to a tariff principle permitting only one AC for non-geographic calls? If not please explain why.

CWW agrees that OCPs should be allowed the ability to vary the level of their Access Charge between tariff packages. We agree with Ofcom's assessment that there is no reason to prevent this retail flexibility provided that the pricing of each tariff package, and that of the Access Charge within it, meets the test of being transparent, easy to understand and relevant to the consumers of the particular bundle. We agree with Ofcom's assessment that consumers when provided with relevant

information will be able to differentiate and make informed distinctions between the different retail tariff packages offered by CPs.

In our response to Ofcom's 2010 consultation, CWW espoused the position that multiple ACs were required if only to cater for the widely divergent bad debt profiles of the 08 and 09 number ranges.

We have now changed our position on this, as we feel the danger of a separate PRS AC being set at a very high level outstrips other concerns. In our previous response we advocated the need to constrain the AC to geographic levels as an interim measure in order to ensure that calls were included in inclusive bundles which we viewed as being essential to the success of the Unbundled Tariff. We also raised concerns about the incentive for OCPs to laden their PRS AC to an artificially high level rather than to tackle instances of bad debt. Our concern was both the inefficient prices argument that Ofcom explores in the consultation, and also the threat of increased competitive distortion being created on adjacent and complimentary markets; particularly in relation to PRS. The increasing move in the PRS market, particularly in relation to TV promoted PRS, to the use of unregulated short codes operating outside of the Numbering Plan and offering the MNOs exclusive lower cost alternatives to either the current regime or an Unbundled Tariff would be exacerbated where the short code operator was able to undercut its own AC.

Ofcom's analysis supports CWW's concerns by reflecting a material difference between a combined AC and separate ACs for the 08x ranges and the 09 / 118 ranges. In light of these findings CWW has concluded that to achieve its stated aim of a successful Unbundled Tariff with the AC within inclusive bundles it is preferable to have a single AC rather than to allow separate ACs for PRS ranges. This would also allow for the geographic rate constraint on the AC which CWW has proposed.

Whilst it is unpalatable that having a single AC means non-users of PRS would contribute to bad debt provision, OCPs to date have had no real incentive to improve their money collection and credit control policies in order to tackle the unacceptably high level of bad debt generated by misuse of PRS numbers, because the cost was passed on to TCPs. Further, CWW believes that the increased consumer awareness of prices will reduce instances of callers refusing to pay unclear charges. Therefore, we are confident that the level of bad debt associated with PRS ranges will reduce, thus

mitigating this issue. If Ofcom's predictions of a competitive constraint upon the AC are accurate we also trust that increased competition and pressure on the AC will encourage OCPs to address their internal money collection failings now that they will no longer be able to simply pass through the impact to the terminating end of the value chain.

Q10.2: Do you agree with our proposed structure for the AC, in particular that: (i) that the AC should be a pence per minute charge only, but can be subject to a minimum one minute call charge; (ii) that the AC should not vary by time of day; and (iii) that the AC can be included as part of call bundles/inclusive call minutes provided that inclusion does not differentiate by number range? If not please explain why.

CWW supports the proposed structure for the AC and finds that it meets the tests we set out previously of transparency, simplicity and relevance.

- i) CWW agrees that a single ppm AC provides the highest level of consumer benefit to callers. We can see no compelling reason why any OCP should require an additional form of charging, such as a call set up fee or a connection charge which cannot be incorporated as a constituent part of the appropriate AC. There is clear benefit to be gained by consumers from such straight forward presentation and there is nothing to prevent OCPs from recovering charges levied today in a transparent manner via their AC.

We also agree that a minimum one minute call charge may be appropriate to cover OCP costs incurred during the higher proportion of short duration pence per call ranges experienced on the 09 ranges which the AC may not otherwise adequately cover. It is much harder to make such a case on the lower rate 08x ranges where a high MNO AC will distort the pricing wishes of the SP in a similar manner as today, but we accept that it will be clearer for callers to understand the party causing these charges and that the introduction of minimum call charge differentiation between the ranges is unlikely to be easily understood. We see no reason for the AC to require any longer period of minimum call charge as this would dilute pricing clarity.

- ii) CWW agrees that Time of Day pricing is not required for the AC. Network demand for NGCS calls is driven not by any Time of Day imperative but by specific events generating traffic on the network. That is not to say that there are not some reasons why time of day variations to the price of the AC may be sensible, rather we do not believe they are compelling when considered against the advantages of ensuring the prices are clear and easily understood. This position is in keeping with previous regulatory precedent as seen with the MTR charge control which limited rates to a single maximum charge applicable at all times of day. If a particular OCP does require Time of Day differentiation for any reason this to some extent may be replicated through an appropriately tailored bundle.

If Ofcom was however to link the AC to the OCP's standard call charge, thereby more closely mimicking the SMS model, this restriction on the AC could be allowed to fall away and Time of Day pricing would already be an integral and understood aspect of the consumer charge.

- iii) CWW agrees that a single AC applicable to all NGCS ranges is a fundamental prerequisite of a successful Unbundled Tariff.

Q10.3: Do you agree with our proposal not to impose a cap on the AC in the first instance? If not please explain why.

CWW does not agree with the decision not to apply a cap on the AC at this stage. Ofcom has set out its belief that there is the chance of regulatory failure should it seek to introduce a cap on the AC. CWW takes the opposite view. Ofcom is introducing a disruptive and expensive series of changes which if successful will provide consumer benefits when compared to the status quo. However these changes at their upper estimate will have cost industry £86.7m in one off costs and additional annual costs of £5.8m: it is therefore vital that they are successful.

We identified the AC as being the Achilles' heel of these proposals, particularly if competition fails to constrain prices and it is far from certain that competitive pressure will be any more effective in relation to NGCS calls than it has been to date, nor that OCPs will pay any greater heed to vertical externalities. Rather than risk regulatory failure via non-intervention CWW believes that it is in the

interests of both retail consumers and Service Providers to ensure that the AC is temporarily constrained to geographic levels in order to prevent any chance of the Unbundled Tariff being a £90m regulatory and commercial failure.

CWW continues to believe, that the level of the single AC for a given customer should be capped at the OCP's charge for geographic calls for that customer. We note that the comparable market of short-code SMS operates on the basis of messages costing "X pence per text **plus your standard message rate**": in effect the AC is charged at the standard rate for the customer's tariff package. It is our understanding that the US 1-900 calls market, works on the same basis. Absent this constraint, CWW's concern is that if the AC does not form an instrumental component of customers' choice of supplier (and given the relative level of NGCS compared to the totality of traffic, this is likely), OCPs will be able to set ACs with impunity.

