

Virgin Media's response to Ofcom's consultation on Geographic numbers: Safeguarding the future of geographic numbers.

Executive Summary

Virgin Media welcomes the opportunity to respond to Ofcom's statement and further consultation on Geographic Telephone Numbers (the "**Consultation**"). The proposals, as outlined in the Consultation, to safeguard geographic numbers, will have a significant impact on both businesses and consumers alike over a period of many years. In light of the significance and longevity of Ofcom's proposals, Ofcom needs to be sure that its proposals are not only necessary to remedy the issue but are also proportionate in their impact.

As Virgin Media stated in response to Ofcom's first consultation, whilst we understand the need for supply side measures (given that their benefits can be easily quantifiable) and administrative measures (given their low impact on industry), Ofcom's proposals to charge for geographic numbers is premature and is a disproportionate approach to resolving the shortage of geographic numbers. This is particularly the case given that Ofcom is not able to predict the numbers it expects to gain from the charging proposals, which means that it is not able to undertake an informed cost/benefit analysis. As Ofcom states "*our model cannot estimate the possible effect from policy changes, such as the effect of charging for numbers¹*".

Currently, Ofcom is proposing to close local dialling, strengthen its administrative procedures and audits, introduce a charging regime and encourage the take-up of 03 ranges. All of these measures could have a significant impact on the availability of numbers and yet by introducing all these measures simultaneously, any benefits and costs will not be able to be properly assessed. Given Ofcom's requirement to be an evidence based regulator, Ofcom should take an iterative and evidenced based approach to regulation and initiate one measure at a time. This will enable Ofcom to properly and independently assess each proposal and its corresponding impact.

The charging proposals are concerning as Virgin Media estimates the pilot scheme alone will cost Virgin Media £ and this does not include any necessary technical changes to the systems and the time and resource needed to implement new administration processes. Ofcom also needs to factor into its calculations the opportunity cost of the time and resource that CPs will be required to invest into setting up, running and paying for the charging system. This is time and resource that CPs would otherwise be able to invest into activities that would deliver greater benefits for citizens and consumers.

In addition, Ofcom's charging proposals do not factor in the costs of Ofcom's other measures which will be introduced as part of this same review. Currently, the cost of closing local dialling is unknown and will be entirely dependent on the level of announcements/publicity required in each area.

Accordingly, Virgin Media is of the view that insufficient consideration has been afforded to the effects and potential consequences of introducing a charge for numbers. Ofcom has not justified why charging should be introduced, particularly ahead of less draconian and impactful measures. There is scope for Ofcom to improve the availability of numbers through the closing of local dialling, a complementary package of refinement of the number allocation procedures and a

¹ Please see paragraph A2.47(c)

comprehensive tightening of due diligence activity to ensure that numbers in scarce areas are used efficiently.

Virgin Media sets out its comments to the Consultation with reference to those questions it considers it can most meaningfully input into within the timeframe specified to respond to the Consultation. It also sets out at the end of the response, some additional points which are relevant to this consultation process.

Section 5: Reducing the need for new supplies of geographic numbers

Question 1: Do you agree with our proposal to allocate up to 10,000 numbers in blocks of 100 numbers (i.e. 100 x 100-number blocks) in the following 11 five-digit area codes? Appleby (017683); Gosforth (019467); Grange over Sands (015395); Hawkshead (015394); Hornby (015242); Keswick (017687); Langholm (013873); Pooley Bridge (017684); Raughton Head (016974); Sedbergh (015396) and Wigton (016973)

Question 2 (for CPs): Would it be feasible for your network to handle up to 10,000 numbers allocated in blocks of 100 numbers in the 11 five-digit area codes listed in Question 1?

Question 3 (for CPs): What are your predicted costs and timescale requirements for implementing the necessary changes in your network switches to support routing to blocks of 100 numbers in the 11 five-digit area codes listed in Question 1?

✂ Virgin Media welcomes Ofcom's proposal, as set out in paragraph 5.48 of the Consultation, that where sufficient numbers exist, Ofcom will still allocate blocks of 1,000 numbers to those CPs that can justify such allocation. Virgin Media suggests this should include allocating 1,000 number blocks to those CPs whose infrastructure is not able to support 100 number blocks.

Section 6: Charging for geographic numbers

Question 4: Do you agree that the pilot for geographic number charges should be introduced six months after the date the final statement is published? If not, please state your preferred implementation period and reasons.

