

Ofcom consultation on maximum Service Charges for PRS and Directory Enquiry Services in the unbundled tariff regime

September 2012

UKCTA Response to Ofcom Consultation

Submitted to Ofcom: 19 September 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 the opportunity to comment on this aspect of the non-geographic calls services (NGCS) review. The comments contained in this response relate solely to the question of the proposed PRS and DQ Service Charge caps and should not be construed as representing more general commentary on the review itself. We direct Ofcom to the previous responses of UKCTA and individual members in this regard. In addition the views of EverythingEverywhere are not reflected within this response and we again direct Ofcom to their individual submission.

We support all of Ofcom's proposals in this consultation and welcome what we consider to be the correct balance between realigning prices to recognise previously constrained inflationary pressures whilst providing a proportionate set of measures based on existing regulation to address legitimate concerns about the potential for fraud. UKCTA fully supports Option 2's proposed Service Charge ceiling of £3 per minute and £5 per call. We believe this brings the fixed market suitably in line with the mobile short code offerings and with an acceptable level of risk from fraudulent activity. Individual members are unlikely to be able to unanimously support any increase above this rate.

The existing regulatory measures available to PhonepayPlus we believe to be satisfactory to deal with any issues that may arise once the changes are implemented. However we caution that history has shown that every change in regulation in this area has been greeted with increased instances of 'scams' and other activity to the detriment of consumers. Whilst the Unbundled Tariff and existing regulatory tools are in place to address these, PhonepayPlus and Ofcom need to be prepared to take proactive steps to ensure that the new tariffs are only used for legitimate services.

Questions

Question 4.1: Do you agree with the assessment criteria we are proposing to use for our analysis, and in particular the three additional criteria we have identified as relevant?

UKCTA agrees with the criteria Ofcom has utilised to assess the suitability of its proposals. We acknowledge that this is for the most part based upon those deployed during the wider NGCS review and welcome the consistency that has been shown. Where there are differences between the criteria we concur that these differences are relevant to the specific detail of the PRS and DQ markets and that they represent valid considerations against which any assessment is to be made.

The three specific areas are given as:

- i) the availability of directory enquiry services at affordable prices,
- ii) consumers' exposure to fraud and bill shock; and
- iii) CP's exposure to bad debt

The first two additional criteria are consistent with Ofcom's consumer protection duties and whilst "affordable prices" is a highly subjective concept it is a consideration which needs to be undertaken. Similarly consumer concerns regarding fraud and bill shock are common aspects which Ofcom is addressing in other consumer focussed work as well as the wider NGCS Review and fraud issues have historically blighted 09 ranges for a number of years.

UKCTA members are familiar with issues relating to bad debt, both in relation to their own retail businesses and the difficulties in ascertaining suitable regulatory retentions reflective of originating operators' PRS bad debt rates. We agree that this is an important criterion against which to judge the proposals and one which has been commented on in detail as part of the NGCS review's deliberations as to the suitability of the Access Charge element of the Unbundled Tariff. We have not commented further on the issue here.

Question 4.2: Do you agree that a maximum SC should apply to 09 numbers for the reasons set out above?

Yes, UKCTA agrees that setting a maximum Service Charge for 09 numbers is an appropriate response to i) improve consumer confidence and price awareness; ii) protect against bill shock and fraud risks; iii) limit the impact of bad debt on an originator's bad debt and iv) will not result in significant regulatory burden.

Question 4.3: Do you agree that a maximum SC should apply to 118 numbers for the reasons set out above?

We agree that a maximum Service Charge consistent with the 09 range for DQ services is also an appropriate structure. In particular we note that the cap does not in any way constrain the pricing freedom which is currently available to DQ providers.

Question 4.4: Do you agree that a different maximum SC for calls charged on a per call basis and calls charged on a per minute basis is appropriate?

UKCTA agrees with Ofcom's assessment that there is a need for different Service Charge caps relating to pence per call and pence per minute services. It is essential for a successful regime that elicits the confidence of consumers that a balance is struck between the revenues available to new Service Provider services and the potential fraud risks posed by the same increased revenues.

Question 4.5: Do you agree that we should use the RPI measure of inflation to uplift the BT's current maximum retail price for 09 calls to derive the maximum SC under Option 1?

Ofcom's preference for the use of RPI over CPI when calculating the inflation uplift to Option 1 has been justified with reference to previous work in the postal sector. Here CPI was deemed appropriate for what were considered to be essential services as it provided a lower cost to consumers. In this instance RPI is preferred even though it results in higher consumer costs on the grounds that the services themselves are non-essential.

Whilst it seems an arbitrary rather than scientific choice UKCTA recognises that the difference between the rates is small and therefore agrees that using RPI is a suitable measure to account for the uplift in inflation from the current BT maximum retail price.

Question 4.6: Do you agree that we should not uplift the SC caps by inflation on an annual basis?

UKCTA favours adopting the additional headroom offered under Option 2's proposed £3 per minute and £5 per call structure rather than the additional uncertainty and administrative costs associated with annual RPI increases. We agree that such an annual adjustment would be administratively inefficient and cause Service Provider and consumer pricing uncertainty ahead of each increase.

Question 4.7: Do you agree that the maximum SC cap should be set exclusive of VAT?

Industry's experience at the time of the last change to VAT rates has shown that it is far preferable to publish prices exclusive of VAT rather than to make the numerous regulatory changes required in modifying numbering plans or amending at the consumer level.

Question 4.8: Do you agree that Option 2 (a £3 per minute and £5 per call cap) is the most appropriate maximum service charge limit for 09 and 118 numbers? If not, please explain why.

UKCTA agrees with Ofcom's assessment of the three options under consideration. We concur that of the three options under consideration Option 2 is the most advantageous in light of Ofcom's assessment criteria and we agree that it provides the most appropriate maximum service charge for both 09 and 118 numbers.