It is difficult for CWW to comment on the exact level of risk posed by regulatory failure in the absence of the legal instrument changes Ofcom intends to make. We understand that Ofcom will consult upon these at a later, as yet undisclosed, date and look forward to responding accordingly.

The Service Charge

Q10.4: Do you agree with our proposed approach for the structure of the SC? In particular that: (i) bespoke SCs should be prohibited; (ii) that no further restrictions on the SC structure should be required (e.g. allowing pence per minute and pence per call SCs, no restriction of Time of Day charging subject to ability of billing systems to pass through the charges) If not, please explain why and provide evidence if possible.

- i) CWW welcomes Ofcom's decision that it is not appropriate to allow bespoke pricing of SCs. We acknowledge that BT's specific position in the market and the SMP points CWW raised previously are to be considered as part of the wholesale narrowband call market review and the appropriate remedies implemented as part of that review. We look forward to discussing this in more detail as part of the review.
- ii) CWW welcomes the flexibility Ofcom proposes to offer SPs by allowing both Time of Day, pence per call and / or pence per minute charging and suggests this reflects the diversity of

needs within the SP and call centre communities which in contrast is not as relevant in conveyance networks and therefore in relation to the AC. However we are concerned that this flexibility may be indirectly restricted by certain OCPs' desire to limit the number of price point variations in order to minimise their billing costs. Ofcom must be wary that by accommodating the billing investment decisions that the MNOs in particular legitimately made under the current regime, it does not indirectly undermine and constrain the needs and pricing flexibility of individual SPs, less able to represent themselves, but representing the innovative service providers which have made the NGCS the successful contributor to the UK economy that it is today. The flexibility for time of day gradient for example is beneficial for those Service Providers trying to drive volumes in a specific time of day band or to manage capacity in peak times and should be maintained. This is a balancing act and CWW acknowledges that there is scope for price point consolidation and that keeping the costs of OCP billing system changes to an acceptable level is desirable. However, the conclusion to this issue should recognise that reducing the number of price points to too low a level will potentially have a detrimental impact on the availability of services and ultimately consumer choice.

Q10.5: Do you agree with our proposals to impose maximum SC caps for the purposes of protecting the identity of the number ranges? Do you agree that the caps should apply to the 084, 087 and 09 ranges and that they should be set exclusive of VAT in the Numbering Plan? If not please explain why and provide evidence to support your position if possible.

CWW agrees that the level of the SC should be constrained via the Numbering Plan. It is our understanding that Ofcom is currently reviewing the status of the Numbering Plan in the context of NGCS price publication and we look forward to responding to its proposals in due course.

We agree that publication of the relevant prices in the Numbering Plan should be exclusive of VAT. Industry's experience during the last VAT rate change demonstrated that setting price maximums inclusive of VAT was problematic when the tax rate was amended, both in terms of the regulatory changes needed to amend the Numbering Plan in a timely fashion and also from the perspective of the impact upon Service Providers.

Q10.6: Do you agree with our proposed cap of 5.833p for the 084 range and 10.83p for the 087 range? If not please explain why.

CWW fully agrees with the proposed price caps; we note that Ofcom's conclusions reflect our own calculations and are reflective of the price inflation and additional charging mechanisms that have occurred since the original BT centric retail prices were introduced. As previously stated CWW support for the Unbundled Tariff is based upon the assumption that Ofcom can introduce SC levels based upon revenue neutrality to terminating SPs whilst achieving pricing simplicity for consumers and that the regulatory mechanism to establish these rates is Ofcom run and provides the most equitable solution for both consumers and industry.

Q10.7: Do you agree that the number of SC price points should be restricted? Do you agree that that restriction should be somewhere between 60 and 100, and where within that range do you consider would be optimal? Do you have any comments in relation to how Ofcom should decide where in that 60 to 100 range the maximum number of SC price points available should be set?
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Q10.8: Do you agree with Ofcom's proposed approach to agree the relevant SC price points with industry rather than specifying them as part of the Numbering Plan? Do you have a particular preference for which SC price points are necessary within the different number ranges? What criteria would you propose for the selection of price points?

We understand that industry is to establish the mechanism for achieving this aim during July and welcome the opportunity to participate. In CWW's opinion there is scope to rationalise the current plethora of price points based primarily upon traffic volumes to each price point and we acknowledge the benefit this will have in reducing development costs for those OCPs which have elected under the current regime to rationalise their billing approach for NGCS.

We have included below a single month's snapshot of CWW traffic to the NGCS ranges which was provided to Ofcom originally as part of the Commercial Working Group. It is clear from this extract that the vast majority of traffic is grouped into a small number of charge bands. In CWW's opinion it is an aggregate version of this traffic analysis which should provide the starting point for discussions as to how many charge bands are necessary and how today's POLOs can be mapped against

specific Unbundled SCs. At an aggregate level Ofcom already has a general picture of where the majority of the traffic is grouped and this should allow industry to at least identify those ranges where there is a consensus view that the charge band should continue under the new regime.

CWW anticipates that the final number of charge bands will need to be dictated by Ofcom. There are a number of less popular ranges which are nonetheless carrying legitimate traffic and may be faced with migration to a different charge band. Today the total number of charge bands in use exceeds Ofcom's upper range of options under consideration. We expect industry to be able to agree a mechanism for the most popular charge bands, but it would not be appropriate for industry to discriminate between the less popular in a way which could lead to customer migration.

CWW is concerned however that too aggressive a limit will unduly limit the commercial freedom of SPs to innovate and could remove niche business models from the market. Ofcom must be wary that it does not undermine the freedom it has granted the SC based upon the billing constraints of OCPs. NGCS is a market that has been blighted by vertical externalities where OCPs have failed to take into account the wishes of SPs in their pricing behaviour. It would be unacceptable if these same externalities undermine the commercial freedom of SPs in reflecting a SC that meets their needs, whether this be a combination of ppm and ppc or a requirement for time of day pricing. CWW does however acknowledge that the regularity of such changes is today limited and that the vast majority of traffic will be easily accommodated on the more popular ranges.

Acknowledging that additional complexity to the SC carries with it increased levels of risk that the Unbundled Tariff may fail to achieve its pricing transparency goals; Ofcom and industry together must acknowledge that the exercise industry needs to undertake in order to map existing price points to the new SC tariffing, must be an exercise to establish the mechanism for day one. It cannot be perceived by SPs to be in any way a constraint upon competition nor can it represent the end state for NGCS tariffing. There needs to be a clear mechanism in place by which SPs can apply to introduce or amend rates to reflect the innovation of their services and that guarantees the preservation of tariff clarity. Even though in practice such changes will be few and far between, with the possible exception of the main DQ providers, the structure cannot ultimately be constrained for any great period of time by the restrictions of legacy OCP billing systems.

