



OFCOM'S REVIEW OF THE METERING AND BILLING DIRECTION

Response by British Sky Broadcasting Limited ("Sky")

SUMMARY

1. This is Sky's response to Ofcom's consultation (the "**Consultation**") of 14 February 2013 on the review of the Metering and Billing Direction adopted by Ofcom in 2008 (the "**Direction**").
2. Sky has the following comments:
 - Sky disagrees strongly with Ofcom's proposal to remove wholesale services entirely from the scope of the Direction. If wholesale services were no longer subject to the Direction, Sky and other retail communications providers ("**CPs**"), reliant on wholesale calls services, would no longer be able to rely on the accuracy of wholesalers' call detail records ("**CDRs**") so as to ensure the accuracy of their own billing.
 - Sky agrees that mandatory regulation of data services is not required and proposes that the current voluntary provisions regarding data services be reviewed by Ofcom's Expert Working Group ("**OEWG**").
 - Sky considers that the error rates/tolerance thresholds relating to fixed and mobile voice services should be reviewed in order to ensure that they remain fit for purpose in light of a number of recent and continuing industry developments.

WHOLESALE SERVICES SHOULD REMAIN WITHIN THE SCOPE OF THE DIRECTION

3. Sky strongly disagrees with Ofcom's proposal that wholesale services be removed from the Direction.
4. It is important in this regard to distinguish between (i) the bills provided by wholesale CPs to their customers ("**Wholesale Bills**"), and (ii) the CDRs provided by wholesalers to retail CPs such as Sky, which allow the retailers to calculate the amounts to be charged to end-customers.
5. As stated in Sky's response to Ofcom's request under section 135 of the Communications Act 2003 for information regarding its Review of the Metering and Billing Direction of 25 June 2012, Sky does not consider it necessary for the Direction to cover Wholesale Bills. This is on the basis that wholesale pricing is subject to commercial negotiations between the relevant parties and only impacts directly on wholesale customers.

6. However, Sky considers it essential that the CDRs provided by wholesale CPs to retailers such as Sky continue to be subject to accuracy thresholds under the Direction.¹ This is because of the way in which charges for call services provided by retailers which use wholesale products are calculated: for example, **[Confidential]**.
7. The inclusion of wholesale services within the scope of the Direction, and the requirement of wholesale CPs *“to satisfy themselves that the services they offer...meet the requirements of this Direction”* (emphasis added) allows wholesale customers such as Sky, in calculating and issuing bills to end-customers, to rely on these CDRs being accurate in order to *“satisfy themselves that the services they...receive meet the requirements of [the] Direction”* (emphasis added) to facilitate compliance with their obligations under the Direction, which is a pre-requisite for compliance with General Condition 11.² If, however, wholesale services were no longer subject to the accuracy thresholds under the Direction, as Ofcom is proposing, Sky (and other retail CPs who depend on wholesale services for all or part of their retail offerings) would no longer be able to rely on CDRs being accurate to ensure the accuracy of their own billing. This would, therefore, lead to a risk of:
- non-compliance by wholesale customers with the billing accuracy requirements imposed on them under the Direction, which state that *“Primary responsibility shall rest with the Communications Provider that holds the contract with the End-User (deemed to be the overall Total Metering and Billing System owner) to ensure that the overall services meets the accuracy standards within this Direction...”*;³ and
 - direct harm to end-customers.
8. In order to mitigate the risk of issuing incorrect bills to end-customers, wholesale customers such as Sky would need to find other ways to ensure that the CDRs they rely on accurately reflect the calls actually made on the wholesalers’ networks (for example, to be confident that erroneous long duration calls were removed at the mediation stage where necessary). However, Sky is concerned that it would not be able to negotiate an equivalent degree of protection regarding the accuracy of wholesalers’ CDRs in its wholesale supply contracts. For example, **[Confidential]**, retailers would also need to negotiate provisions:

¹ A3.4.5 currently states that, *“Where wholesale service contracts exist between two or more Communications Providers, it shall be for each Communications Provider to satisfy themselves that the services they offer or receive meet the requirements of this Direction.”*

² A3.4.5.