Question 5.1: Are there any other consumer protection measures we should consider for the 09 and 118 ranges? Please explain why you consider any additional measures you identify might be appropriate.

The options for consumer protection Ofcom sets out appear to be comprehensive and UKCTA does not have any further measures which may offer additional protection.

Question 5.2: Do you have any comments on our assessment of the costs and benefits of a pre-call announcement on the 09 and 118 range? Please provide reasons for your view.

Question 5.3: If relevant, please provide an estimate of the likely costs that you would incur if a pre-call announcement were implemented on these ranges, taking account of any benefits it may bring.

UKCTA notes that the original decision to place pre-call announcements for 070 numbers as an obligation upon OCPs was an imperfect design driven largely by the lack of any single party in the value chain that was able to provide the caller with a clear indication of the cost of the call. The introduction of the unbundled tariff removes this failing and provides a clear opportunity to provide the caller with pricing information.

We note however that if the unbundled tariff is the success it is intended to be, then such measures should be largely superfluous as the Service Provider will be required, both through obligations placed upon it under the Unbundled Tariff and also under the PhonepayPlus code to clearly advertise the cost of calls. In such circumstances it is unclear how the cost of pre-call announcements provides any additional benefits to consumers to justify the costs of implementation.

Question 5.4: Do you have any comments on our assessment of the costs and benefits of a consumer opt-in for 09 and 118 numbers? Please provide reasons for your view.

UKCTA does not agree that a universal consumer opt-in for 09 and 118 numbers is an appropriate solution. We recognise the consumer protection incentive behind BT's suggestion but strongly believe that such measures are entirely within the power of the operator with the consumer relationship to introduce or not as they see fit. Individual operators should be given the opportunity to determine whether they wish to automatically provide access to these numbers or to risk implementing an opt-in approach that results in consumers churning to other Communications Providers who may offer access. It has been a source of frustration to many UKCTA members that today's bad debt surcharge for PRS numbers has not previously incentivised BT's management of bad debt. We do not view that imposing an industry-wide solution at the expense of Service Provider traffic and revenues is an appropriate mechanism for addressing this concern.

It is unlikely that such an approach can ever promote competition or ensure the continuity of service of directory enquiries to consumers at an affordable price.

Finally UKCTA understands that the ability to bar sub-ranges within the PRS numbers, as with the references Spanish example, is a level of functionality which does not exist in many networks. The cost of such an introduction is likely to be high with only limited benefit in relation to a niche number of services. Such investment should remain the choice of individual operators.

Question 5.5: Do you have any comments on our assessment of the costs and benefits of time-related notifications on the 09 and 118 range? Please provide reasons for your view.

Question 5.6: If relevant, please provide an estimate of the likely costs that you would incur if time-related notifications were implemented on these ranges, taking account of any benefits it may bring.

UKCTA agrees that the inherent costs of time-related notifications are likely to be high. We remain unconvinced that the benefits of this option offer any tangible improvement over the existing PhonepayPlus powers that warrant the extra investment that would be required to introduce such notifications.

Question 5.7: Do you have any comments on our assessment of the costs and benefits of dedicated number ranges on the 09 and 118 range? Please provide reasons for your view.

It is UKCTA's belief that the ability to bar individual number blocks within the 09 range is not available to all CPs in the same way as to BT. As such we cannot attribute the same level of benefit as that claimed in providing a dedicated range within 09 for higher rate numbers. Whilst dedicated 09 and 118 number ranges will have administrative benefit internally to CPs and is worthy of consideration for that reason alone, we do not believe that there will be any automatic uniform benefit from more granular calls barring capability.

Dedicated ranges will however allow Ofcom and PhonepayPlus to easily monitor who numbers are being allocated to more and to readily identify any fraudulent activity.

Question 5.8: Do you have any comments on our assessment of the costs and benefits of an extension of the 30 day withhold period on the 09 and 118 range? Please provide reasons for your view.

UKCTA does not believe there is any material benefit from such a proposed extension to the withhold period. PhonepayPlus already has considerable ability to withhold revenues upon request and at immediate notice. Taking into consideration the comparatively low volumes level of PRS fraud and existing 30 day period, we do not believe there is any need for an efficient regulator to require further time. Indeed considering the extra quantum of any potential consumer harm the incentivisation should be to resolve issues in the shortest possible timeframe.

Question 5.9: Do you agree with our assessment that additional consumer protection measures would only be justified if SPs are able to set SCs for services on 09 and 118 with the ranges proposed under Option 3? Please provide reasons for your view, including, if relevant, the measures that you consider would be appropriate.

Question 6.1 – Do you agree that the level of the SC should be set at £5 per call and £3 per minute and that no additional consumer protection measures will be required? If not, please provide alternative options and evidence to support your preferred option.

UKCTA agrees that setting a Service Charge at a level of £5 per call and £3 per minute is the maximum level at the time being which members would be comfortable that no further consumer protection measures required. We note that there may be a case in the future for further increases if inflation again places pressure on the Service Charge Cap.

The per call costs in particular are likely to be the focus of any initial attempts by fraudsters to exploit the change in regulation. Past experience with changes to the PhonepayPlus Codes and the changes to 0871 regulation were met with concentrated periods of fraudulent activity and these increases in price offer an attractive target in relation to which operators and regulators must remain vigilant. Any increase in price points beyond Option 2 will not only require additional consumer protection measures, but is unlikely to gain the support of all UKCTA members.

Question 6.2 – Do you agree with our proposals in relation to the timing of our proposals for a maximum SC charge for 09 and 118 numbers taking effect?

Yes we agree that the changes should coincide with the timescales of the NGCS review.