ASSUMED HANDOVER POINT ('AHP')

Q10.9: Do you agree with our assessment on the location of the AHP on BT's and other CPs' networks? If not, please explain why you disagree.

CWW agrees that Near-End Handover (NEHO) represents the optimal approach for the Assumed Handover Point. In our previous response we argued that in order to foster the correct investment incentives it was important for any new wholesale regime to encourage and reward infrastructure investment and efficient routing. We set out an objective assessment of the issues, using the framework of Ofcom's six principles of cost recovery and our experience as a significant originator, transit operator and large scale TCP in order to establish the fairest and most reasonable outcome between all market participants.

Our evidence supported the wholesale model proposed by Ofcom whereby the maximum SC is handed over when traffic is picked up at the DLE, with deductions from the SC to cover BT's extra conveyance costs if traffic is picked up at tandem switches further up the hierarchy. We concluded that this was the only fair way to both encourage infrastructure investment and efficient routing.

We therefore welcome Ofcom's finding that a NEHO regime is the most appropriate both from the logic and practicalities of call routing where the OCP cannot know the ultimate destination for a call and as recognition that the regime should incentivise and reward network investment.

Q10.10: Do you agree that for calls that route via a transit network, the TCP should pay for transit? If not, please explain why you disagree. In particular please explain your views on how incentives can be included within an “OCP pays” approach to ensure the TCP seeks to interconnect directly (where this is efficient) and not to reduce its points of interconnection at the expense of the OCP and efficient end to end call routing.

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Q10.11: Do you agree with our proposed approach for calls between two non-BT CPs, both for the case when a transit network is used and for when direct interconnection is implemented? If not, please explain why you disagree.

CWW considers that Ofcom’s analysis of the proposed transit arrangements is flawed and has failed to recognise some of the incentives underpinning BT’s position in relation to transit. We set out below what CWW considers the implications these incentives have upon the question of transit and which appear not to have been given necessary weight within Ofcom’s consideration.

Ofcom in A18 seeks to address the current split direction of NGCS transit payments and to initiate a universal TCP pays transit model across the NGCS ranges. Whilst uniformity is desirable, by placing the costs of transit upon the TCP, Ofcom is handing a clear competitive advantage to BT in the TCP market. Due to its incumbent advantage and network reach BT is in the position of never having to incur transit fees in their provision of NGCS. The model espoused by BT and which Ofcom is endorsing will result in TCPs being loaded with additional costs which will never be incurred by BT itself. Furthermore this additional fee upon TCPs will be paid to BT in their privileged position of being the default transit network.

CWW has direct evidence of this motivation in our attempts to identify the relevant OCP for transit traffic. BT in their role as transit provider obviously has access to the identity of the OCP for this traffic. However any TCP seeking to facilitate avoidance of the use of transit and to engage in the commercial negotiations Ofcom refers to in A18.46 is prevented by BT’s refusal to tell TCPs the identity of the OCP. If the TCP is unable to identify the OCP calls originate from, how can it hope to negotiate direct interconnection & routing?

In 2006 BT started to produce the NTS CLI transit report to support their obligations under Ofcom's October 2004 INCA CLI Billing Directive. The NTS CLI transit report does not name originating CP but instead uses Telephony Network Operator Role (TNOR) codes, numeric values to identify the OCP.

In 2006 CWW asked BT to disclose the name of the OCPs and received the following response;

"The possibility of including the data requested in the INCA billing solution was fully explored during the 2 year negotiation stage. The billing solution, which was finally developed with industry involvement and endorsed by Ofcom in the said direction, did not include call originator identification. BT is not therefore, proposing to include this data in the billing information provided to CPs at this time."¹

To date BT continues to refuse to identify the relevant OCPs and since 2006 CWW has only been able to identify ~~2~~ of the ~~2~~ TNORs. We have tabulated this information below:

¹ Excerpt from e-mail exchange between Thus and BT: 20 September 2006
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Code	Operator	Code	Operator	Code	Operator	Code	Operator

Table 2.0: TNOR Codes

It also appears to CWW that Ofcom’s analysis has missed the impact of who makes the routing decision. From our understanding of the proposals Ofcom appears to suggest that having an interconnect route is sufficient to determine that it will be used. We believe that this misapprehension arises from a failure to distinguish between a case where BT is the OCP and instances where it is a different OCP.

- Where BT is the OCP, the TCP determines the routing plan from the BT network and hence can indeed influence the avoidance of [BT-internal] tandem nodes.
- However where the OCP is other than BT, the routing decision is made by the OCP.

To change this convention would require a disproportionate level of technical changes across industry (every OCP would need to open an interface to allow TCPs to control call routing on their networks).

In light of this CWW strongly disputes clause A18.46:

In the first of these cases we would expect that the OCP should be able to route the call directly to the TCP. We recognise that there may be some costs associated with establishing this direct routing if it is not currently in place (such as the cost of data build on the relevant OCP switch). Nonetheless, we would expect that commercial negotiation between the OCP and TCP would be able to resolve any issues related to using this direct route, based on the approach described above in paragraphs A18.40 to A18.43.

We have provided categorical evidence in Annex 3 with a summary of transit dealings that these expectations are incorrect, and that commercial negotiation cannot and will not overcome these difficulties. Even for those instances where we have overcome the TNOR difficulties outlined above and worked out the identity of the OCP and have a direct interconnection to them, OCPs (particularly those who are not in the NGCS market themselves) typically refuse to route directly, even when offered a fair share of the transit fee that we would avoid: this is because they simply default route the whole of the relevant NGCS ranges to BT. We have provided quantitative evidence in relation to OCPs where this is the case.

As you can see by the transit report the opportunity for significant cost savings by the OCP is not adequate to encourage direct routing by them. This may be because a CP's internal resources are prioritised for customers rather than interconnect efficiencies or in a number of cases (particularly with the MNOs) a single provider is typically used for all NGCS traffic and they simply refuse to break out CWW ranges. In short if CWW does not carry ALL of the CP's NGCS traffic then irrespective of commercial negotiation the CP will simply not split out CWW codes to route directly to us. We are unable to do this as BT in their TCP role will not pay transit charges and insists calls be routed directly to it.