³ A3.4.5 states that *“Where wholesale service contracts exist between two or more Communications Providers, it shall be for each Communications Provider to satisfy themselves that the services they offer or receive meet the requirements of this Direction. Primary responsibility shall rest with the Communications Provider that holds the contract with the End-User (deemed to be the overall Total Metering and Billing System owner) to ensure that the overall services meets the accuracy standards within this Direction...”*.

- requiring the wholesale CPs to compensate retailers for any sanctions for non-compliance with the Direction, reputational harm suffered, and customer compensation; and
 - granting audit rights to the retailers to allow them to verify that the wholesale CPs are in fact providing accurate CDRs.
9. Moreover, the retailers would need to divert significant resources to the monitoring and auditing of the wholesalers' systems. The costs to retailers of implementing processes for such monitoring and auditing would be significant and disproportionate given that the current Direction already provides the necessary protection. Sky believes that **[Confidential]**. It is also likely that **[Confidential]** would be required (at additional cost) to pre-filter potential overbilling risks. Sky notes Ofcom's statement that it considers it appropriate to remove regulation where the costs of complying with the regulation outweigh the benefits to consumers.⁴ However, Ofcom must factor into this assessment the likely costs to be incurred by both end-customers and retail providers such as Sky if wholesale services are removed entirely from the scope of the Direction.
10. A further reason for Ofcom's proposal to remove wholesale services from the Direction is that Ofcom has received feedback that, in practice, wholesalers often find it impossible to comply with the accuracy/error thresholds currently set out in the Direction in light of the volume of traffic. Given the significant concerns set out above, however, Sky proposes that a more reasonable and proportionate response to this problem would be for Ofcom to engage with the relevant industry stakeholders, most likely through OEWG, to agree modifications to the current requirements in order to ensure that they are relevant to current market circumstances, whilst ensuring adequate protection for retail CPs and, ultimately end-customers. Sky notes, however, that any relaxation of the error thresholds for wholesale providers would need to be reflected in the thresholds applicable to retail CPs in relation to calls carried by the wholesaler but billed by the retail CP.
11. Sky takes little comfort from Ofcom's observation that it would be open to CPs to raise issues or disputes with Ofcom in the event of wholesale inaccuracies, as this would be a retroactive measure and would not help to ensure that Sky complies with its regulatory obligations to ensure the accuracy of its customer bills.

DATA SERVICES: CONTINUED APPLICATION OF THE VOLUNTARY REGIME

12. Ofcom notes in the Consultation that data use has increased since the Direction was last reviewed in 2008, and that it expects usage to continue to grow, in particular as next generation broadband and 4G mobile services are rolled out. On this basis, Ofcom states that it continues to believe that there is benefit in CPs having the opportunity to provide their customers with assurance about the accuracy of their billing systems and

⁴ Paragraph 3.151.

that voluntary provisions remain appropriate. Ofcom also proposes that the voluntary provisions should be reviewed and updated as appropriate to make them more relevant and useful for CPs. Sky agrees with this proposed approach and does not consider that mandatory regulation is required. In terms of the proposed review of the current voluntary provisions, Sky suggests that this be carried out within the OEWG alongside a review of the mandatory provisions relating to fixed and mobile voice services.

FIXED AND MOBILE VOICE SERVICES: REVIEW OF THE THRESHOLDS

13. Sky considers that Ofcom should maintain the current scope of the Direction but engage further with Sky and other relevant industry stakeholders, most likely through the OEWG, to discuss whether the current error tolerance rates/thresholds remain fit for purpose or whether those thresholds should be modified in order to ensure that they continue to provide end-users with the required level of protection whilst ensuring that the burden placed on communications providers is both reasonable and proportionate. Sky considers that a review of the current thresholds is necessary in light of a number of recent developments, including (i) the greater flexibility and system functionality now available to CPs to amend customer bills and adjust billing notifications during the billing window (where errors have been detected) to allow the correct amount to be collected (ii) the use of smartphones to access landline capability and package benefits (for example, via BT Smart Talk and equivalent services from other providers), and (iii) the complex nature of NGN call types.

Sky

April 2013