In relation to Ofcom's proposal to introduce charging six months from the final date of the statement, Ofcom has not considered that simultaneously, Ofcom's supply side measures will take effect. The charging proposal cannot be seen in isolation from closing local dialling as this measure will result in significant expense and resource for CPs to configure their switches, update consumers and pay for and coordinate a public marketing campaign.

Furthermore, as Ofcom states in the Consultation, closing local dialling, aside from any further measures, would prevent the need for the introduction of an overlay code for a minimum of 6 years, even in the scarcest number areas. It is therefore unnecessary for Ofcom to introduce charging 6 months from the publication of the final statement as the problem with number shortages following the closing local dialling is not time critical. It is not proportionate for Ofcom to impose a charging regime on CPs if it is not required - this is the same rationale as Ofcom has used to justify (rightly) not imposing nationally the closing of local dialling².

² Please see paragraph 4.47

Ofcom's proposal to charge for numbers is not only premature but also unfairly penalises those providers, such as Virgin Media, who generally use numbers efficiently to meet consumer demand. Ofcom states that the rationale for the charge is that CPs are *"currently allocated number blocks for free they do not bear all the costs generated by using these numbers and this can lead to CPs requesting and holding more number blocks than would be economically efficient"*³. Therefore, in principle, charging should reduce demand by encouraging more efficient use of numbers. The flaw in Ofcom's charging proposal is that even if a number is efficiently used, the CP is still charged. Therefore, the CP or consumer if the charge is passed on is penalised without any corresponding benefit accruing to either.

Virgin Media notes in paragraph 6.67 of the Consultation that Ofcom states it would be too burdensome to charge just for inefficiently allocated numbers. Virgin Media considers that Ofcom has provided no substantive justification for this assertion. Moreover, Ofcom queries how it would verify usage information provided by CPs is correct. It is unclear why Ofcom has this concern given its s.135 powers. In relation to small entrants, Ofcom notes that imposing charging only on numbers which are not efficiently allocated would disproportionately penalise these operators. However, charging for all numbers in an area penalises all operators, including those who allocate numbers efficiently. Smaller operators could manage their costs more effectively if they were able to return numbers in less than 1000 number blocks.

Given these fundamental flaws in Ofcom's charging proposal, Virgin Media suggests that Ofcom first adopt supply side and administrative measures and then consider, based on factual evidence, whether it needs to move to the more draconian remedy of charging for numbers, but only for those numbers which are unallocated. Furthermore, it may not be necessary to introduce a charge, even on a pilot basis, if closing local dialling and more robust administrative measures are put in place. Most significantly, as Ofcom states *"[w]e consider, therefore, that closing local dialling would generally provide sufficient additional numbers to meet demand beyond the short-term requirements of CPs"*⁴

Question 5: Do you agree that we should introduce charges in a pilot scheme initially? If not, please state your preferred approach and reasons.

As stated above, Virgin Media does not consider that a charging regime should be introduced without first assessing the impact of less interventionist measures (i.e. closing local dialling and improving the administrative processes).

Ofcom proposes to review the pilot scheme in two years and sets out in the Consultation the factors that could potentially be relevant to assess its impact. Virgin Media suggests that charging should only be introduced on a wider basis if there are clear and tangible indications that such a measure is effective. However, as Ofcom states in the Consultation, it is difficult to ascertain the impact of the charging regime⁵. This is even more likely when it is being introduced alongside other measures. Such an approach is concerning as it means there cannot be an objective and fair assessment of the impact of the 10p charge. As discussed above, this issue would be avoided if administrative measures were introduced first and then, at a later date, if necessary, charging.

³ Please see paragraph 3.86

⁴ Please see paragraph 4.96

⁵ A2.58

Question 6: Do you agree that the revised pilot scheme should capture around 30 area codes with the fewest number blocks remaining available to allocate? If not, please state your preferred threshold and reasons.

Virgin Media's starting premise for the introduction of a charging regime is that it should only be used as a last resort, when Ofcom has exhausted all other measures. Ofcom's starting premise seems to be that it wants to introduce a charging scheme on a pilot basis to assess its impact. This is highlighted by Ofcom's widening and readjustment of the areas to be included in the pilot scheme after the industry had, in good faith, committed to return 69 million numbers as part of the audit.