Given this market failure and the prospect that it favours a single NGCS provider in BT, CWW believes there is a strong case for regulatory intervention in a TCP pays transit regime and urges that:

- a) Where a TCP connects to the relevant nodes in an OCP's network, if the OCP then uses a transit provider the TCP should indeed pay the transit cost, but be permitted by regulation to recover the costs caused by the OCP's inefficient routing decisions from the OCP. Clearly this requires an interconnect model which isn't cascade accounting on a given call, but we argue that conceptually this is no different to the situation which already applies for transit portability. Given the OCP and TCP have direct connections, the billing and contractual relationship will exist for the TCP to invoice the OCP.
- b) To facilitate this regime BT in its role as transit provider should have a regulatory obligation to provide TCPs with information identifying the relevant OCP.

We also draw Ofcom's attention to the question of interconnect circuit ownership. To summarise the proposals set out from A18.38 onwards Ofcom proposes that where the OCP sends calls to a transit network, the capacity should be that owned by the OCP.

However this ignores the dual role played by BT, both as an NGCS provider and as the transit network in question. If you consider for a moment BT in its role of NGCS TCP; under Ofcom's proposals 08/09 calls to BT's hosted customers will need to be routed to them using BT's capacity. So in essence, BT number ranges use BT capacity. However, under Ofcom's proposals calls to any other TCPs number ranges will use the OCP's capacity. To have specific number ranges utilising specific capacity is something that will require OCPs to break out the number ranges. To date OCPs have proven to be either unable or unwilling to implement this break out – as reflected in the decision not to alter circuit ownership during the changes to the 0870 number range.

CWW believes it inevitable that bilateral arrangements will result in the entirety of the NGCS ranges using either the OCP or BT capacity in order to avoid this break out: we are confident that in reality it will be the OCP's capacity that is used, as this is where it currently resides. If the ultimate outcome of Ofcom's proposals on circuit ownership is that NGCS calls are placed onto the OCP capacity, the

outcome will be a distortion of competition as BT would receive favourable treatment by not having to pay for capacity to the OCP, whilst other operators do incur the costs where they provide connections and are able to persuade the OCP to use them.

THE 0845 AND 0870 RANGES

Q11.1: Do you agree with Ofcom's assessment that an unbundled tariff should also apply to the 0845 and 0870 ranges? If not please explain why.

CWW agrees that the Unbundled Tariff should apply to both the 0845 and the 0870 ranges. Although this represents a seismic and unexpected shift in Ofcom policy in relation to 0870 and one that is likely to attract the ire of those SPs that have already incurred the costs of migration from the previous regulatory changes, it is the best option for the ranges in the long term. Accordingly CWW has shifted its position from protecting the existing 0870 services from enforced migration to actively supporting the continuation of the range. The level of traffic and significance of the services running on the 0845 range when coupled with the lack of consumer harm that can be generated on its lower price points means that any move to close the ranges will fail to satisfy a cost benefit analysis.

That is not to say that a continuation of the historic linkage between these number ranges and geographic prices offers a preferable alternative. The failure of this linkage lies at the heart of much of the consumer pricing confusion and numerous regulatory initiatives have failed to improve the situation.

CWW agrees that applying the Unbundled Tariff to the ranges offers the opportunity to reinvent the nature of the ranges within a coherent framework. It is essential that this framework includes a clear and transparent price point for the wide range of services operating on the range. It is imperative that current services are supported by the setting of an objective sustainable SC which takes into account the historic levels of 0845 / 70 in order to maintain these services and to prevent the costs of large-scale migration from the ranges.

It is essential that a single universal price point for 0845 is maintained; likewise all 0870 numbers should also attract the same service charge. A fragmented approach to 0845 and 0870 service charges will not provide the pricing transparency desired by consumers. Ofcom must be prepared to

select the SC levels for these ranges as it would not be appropriate for industry to make the decision. Ofcom should be guided when selecting the SC levels for 0845 and 0870 by the historic levels of the POLOs available with these ranges.

IMPLEMENTATION

Customer bills

Q12.1: Do you agree with our proposal not to mandate the presentation of disaggregated AC and SC charges on customers' bills? Do you agree with our view that it should be up to OCPs to decide the best way to present these charges to their customers on bills OCPs but that we require that at a minimum, the OCPs should include the customer's AC on the bill they receive?

CWW fully supports Ofcom's decision not to mandate the per call presentation of a disaggregated AC and SC charges on customers' bills. This single item represented a significant amount of the OCPs' implementation development and costs associated with the unbundled tariff but represented only limited benefit to the bill recipient.

We agree that a minimum requirement to clearly delineate the level of the AC upon the customer bill is necessary and that this is entirely compatible with the current GC12 requirements in relation to bill itemisation. GC12.1a requires bill itemisation to be sufficient to "verify and control the charges incurred". CWW agrees that this can be satisfied manually by the presentation of the AC rate separately on the bill. Exactly how this is done should be entirely within the control of the OCP. CWW is not aware of any current material concerns regarding the quality of bill presentation that would suggest a need to dictate billing presentation format or to suggest that OCPs would not be able or willing to present the AC in a manner that allows for simple calculations to be undertaken. It is for the OCP to determine how it chooses to meet the regulatory requirements as set out under the General Conditions and for Ofcom to enforce compliance with these requirements. We welcome Ofcom's restraint by not engaging in the micro-regulation open to it under GC12.2 on this point and welcome the freedom afforded OCPs to meet the requirement in a flexible and proportionate manner which best reflects the needs of each OCP's customers.

Wholesale issues

Q12.2: Do you agree with the requirement for a central SC database. If so what would be your preferred approach – public sector or private sector provision? If you do not agree with the need for the database what approach for the dissemination and verification of SC would you prefer and why. Are there any other issues with respect to the database you would wish to raise?

CWW believes that there is great benefit to be had from a central database of SCs and we agree with Ofcom's assessment that costs are unlikely to be high due to the limited changes involved in maintaining such information.

CWW is agnostic as to how the database is to be provided, noting that industry will face costs whether directly through private provision or indirectly via Ofcom's annual admin fee. In practical terms it is likely to be simpler to manage the project and contractual agreements through Ofcom rather attempt to manage and co-ordinate multiple TCP contributors. Whilst we understand Ofcom's reluctance to take on the administrative duties we are not aware that any concrete reason has been voiced which would prevent Ofcom from doing so. Given Ofcom's key role in consumer protection, and the importance of this database in ensuring customers are correctly charged, we consider that there is a regulatory logic to Ofcom fulfilling the role.

We note that Ofcom has stated that the current Numbering sub-site of the Ofcom website would not be a substitute for a central database of SCs. Unfortunately Ofcom does not provide any evidence supporting this statement. CWW believes the existing information held in the National Numbering Scheme would at the most rudimentary level only need an extra column to be added in order to display the SC. Leaving aside for a moment the costs for administrating the occasional minimal update that will be required, it is clearly the most cost efficient mechanism for presenting SC information. Indeed in order to perform its numbering and consumer duties Ofcom would need first hand access to this level of information, necessitating the need to store and reference an 'official' version of the information in any case.

