BT's response to Ofcom's consultation

"Simplifying Non-Geographic Numbers"

31st March 2011

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Comments can be addressed via e-mail to Nicola Robbins at the following address: nicola.robbins@bt.com

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1. Executive Summary

1.1 Background

We welcome Ofcom's comprehensive review of non-geographic call services (NGCS). We believe Ofcom's proposals form a good basis for a new set of rules for the operation of NGCS to the benefit of all parties – the calling consumers, network operators and service providers.

Ofcom has gathered unequivocal evidence of serious market failure. The current patchwork of regulation has failed to deliver either consumer satisfaction or stability for the NGCS industry.

1.2 Consumer impacts

Ofcom's research shows that consumers are confused by non-geographic call prices. This has been exacerbated by mobile operators, in particular, charging high prices. As a result consumers are making fewer calls to these numbers and this has impacted the whole of the NGCS value chain. Consumer protection is an important feature of any well functioning regime and we believe that any rules should be rigorously applied across the industry in a technology-neutral way.

1.3 Current and future regulation

We welcome the proposal to remove the current NTS Call Origination Condition. At the retail level the market has changed significantly since the NTS regime was first introduced. BT has not had retail Significant Market Power (SMP)[1] for some time. However, regulatory restrictions remain in place which apply solely to BT. This is no longer appropriate (see section 2). BT should not be placed in a different regulatory position from any other player at any stage of the NGCS value chain.

We believe that no additional SMP conditions are appropriate beyond the general requirement to provide call origination at the wholesale level, including for NGCS services.

1.4 Ofcom's options

Each of Ofcom's options, other than the status quo, offers varying benefits. We agree with Ofcom that the unbundled tariff is the most attractive option. It will address many of the problems identified when combined with some supporting measures (see section 3) and will greatly benefit consumers by improving price transparency.

For the unbundled tariff to be effective, we agree that access charges should be set at a reasonable level to stimulate demand for NGCS and that originators should have flexibility to market these services in packages if they choose. We also agree that service charge maxima at the 08x/09x level should be set. Below that, the service charge for each number range should be the same for all providers as variations would lead to considerable consumer confusion (which would be made worse/unworkable by number portability). This approach is compatible with vigorous competition in termination and we agree with Ofcom that this market is effectively competitive.

[1] Ofcom's 15 September 2009 statement on "Fixed Narrowband Retail Services Market" concluded BT no longer had SMP in this market and that the market was fully competitive.

A further issue is the extent to which individual players (originators and service providers) may wish to offer bespoke terms. We believe that the rules for such differences need to be made clear and that any restrictions should not be aimed solely at BT.

1.5 Numbering strategy

We support much of Ofcom's proposed approach to numbering, although one of our key differences is that we do not feel that forced number changes would be justified (see section 4).

1.6 Transition and implementation

We agree with Ofcom that the transition to a new regime will be challenging and take some time. There are a number of practical issues which need to be resolved about the operation of the unbundled tariff, including, for example, how the access and service charges will be set (see section 5). As a result, we have not yet carried out any detailed feasibility work regarding costs and timescales of implementation. We do, however, believe that the benefits sought by Ofcom from disaggregated billing could be substantially achieved by greater pricing visibility at - or before - the point of making the call and through messages on customers' bills that explain how the total cost of the call is shared between the access and service charge.

1.7 Wholesale regulation

We feel that Ofcom has not been clear on how it will regulate at the wholesale level but believe that no additional constraints on BT are justified (see section 6). Ofcom must ensure fair access by all to all parts of the value chain – from caller through to service provider.

1.8 Moving forward

In summary, we welcome this review and consider that Ofcom has provided a wide set of possibilities and that the proposed model is the most appropriate. There are practical issues to sort out and a number of areas where greater clarity on the unbundled model is needed. Clear rules at the outset will help ensure that all of industry complies with a common and practical framework. An early launch will benefit both consumers and the NGCS industry and we would recommend a phased implementation if this is the most effective means to bring about the changes more quickly. We are keen to engage with Ofcom and industry on how best to develop fair and practical solutions.

2. Rationale for change

As Ofcom notes, the existing NGCS regime is failing to deliver either industry stability or consumer satisfaction. We agree with this assessment and set out below our comments on the specific issues Ofcom has identified.

2.1. Consumer issues

Ofcom's research has shown that consumers are confused by non-geographic numbers. Measures put in place by Ofcom in previous reviews[2] have failed to resolve consumers' concerns regarding retail charges for NGCS calls. These charges are frequently unclear to the consumer at the point of making the call. This problem is compounded by the wide range of retail charges in the marketplace for the same number, with mobile operators, in particular, charging rates significantly higher than most fixed operators. The establishment of organisations such as "Say No to 0870" also emphasises that consumers are dissatisfied with many of these services.