✂ However, due to the return of these 69 million numbers by industry (and the proposed measures in the five digit area codes), Ofcom states that only 8 of the original pilot areas would be caught by the charging pilot regime. Accordingly, Ofcom proposes in the Consultation to extend the scheme to capture 22 new area codes.

As an evidenced based regulator, Ofcom needs to justify the proportionality of a charging regime on the merits of such a scheme rather than start from a presumption that it needs a sizeable number of areas to include in a pilot charging regime, regardless of whether such a measure is needed immediately in that particular area and without reference to its other measures.

Question 7 (for CPs): Are you able to provide an estimate of the administrative costs of implementing number charging? Which aspects generate the most significant administrative costs for CPs?

Virgin Media estimates that potentially (and this will depend to a large extent on how Ofcom administers the charging regime) in addition to the ✂ cost it will incur as a result of the 10p per number cost, administering the pilot regime, (i.e. updating our customer provisioning systems, allocating costs between business and residential sections of the company) is likely to be in the region of ✂.

In addition, as stated above, the costs of the pilot charging regime cannot be seen in isolation as Ofcom also needs to weigh up the cost on industry of all its proposals relating to the geographic numbering review. In particular, until the industry forum is well underway, and a proper assessment of the effectiveness of closing local dialling in Bournemouth is understood, it is difficult to assess the level of funding required to close local dialling. In such circumstances, Ofcom should not be seeking to impose further cost on industry.

Annex 5: Cost recovery for number charges when the CP using the number is different from the range holder

Question 8: Which option for dealing with number charges for ported and WLR numbers do you prefer? Please set out reasons for your preference.

As stated above, industry is already facing increased costs due to the closing of local dialling initiative. In light of this, Ofcom should be looking to reduce unnecessary costs on industry, particularly, where there are a number of alternative approaches available to it. Certainly for the pilot scheme, and potentially thereafter, Virgin Media considers that Option 5 is the most appropriate, i.e. that Ofcom does not levy number charges for ported or external WLR numbers. Virgin Media also agrees with Ofcom that it should adopt the discount approach (i.e 10p per number reduction for ported and WLR numbers) as this is the simplest approach to administer for CPs.

Virgin Media would like to draw Ofcom's attention to the fact that even if Ofcom applies a discount to ported and WLR numbers, it is not easily ascertainable, & who any particular range or number has been ported to (for the purposes of obtaining a discount). This may mean that in some instances it could be more cost effective to forgo the discount. The effect of such perverse incentives, will not increase the supply of numbers but rather will result in a net loss for CPs and correspondingly for consumers.

Annex 6: Implementing a pilot charging scheme for geographic numbers

Question 9: Do you have any comments on Ofcom's intended billing assumptions for the proposed pilot charging scheme for geographic numbers? (i.e. that Ofcom will bill CPs annually; CPs will be billed in arrears; and charges will accrue for each number block in chargeable area codes on a daily basis)

Question 10: Do you have any views on the appropriate Charging Year and billing cycle for the pilot charging scheme for geographic numbers?

As stated above, the introduction of a charging regime is likely to significantly increase the administrative costs to industry. Whilst Ofcom's rationale for charging on a daily basis seems sensible, there are a number of corresponding administrative issues which need to be considered. In particular, the relevant discount/charge needs to be calculated on the same basis to ensure that CPs are able to take account of the full discount in respect of any ported/WLR numbers.

Additional points arising outside of the questions in the Consultation

Virgin Media sets out below a number of further considerations to increase the supply of numbers which should be considered alongside Ofcom's other proposals and ahead of the proposed charging regime:

(i) Overlay codes

Virgin Media notes that the qualitative research found that consumers indicated a preference for closing local dialling over the introduction of an overlay code. & Ofcom should consider Colt's suggestion (as set out in footnote 89 of the Consultation) that CPs are allowed a choice of allocation either from the local code or with the overlay code which would allow for the allocation of 10,000 block numbers. This would leave the original code available for residential and small business customers.

(ii) Ofcom's proposals on 03 ranges

Virgin Media understands that Ofcom intends to issue a further consultation on non-geographic numbers in 2012, which may include measures to encourage the update of 03 ranges. This is a significant development as the majority of Virgin Media's recent geographic numbering applications have been in support of public sector/health and local authority customers at whom the 03 ranges are aimed. A drive to promote 03 ranges could reduce number shortages significantly and may further delay any need to introduce charging.

**Virgin Media
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