CWW would also ask whether Ofcom has considered the suitability of existing information portals between Ofcom and industry to populate this information? We note that the MID database is already used to collect quarterly information from industry in relation to the Communications Market data. CWW and other CPs enter a secure portal and submit quarterly data which is accessed by

Ofcom to collate its market reports. The database is also used for the secure submission of annual revenues which are used to calculate each CP's admin fee.

It strikes CWW that this portal may offer the ideal mechanism by which regular updates of SCs can be provided and that adaption of the existing mechanism is likely to be considerably cheaper than engaging a private supplier to provide essentially the same mechanism. We do not believe that aligning MID with the format of the National Numbering Scheme would be a major undertaking.

The National Numbering Scheme or MID are unlikely to offer a hosting solution of the actual data if there is a requirement for consumer access. However we again believe that there are possibilities which are within Ofcom's gift to facilitate. If not the use of the Ofcom website, we note that Ofcom's price comparison accreditation has approved a number of different providers which already have the consumer reach and infrastructure necessary to host such information. We believe there is scope for these organisations to reference the data held within the National Numbering Scheme and to display it in a more consumer-friendly manner and for this to be complimentary to their existing services, particularly if endorsed by Ofcom.

CWW recommends that Ofcom in the first instance publishes SC information with a scheduled future review of the arrangements in order to determine whether it is the best long-term solution; whether MID development is suitable and whether further consumer-facing development is needed.

Q12.3: Do you agree with the need for reformation of the existing processes for number range building and tariff change notification? If so, what do you consider to be the key characteristic of a revised set of processes? Do you consider that there is a need for regulatory intervention in their establishment, if so why and on what basis should Ofcom intervene.

Ofcom's damning verdict of the ad-hoc nature of existing processes for number range building and tariff change notification did not come as a surprise. We have been closely involved in the industry led initiative to introduce a code of conduct in relation to these processes and are approaching the point where we can sign up officially. We agree with Ofcom that there is scope to extend this work with direct reference to any central database requirement and that this would be the trigger needed to ensure that all CPs actively participate with and abide by the code.

Q12.4: Do you consider that there is a need for additional regulatory intervention in the area of end-users' access to non-geographic numbers, in addition to General Condition 20? If so why and what form should such an obligation take?

No, CWW is of the same opinion as Ofcom that commercial pressures in conjunction with the requirements already in existence under GC20 are adequate to ensure that consumers have access to non-geographic numbers. There is obviously scope for improvement to remove the need for Ofcom to informally resolve issues as they do arise, but this enforcement in conjunction with the industry led code of practice we believe will suffice to ensure that consumer choice is maintained.

Communicating with consumers

Q12.5: What steps / actions do you consider need to be undertaken to ensure changes to the structure and operations of non-geographic numbers are successfully communicated to consumers?

CWW played an active role during the Communications Working Group and we are happy to assist Ofcom further in the development of an appropriate level of communication.

In order to convey the changes to NGCS successfully it is likely that consumers will, at a very high level, need to understand the component costs associated with a generic phone call; even if that is confined to the concept of the Access and Service Charges. We anticipate that this will be a fundamental change in mind-set requiring specifically tailored literature and we are happy to help develop a "quick guide" pdf glossary of terms and abbreviations to be published on Ofcom's website, and subsequently disseminated across industry, so that CPs can refer customers to it as a definitive source of information.

As a predominantly business to business provider, CWW is less keen to participate in any form of mass educational campaign targeted at consumers. We do not feel that it is proportionate or appropriate for Ofcom to require CWW to heavily fund a consumer-advertising campaign. Ultimately, costly campaigns like national printed advertising in newspapers, on billboards, buses and tube stations etc. may be required for Ofcom to reach all citizens. There are, however, OCPs better equipped to facilitate this communication than CWW. It is difficult to measure

the effectiveness of such campaigns as they are often seen as standalone messages out of context, so it is important that Ofcom considers a wider more cost-benefit orientated approach to its marketing mix. Big advertising activities in the national and local press would need to be tied-in to the end phases of the numbering changes, as a high impact way to publicise the cutover deadline and cutover dates. It may be worth Ofcom considering relatively low cost digital marketing techniques in the first instance to gain momentum in the general marketplace before targeting those areas requiring specific consumer protection measures.

NGCS is a notoriously complicated subject once the detailed call flow, commercial or regulatory underpinnings are examined. This often makes those closest to the detail poor at explaining the regime in a consumer friendly manner. We suggest Ofcom explores some form of visual marketing campaign to create momentum and for this to cascade to consumers and industry commentators^[1].

We are happy to make any related images or further explanatory materials available on our public website so that they can be accessed easily by CWW colleagues and customers.

Price publication requirements

Q12.6. Do you agree with our proposal that existing price publication obligations (with some modifications) are sufficient to ensure that consumers are made aware of their ACs? Do you agree that we would need to specify the AC as a key charge?

It is difficult for CWW to respond in detail on this point without having seen the detail of the amendments to the GCs which Ofcom seems to be suggesting. We do agree that GCs 10, 12, 14, 23 and 24 constitute a comprehensive set of pricing obligations which should provide a sufficient basis to ensure that consumers are provided with the necessary information in relation to their AC.

We are less certain as to what Ofcom means by the term a “key charge” as to our knowledge this is not a concept explicitly contained within the GCs. Our assumption is that this is a form of words that will replace the equal prominence requirements currently in place for 08 numbers. If that is the case we obviously support the requirement to ensure that the AC is presented in a clear and prominent

^[1] As an example: <http://www.seewhatyoumean.co.uk/>

manner which provides the consumer with the requisite level of information. We look forward to seeing Ofcom's full proposal in relation to this matter.

Q12.7: Do you agree with our provisional view that the requirement for SPs to advertise their SCs could be implemented through a condition on SPs that is enforced through an industry Code of Practice and the ASA? Are there any other options (beyond the two outlined) which Ofcom should be considering? What do you consider is the best approach for securing industry commitment and developing a Code of Practice?

CWW supports Ofcom's proposal not to place the 08 ranges under the remit of PhonepayPlus, but to instead require SPs to advertise their charges through an industry Code of Practice under the umbrella of ASA enforcement. We agree that this is a much more appropriate and cost effective form of regulation for both the number ranges and our customers' services.

We look forward to working with Ofcom in order to establish the required Code of Practice. We note that a very early draft of such a code has been initiated by some members of the NGCS Focus Group. A copy has been attached in Annex 1.