This confusion shows that advertising messages are also unclear with consumers typically overestimating the price of these services[3]. As a result, they may avoid making calls to these numbers thereby deflating call volumes; evidenced by NGCS minutes declining more quickly than other fixed call volumes[4].

We have responded to consumer confusion in the market by including both 0845 and 0870 services within our residential calling plans. This has given our customers pricing certainty for these number ranges. However, as Ofcom, notes the majority of these numbers are priced outside inclusive call packages by other operators.

Ofcom has identified[5] a specific issue about low income households which only use mobile phones. These customers are disadvantaged by the higher retail charges made by mobile operators. Ofcom's research shows the positive impact on the volumes of calls made to the Department for Works and Pensions' (DWP) numbers[6] once they were made free of charge from a mobile. This example illustrates that there is consumer concern over the cost of calling these numbers which is leading to a reluctance to make calls. These concerns need to be addressed, most especially in the mobile sector.

It is clear from the research that any regulatory changes need to address both fixed and mobile operators in an even handed fashion especially given the high degree of inter-changeability between the services.

2.2 Service Provider concerns

As pointed out by Ofcom, SPs also have a number of concerns. They cannot control how much an individual originator charges a customer to call them and this lack of control means that SPs cannot price accurately in their advertising. As a consequence, SPs often have to

[2] Changes to 0870 Final Statement April 2009. The National Telephone Numbering Plan 2002 (080x pre call announcement).
[3] Ofcom consultation paragraph A2.119 34% of respondents believed 0845 is used to provide PRS even though the National Telephone Numbering Plan sets the rate as "local".
[4] We have previously shared with Ofcom BT Retail consumer market trend information.
[5] Consultation paragraph 1.13.
[6] Consultation paragraph A2.91.

deal with complaints from callers about pricing issues which are outside of their control and, in turn, this undermines consumers' confidence in these services.

Further, Ofcom's research shows that consumers assume that costs to call NGCS numbers are higher than they are and these misplaced perceptions can significantly reduce demand for these services. Also as SPs cannot control how their service is priced compared to their competitors, this has an impact on their ability to position their service and their brand. As a result, SPs have less incentive to invest in new services.

These issues adversely impact the smooth running of the NGCS market.

2.3 Terminating Operators' concerns

The current regulatory regime requires BT[7] to calculate NGCS terminators' out payments using a regulated formula. Ofcom acknowledges in the consultation that the regulated link between BT's retail call origination charges and terminators' out payments causes numerous disputes.

Although non-BT call originators are free to make considerable margins for retailing NGCS calls, terminators' charges for those calls are calculated as if they were constrained by regulation, i.e. as if the call had been originated by BT. This is distorting the marketplace and affecting broader retail pricing as well. Excessive retail charges, particularly from mobile originators, also impact on terminators' and SPs' business models as they can act as a call deterrent and so reduce call volumes.

We would welcome an NGCS regime which provides greater pricing clarity and certainty thereby reducing the scope for disputes and, as a consequence, the regulatory and legal burdens. Clear interconnect and transit arrangements will also be needed if we are to avoid new types of disputes in the future (see Annex 3). In particular, the industry will require clarity on implementation and transition processes. This is especially the case for any new terms for 080x calls.

2.4 Current regulation is not working

Current regulation is plainly not working, as Ofcom's own evidence demonstrates. Since the NTS regime was first introduced, the retail call origination market has changed significantly. This change leaves the existing NTS rules outdated and unfit for purpose.

BT has not had SMP in retail call origination for some time, yet regulatory restrictions which apply solely to BT's retail business remain in place (see below). There can be no justification for applying regulation solely to BT as a (retail) originator (and, indeed, as a terminator – see later). Specifically:

- *The National Telephone Numbering Plan (NTNP)* – any provisions, including those about price, in the NTNP should be applied and adhered to equally by all CPs (fixed and mobile) – the pricing provisions in the Plan must cease being BT-focused. If this does not happen, consumers will have no more clarity than they do now; and

[7] For calls retailed and originated on BT's fixed line network.

- *The NTS Call Origination Condition* – it is inappropriate for this to apply solely to BT's downstream operations (BT Retail and Global Services). It places BT at a material disadvantage to its competitors. The effect of this asymmetry is that only BT foregoes a margin on NTS/PRS call origination. It also limits BT's ability to deliver innovative pricing initiatives.

2.5 Need for regulatory change

If we are to build consumer confidence in NGCS, we must make call pricing clearer so that consumers can make an informed purchase decision. They have to be able to identify from the number, the end-to-end price of a call to the service of any SP. If they can do this, their increased willingness to make such calls will help to increase volumes and reinvigorate a declining market.