The current version of the Code of Practice is intended as a starting point for discussion and CWW acknowledges that much more work will be required with SPs and the ASA before any finalised version of the Code of Practice is ready for publication and implementation. Whether this work is concluded under the auspices of the NGCS Focus Group but widened to include SP trade bodies or a separate group, CWW is happy to be involved in the development of the Code.

We would stress that we do not envisage the Code of Practice and its enforcement encroaching upon the work that PhonepayPlus conducts or creating a cottage industry of its own. It is not the intention to set up a rival form of regulation but rather to create a streamlined set of guidelines for SPs to follow. We note that Ofcom has direct experience of implementing such an industry document through the Broadband Speeds Code of Practice and it may be that a more hands-on approach from Ofcom is desirable to ensure adequate engagement with the SP community. CWW believes that the current early draft demonstrates that there is already a clear desire amongst industry to ensure that a workable scheme can be put in place.

Once it is in place CWW expects that the logical conclusion would be to move 0871 under this Code of Practice as well. We note that the current consultation is silent upon this point, but we believe that there is growing sentiment amongst CPs that the current regime applies a disproportionate level of regulation upon the range with little discernible benefit.

Other implementation issues

Q12.8: Do you agree internationally originated calls should be charged at the same SC as an equivalent domestic call? If not, please set out your reasons. Do you agree that originators should be able to set a separate AC level for roaming calls in a given country, though the other characteristics of the AC should still apply?

CWW rejects the need for a different SC to be paid to the TCP according to whether the call is of national or international origin. The inbound international carrier has the commercial freedom to charge their overseas partner as they see fit. It is entirely within their power therefore to set these prices at a level which allows them to cover their costs i.e. the level of the SCs which they have to outpay nationally. Any attempt to differentiate between inland and overseas originated traffic may be counterproductive, encouraging a degree of trombone routing, with inland traffic diverted overseas in order to reduce the level of the Service Charge paid, thus undermining the integrity of the regime.

We are however supportive of the need for a separate *international* roaming AC.

Q12.9: We would welcome stakeholder views on our proposed approach for applying the unbundled tariff to payphones. Do you agree that it is appropriate to allow payphones to set a minimum fee for non-geographic calls?

CWW has no comment in relation to applying the Unbundled Tariff to payphones.

Q12.10: Do you consider there is a need to exempt business to business telephony contracts from some of the constraints of the unbundling regime? If so what exemptions do you consider

appropriate and why are they necessary (please give examples of the conflicts you would identify if exemptions are not provided). To which contracts should the exemptions apply and why?

CWW is unconvinced that an explicit exemption extending beyond the typical commercial contracts between parties is required. We are aware that NGCS may be used in closed user group situations but we do not believe that this scenario requires explicit regulation or anything more than commercial agreement between the parties concerned.

Timing

Q12.11: Do you agree with our proposal that implementation should take place 18 months from the date of the final statement?

CWW's response to this question in the 2010 consultation was that more detail was required as to the detailed proposals before a full assessment could be made of the necessary timescales. We note that there still remain some key areas where the outcomes are dependent upon industry agreement or commercial agreements. Some of these are unlikely to be resolved without Ofcom intervention, e.g. call origination charges for Freephone calls. As this represents a fundamental building block for all subsequent activity with customers Ofcom must be prepared to act swiftly and intervene where necessary in order to achieve even an 18 month implementation timescale.

CWW calls upon Ofcom to take action immediately to assure stakeholders that if there is a gap between the existing call origination condition (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 with the existing regime remaining in place until such time as the new unbundled regime takes over. Continuity is essential for the services operating on NGCS and any gap between the existing call origination condition and the unbundled regime will undoubtedly result in a series of disputes, distracting both Ofcom and CPs and creating commercial uncertainty which could otherwise be avoided.

IMPACT ASSESSMENT

Q13.1: Do you agree with our estimates of the billing costs for implementing the unbundled tariff, taking into account the discussion in Annex 19? If not, please explain why and provide evidence to
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support your response, particularly of the level of costs you are likely to incur as a result of our proposals.

CWW is satisfied that Ofcom has obtained detailed information from individual CPs in order to draw its conclusions and estimates for the implementation of the Unbundled Tariff. We do not have any further information to provide in relation to costs likely to be incurred.

Q13.2: Do you agree with our estimates of the level of migration and misdialling costs for service providers who may migrate as a result of the unbundled tariff (taking into account the analysis and evidence in Annex 12)? If not please explain why and provide evidence.

There is a paucity of accurate informed data available in relation to misdialling costs. We do not have any additional information available to help inform Ofcom's of these costs.

Q13.3: Do you agree with our estimates of the communication costs of implementing the unbundled tariff? In particular: (i) the costs of OCP communication with their customers; and (ii) the costs of TCP communication with their SP customers. If not, please explain why and provide evidence to support your response, particularly of the level of costs you are likely to incur as a result of our proposals.

CWW is satisfied that the depiction of TCP costs to be incurred through communication with SP customers accurately reflects the information which we have supplied to Ofcom and is therefore an appropriate estimate. We believe that Ofcom will have been equally diligent in terms of the OCP costs and that these estimates are a reasonable proxy for the final costs.

Q13.4: Do you have any comments on our impact assessment for the unbundled tariff? Please provide evidence to support your response.

CWW agrees with Ofcom's ultimate conclusion that the benefits of the Unbundled Tariff are likely to outweigh the resource costs. However it should not be forgotten that the costs are significant and Ofcom should be prepared to do all that it can to facilitate commercial and implementation measures in order to guarantee that the Unbundled Tariff is a success.

FREEPHONE AND 116

ASSESSMENT OF OPTIONS

Q16.1: Do you agree with our assessment of the options for the 080 range? In particular, do you agree with our preferred option of making 080 genuinely free to caller? If not, please explain why.
&

Q16.2: Do you have any comments on the analysis used to develop the Impact Assessment Range for the mobile origination charge and the Mobile Maximum Price range for 080 calls as set out in Annexes 21 to 25? Please provide evidence to support your comments.

CWW supports the view that there is benefit to be had from making Freephone calls truly free to caller in all cases. However, this support is subject to a series of caveats. It is necessary to ensure that the price of origination is controlled in such a manner that it remains affordable for those Service Providers with a genuine desire to use Freephone numbers to be able to continue to do so.

In addition the solution should be simple enough for network operators to justify the costs involved to develop the capability to operate this new system and most notably this means covers the billing and billing verification systems required if origination charges are to vary between different originators.

Finally, OCPs must continue to carry calls to these numbers, which will be much easier to ensure if they are able to recover their reasonable costs of doing so.

Q16.3: Do you agree with our estimates of the level of migration and misdialling costs for service providers who may migrate as a result of our proposal to make the 080 range free to caller (taking into account the evidence and analysis in Annex 12)? If not please explain why and provide evidence.

CWW thanks Ofcom for revisiting its previous figures in relation to the costs of migration following our comments and we endorse the finding that for our customer segment in particular the previous assumptions represented an underestimation for the cost of migration.

We agree with Ofcom that there is a paucity of accurate informed data available in relation to misdialling costs. We do not have any additional information available to help inform Ofcom's view that these costs are unclear.

Q16.4: Do you agree with our proposal to treat the 116 ranges in the same way as the 080 range (i.e. designate all as free to caller) as set out in detail in Annex 27? If not please explain why.

CWW agrees that the designation of 116 as 'free to caller' in the same manner as the 080 range is a desirable and sensible decision. The current differentiation between 116 services offers little to consumers other than pricing confusion. When the social value of the majority of services operating on 116 is taken into consideration it is difficult to make any case that warrants pricing differentiation.

We look forward to responding to Ofcom's forthcoming consultation on the 050 range and anticipate a similar decision confirming that 050 is to remain a 'free to caller' range in keeping with 080. We strongly disagree with any suggestion that 050 be used as a range for Freephone service providers not willing to pay the increased costs of making 080 free-to-caller.

IMPLEMENTATION

Q17.1: Do you agree with our provisional view that it is appropriate for an access condition to be imposed on all TCPs hosting designated Free to caller numbers requiring them to:

- (i) purchase wholesale origination services for calls terminating on designated free to caller ranges from any requesting OCP;
- (ii) to do so on fair and reasonable terms and conditions (including charges); and
- (iii) notify their SP customers of any initial revision to the charges for wholesale origination services within two months of Ofcom imposing the requirement for zero maximum prices.

If not do you consider any ex ante intervention is required? Please give your reasons for or against such intervention and your preferred approach.

&

Q17.2: Do you agree that the access condition does not need to be extended to OCPs, but is effectively binding on both parties? If not please give your reasons.

CWW does not believe that the access condition proposals are in practice a workable solution. We acknowledge that Ofcom has attempted to replicate the effect of the current BT call origination condition from the termination end of the market, but if implemented it would place CWW and its SP customers using 080 in an untenable position.

The plan to place an access condition on the TCP assumes that the TCP is in a position where its contracts with all of its SP customers allow it to pass through the call origination costs smoothly to its SP provider. That may not actually be the case. Take a situation where a TCP may have a fixed term 5 year contract with a SP to terminate 080 traffic say at 1ppm. There is no scope within the contract for the terms to be altered within the fixed time period unless there is a fundamental change to the regulatory framework and clear statement from Ofcom. The contract itself has been negotiated in good faith by both parties and is reflective of the market and the fair and reasonable terms of the relevant OCPs. A new satellite based OCP enters the market and rapidly gains market share. Their price for call origination is significantly higher due to their niche business model and they have arrived at a fair and reasonable price of 4ppm. For each call made by the customers of this new entrant the TCP loses 3ppm.

As the TCP is contractually locked into a commercial agreement it is unable to pass through the impact of its increased costs. If the contract did allow pass through the regulatory position is even more untenable for the SP as the SP would be forced to pay any charge deemed to be 'fair and reasonable' without having any advance knowledge as to what the final rate could be.

The TCP must have the ability to recover costs from the SP or to control the costs placed upon it by the OCP in order for the model to provide commercial certainty. The only option available to TCPs under this model would be the renegotiation of every 080 contract prior to the Unbundled Tariff being launched or the complete termination of the said SP contracts within the same timescale.

CWW finds this unacceptable and instead proposes that:

- Where an OCP provides 080 calls they have to be free to caller.

- The OCP must make a fair and reasonable offer to the TCP for call origination. The definition of what constitutes fair and reasonable is to be established by clear guidance published by Ofcom. This guidance is required ahead of any negotiations between OCPs and TCPs. Ofcom should be cognisant that without this guidance being in place it is highly unlikely that commercial negotiations between OCPs and TCPs will be successful and until these negotiations are concluded it will be impossible for TCPs and their SPs to have the certainty required to make informed business decisions whether to remain upon 080 or migrate to a different range.
- The TCP should retain the right, driven by the requirements of their SP customer, to decide whether or not they wish to take up the call origination offer. It is the SP that has the incentive on 080 calls to encourage callers to contact their service. If the rates on offer are reasonable they will pay, if they are not they should be under no compulsion to buy the service.

Ofcom guidance must provide a structure which guards against a minority of OCPs trying to justify higher origination costs than their peers in either the fixed line or mobile markets. It would be unacceptable for one fixed line or mobile provider to claim higher costs than the mainstream benchmark purely as a result of their own inefficiency as to do so would reward that inefficiency and ultimately distort competition. If a fixed or mobile provider's cost of origination is genuinely greater than that of their peers then they must continue to experience the full commercial pressure to reduce those costs to an efficient level. A regime which allows inefficient OCPs to part fund inefficiency through contributions from TCPs would not be in the wider consumer interest.

Q.17.3 Do you support an implementation period of either:

- 12 months; or
- 18 months (in line with the implementation of the proposed unbundled tariff)? Please explain your reasoning as well as providing any evidence to support your view.

CWW has received feedback from some 080 customers urging that the changes to current pricing be made as soon as possible. However in practical terms CWW is more cautious in its approach. We applaud the decision to make 080 truly free and recognise the benefits that lower retail prices

will bring to callers. However we are dubious as to the ability of industry and Ofcom to be able to implement any changes within a 12 month timeframe.

Ofcom sets out seven steps required for successful implementation in 17.98. We concur that these represent the necessary steps in order to introduce changes. CWW also accepts that the consumer messaging for 080 and 116 is far simpler to convey than for the unbundled tariff and therefore warrants a reduced implementation period.