Current regulation does not address this key principle. A new set of regulatory rules is needed which should be applied to all CPs in a symmetric, consistent and transparent way. Any new regulation should ensure that:

- Consumers find the new arrangements clearer
- Consumers are fully informed
- It provides a fair return for call originators who are allowed to compete on price
- Certainty of termination receipts for NGCS operators
- Competition is encouraged in the hosting space to offer value add services for clients
- There are no loopholes
- There are processes in place to ensure compliance

3. Assessment of Ofcom’s options

We think that the range of options is reasonable. We agree that they should not be viewed as alternatives, but where relevant, looked at in conjunction with each other. All options other than the status quo appear to offer the likelihood of benefits, though some are more attractive than others.

3.1 Status Quo

We agree that the current regulatory regime cannot continue – see our comments in section 2.4 above.

3.2 Deregulation

Ofcom should always consider deregulation, especially where the market is fully competitive. The current regulatory regime unfairly imposes remedies on BT in a market where BT has no SMP. Removal of the relevant call origination obligations is therefore imperative if BT’s retail businesses are to compete on equal terms.

Thus, this option does have merit. Deregulation would ensure that all CPs are treated equally. We think the market has changed sufficiently to justify this option. However, as Ofcom points out, this option by itself would have challenges and would not necessarily address either pricing transparency or resolve the issue of termination disputes.

3.3 Improving pricing awareness measures

We agree with Ofcom that improved pricing awareness is not sufficient as a standalone solution. The existing price advertising rules have failed to improve price transparency for consumers. For example there is evidence that some CPs’ pricing information does not meet the requirements of General Condition 14.2. In addition, Pre-Call Announcements are problematic, as the short lived introduction on Personal Numbers in 2007 highlighted.

There may be benefit in improving existing obligations or, if necessary, introducing new rules aimed at addressing pricing transparency issues. However, this cannot be done in isolation as it will not address the underlying problems. Therefore, we support the proposal to add improved pricing rules to the unbundled tariff solution.

Please see our response to question 7.5 where we discuss how the new rules might work.

3.4 Unbundled tariff

We support this approach (in conjunction with some supporting measures) as it would address many of the issues in the value chain:

- **Consumer pricing transparency** – customers would be able to make a more informed decision about the cost of the call

- **Service providers** – would be provided with the ability to market their services more accurately and with more confidence

- **Pricing consistency** – it would provide consistency of Ofcom's charging principles across all CPs (both fixed and mobile) for NGCS calls
- **Low income households** – many of these households rely upon a mobile phone only. A reduction in mobile charges would be very helpful for this customer group who would also benefit from any improved pricing transparency
- **Service innovation** – improved pricing transparency should restore consumer confidence in these services, potentially increasing customer demand and incentivising SP innovation and investment
- **Termination disputes** – fairer pricing by CPs should reduce the likelihood of disputes similar to those that have arisen over the past two years.

In our view, a key factor underpinning the success of this model is clarity between originators and terminators/SPs as to respective contractual rights and the extent to which either party can vary the standard published charges. We agree with Ofcom that bespoke service charges may cause consumer confusion as well as potential market distortions. By the same token, we consider that imposing an end-to-end obligation on BT alone is inappropriate. Other originators should be obliged to offer access to end-consumers; the evidence is very clear that it is the originators that act as the 'gatekeepers' in this two-sided marketplace. See section 6.2 where we discuss this further.

Resolution of the many practical implementation issues will also be vital; we discuss these in section 5.

3.5 Maximum prices

Whilst maximum prices at the 08x/09x level has many potential benefits, it does not address all of Ofcom's identified market failures:

- **Consumer pricing transparency**
  - Consumers will be better informed than they are now as they will know the maximum price they will pay. However, they still will not have certainty of what they will pay and will not know the exact cost of their call until they see their bills
  - This option does not address the issue of consumers perceiving these calls as being more expensive than they are. Consumers will always see the highest price although their provider may actually charge a much lower price. This would continue to undermine consumer confidence in these services and deflate demand
- **Low income households**
  - The issues for this group of consumers may not be addressed. For example, if a higher set of mobile price maxima were introduced (relative to fixed prices) this would not accommodate low income consumers who rely solely

on a mobile. To solve this problem, a single cap would be required which applied to all operators, both mobile and fixed

- **Service innovation** – improvements would be limited due to a number of factors:
  - Under this option, originators will want to continue to reduce termination payments. If they are successful this could have an impact on revenue share or even remove revenue share opportunities[8] altogether
  - Consumer confidence is unlikely to be restored via price maxima as a standalone solution unless it is combined with additional measures such as the unbundled tariff. This solution would not help to stimulate either call volumes or SP investment
- **Termination disputes** – with this option, the terminator still relies on the revenue achieved by the call originator, over which they have little or no control. This means that every termination rate would continue to be negotiated. As a result, this option does not remove the potential for numerous disputes.

[8] For the avoidance of doubt, any references in our response to revenue sharing relate to the arrangements between the terminator and the SP.