If we set to one side the acknowledged advantages and efficiencies offered to industry by combining customer messaging for both Freephone and the Unbundled Tariff into a single campaign, it is the commercial arrangements that one suspects will be the chief reason why a 12 month period is unlikely to be achievable. Step one of seven requires TCPs to agree commercially with OCPs the origination payment for mobile originated calls. This is the cornerstone of the implementation process and underpins all of the subsequent activity. It is also likely to be the most contentious. Without clear guidance from Ofcom (extending beyond the stated “fair and reasonable” requirements) it is unrealistic to expect anything other than protracted commercial wrangling and an inability for agreement to be reached. The range of potential origination payments Ofcom explores in the consultation, ranging from 0.7ppm to 4.0ppm², is too great to allow negotiations to be meaningfully concluded. It may be achievable to base discussions upon a situation where an acceptable origination charge is known, +/- 5% or +/- 10%, however agreement will not be reached in a situation where Ofcom leaves a series of widely divergent options on the table, each of which may have its own interpretation as to what constitutes ‘fair and reasonable’. Failure to reach agreement whether collectively between the various MNOs and TCPs or even individual parties would then require further iterative communications in order to demonstrate that a position of dispute had been reached before triggering Ofcom’s four month dispute resolution process. Even at this point the recent NCCN 908 et al appeals to the Competition Appeals Tribunal and subsequently Court of Appeal have shown the existence of deeply entrenched positions and commercial imperatives which make any straightforward commercial agreement unlikely.

² Table A22.1: Measures of mobile call origination costs (2013/14 charges in 2011/12 prices.
http://stakeholders.ofcom.org.uk/binaries/consultations/non-geo-numbers/annexes/Part_CAnnexes.pdf
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It should not be assumed that CPs will be able to encourage SPs to make valued judgements and informed migration decisions in the absence of clear commercial parameters. Reluctantly CWW concludes that in order for the commercial negotiations to run their course and still allow SPs the information and timescales they need to make informed decisions, an 18 month implementation period will be required.

Q17.4: Do you have any other comments on our proposed implementation approach for making Freephone free to caller? For example, do you consider it necessary for Ofcom to impose a requirement on SPs to publicise that 080 calls are free and do you have any other suggestions for how SPs could be encourage to publish that at the point of call? Are there any other implementation issues which need to be taken into account?

CWW agrees that requiring SPs to publicise that 080 calls are free to callers is not a necessary or proportionate requirement. It is our expectation that, as we have already seen with the Ofcom press releases and media response to this consultation, the fact Freephone is to become free to callers on all networks will become a cornerstone in publicity for the changes to NGCS. As a result it is highly likely that consumer price awareness will rise dramatically in response to a successful publicity campaign. We agree with Ofcom that to require SPs to incur the cost of further price publication requirements in the absence of any potential for consumer harm would be disproportionate and unnecessary.

ANNEX 1: DRAFT CODE OF PRACTICE FOR TRANSPARENT SERVICE CHARGES

Overall aim: for the “Service Charge” (SC) element of a bundled tariff to be transparent as is reasonably possible to end users.

Background (not to go in the Code): Ofcom says in para. 12.171 of the April 12 NGCS Consultation that requirements would have to be reasonably flexible so that the obligation to publicise would only apply to suitable types of marketing material/advertising e.g. it’s not practical to include up to date pricing information in all marketing material. Ofcom says it would be sufficient to meet its consumer transparency objectives if the SPs *primary* marketing material prominently displayed the service charge in the same way as required under the PPP Code for the higher rate number ranges.

For info, this is what the ASA/CAP recommends for 084 numbers. I don’t think we need to include it here, as it’s another prong of Ofcom’s approach (i.e. Ofcom also wants to refer to it in any case) *“The CAP AdviceOnline database recommends that for 084 numbers, where a number costs more to call than an 01 or 02 number using BT’s Unlimited Weekend package, the marketing communication using that number should include pricing information that states the cost per minute of a call to BT customers as well as stating that other non-BT providers charges are likely to vary, and if space allows, that callers can check the price with their phone company. If the cost to call is always less than the cost of a call to BT’s Weekend Unlimited customers to a geographic number made at the same time (for example 0845 numbers) CAP recommends that no pricing information has to be given. Similarly, CAP recommends that pricing information does not have to be included for 0870 numbers.”*

1. The [parties] wish to establish a framework of best practice for making transparent the Service Charge (SC) element of unbundled Non-Geographic Call Services (NGCS) which are not already covered by PhonepayPlus’s Code of Practice.³ Therefore this Code currently applies to services operating on the 084X and 0870 number ranges.

³ Available at <http://www.code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011.pdf>

2. The Code complies with Ofcom's Non-Geographic Calls Services policy issued [*date of publication of the statement and implementation date*] and is fully informed by Ofcom's consumer protection duties under Section 59 (1) of the Communications Act 2003.
 3. This Code is a self-regulatory document based on the voluntary will and commitment of signatories to implement the spirit, not the letter, of the code.
 4. Service Providers are to be upfront and transparent about the cost of the service they offer ensuring that callers are clearly informed of the Service Charge element of a call to their services.
- As far as is reasonably practical, Service Providers are to include the current Service Charge (SC) element of calling their number in their primary marketing material.
 - The stated level of the SC must be
 - Easily accessible
 - Clearly legible
 - Proximate to the number and prominent in the marketing material
 - And presented in a way that does not make understanding difficult.
 - The SC element may be written as "up to Xp" per minute to ensure it does not easily become out of date and therefore inadvertently mislead consumers [*potentially refer to consumer access to central database – if mandated. Note some CPs maintain pricing for SC should always be actual amount*].
 - Examples of primary marketing material include
 - Websites
 - Posters
 - Large print ads
 - TV advertising

An example would be "calls cost Xp per minute plus your supplier's access charge."

5. **Interpretation of “as far as is reasonably practical”:** This Code is to be interpreted in a flexible and common sense manner to recognise that:
 - (a) It is not always possible to include up to date pricing information in the primary marketing material e.g. where a number is displayed permanently on the side of a van, or in a very small classified advertisement.
 - (b) There are a very wide range of Service Providers, many of whom will have limited resources and for whom advertising via a 0870 and 08x number is only a small part of their business.
 - (c) This code works in harmony with, and is not a replacement for, the CAP guidance issued by the Advertising Standards Agency.

6. All [parties] will use reasonable endeavours to comply with the spirit and the purpose of the Code. [*expectation compliance with the Code will become a condition of the SP’s contract with the TCP as per Ofcom guidance*] Signatories agree that post the earlier date of the publication of, or relevant entity signing up to, the code all subsequent contracts between Network Operators and Service Providers will contain direct reference to this code and the requirements therein.

7. Ofcom will monitor consumer experience with matters covered by the Code and may intervene with formal regulation at any stage if this self-regulatory form does not appear, in Ofcom’s opinion, to satisfactorily transparent service charges for customers.

8. The Code will be subject to review by [*recommend that the code is owned by a legal entity with proper governance*] from time to time in consultation with signatories, Ofcom, [ASA] and others, so that we can ensure that it continues to meet the objective of providing clear pricing information to consumers and remains reflective of the current status of the consumer market place.

9. The undersigned are signatories to the code:

May 2012

ANNEX 2: TRANSIT REPORTS