4. Numbering strategy

We are generally supportive of Ofcom's numbering strategy. We are, however, opposed to any forced number changes, by which we mean that the option should remain for SPs to keep their existing numbers even if the commercial model behind their number changes, because:

- Ofcom's objectives can be met without number changes
- The costs involved for all parties in number changes is high
- They take a long time to implement
- Number changes can have a detrimental effect on any business as customers' familiarity with an existing number is broken e.g. where it is programmed into a phone or written in a personal document.

We discuss each element of Ofcom's proposals in more detail below.

4.1 Ofcom's consumer guide to numbering

We support the idea of an easy to understand consumer guide and emphasise that it must be complete, accurate, simple and helpful. However, we think that Ofcom's proposal falls short in some regards. Please see Annex 1 for further discussion on this matter.

4.2 Number range proposals

It is unlikely that a single regulatory solution will work for all number ranges. We therefore agree that it is appropriate to assess the various commercial scenarios for each individual number range.

4.2.1 Freephone – 0500, 080x and 116

All CPs, fixed and mobile, should adhere to the same pricing rules including price caps where they are in place. This is the only way to improve pricing clarity. We believe that consumers and SPs would benefit from 080x and 0500 numbers always being free to caller, as Ofcom proposes. We also recommend that all 116 numbers should also be free to caller.

There is a potential concern that some providers may choose to bar access to Freephone services if they are made free to the caller. Ofcom may wish to address this concern by introducing an "access charge only" arrangement, say behind 081, where the originator can make a constrained access charge and where there would be no service charge made by the terminator.

Ofcom does not specify how origination charges will be set for these numbers. Currently, the payment BT receives for call origination is calculated using clearly defined and regulated costs i.e. wholesale call origination costs plus Retail Uplift. We believe that the costs of mobile origination are similar to those of fixed operators and this is supported by Ofcom's own cost modelling. In determining a fair origination charge, operators must not be allowed to inflate their claimed level of costs. A single origination cost for both mobile and fixed operators based on the costs involved in carrying a call to the Assumed Handover Point (AHP) would make sense. This would also lead to smoother implementation. We therefore support a cost-based origination payment set roughly at current levels and applied to all originators for Freephone numbers.

4.2.2 03 numbers

We support keeping a price ceiling linked to the rate the customer pays for national rate geographic calls. The requirement for 03 calls to be included in call packages should also be maintained.

If future disputes are to be avoided, there needs to be a concise process, specified by Ofcom, for the calculation of future 03 termination payments. This could be based on Ofcom's 2009 assumptions for determining 0870 termination charges[9] which was later supported in the 03 dispute[10].

The interconnect arrangements for this range may need to be reviewed to ensure consistency with other ranges. We consider this possibility in Annex 3.

4.2.3 055 and 056 numbers

We think clear rules for these two ranges need to be put in place before any loopholes are exploited by those who do not like the changes flowing from this consultation.

These are non-geographic ranges generally used for VoIP and Corporate services. There is no service charge element for these calls. Therefore, we believe that they are unsuitable for the unbundled tariff model. Instead we suggest that a maximum retail price is introduced in line with 03 calls, or 5p or 10p, albeit without an obligation to include them in call packages. In addition, there should be a prohibition on revenue sharing.

4.2.4 070 and 076 numbers

We support the proposal to keep the ranges open.

It is clear from Ofcom's research that consumers consider these to be mobile numbers. We recognise that Ofcom has repeatedly tried to introduce rules for 070 numbers to protect consumers. An overall price cap set at a level which makes calls to these numbers no more expensive than national calls to UK mobile numbers would be appropriate.

We consider that revenue sharing in 07 should be explicitly prohibited.

These changes will limit the harm to consumers arising from any confusion over whether these are calls to mobile numbers and reduce the opportunity for bill shock. If SPs require prices to be higher than national calls to UK mobile numbers, they have the option of moving to 09 numbers.

[9] Determination to resolve 0870 call termination rate disputes between BT and various operators 2009.

[10] Determination to resolve a dispute between Everything Everywhere and BT about BT's termination charges for 03 calls January 2011.

4.2.5 084 numbers including 0845

We agree that the geographic link for 0845 should be broken to allow the whole 084 range to be included in the unbundled tariff. 0845 should have a single service charge that fits below any 084 service charge ceiling. We suggest that 084 should be for services with a maximum service charge of 5p excluding VAT that applies to all originators, each number block having its own service charge (no change to granularity of pricing).

In setting a service charge for 0845 and 0870 numbers, consideration will need to be given to the fact that many originators currently include these calls in package and will only be able to continue to do so if the service charge is set at a viable level.

4.2.6 087 numbers including 0870

We see 087 fitting the unbundled service model. We suggest that tariffs should be at or below 10p excluding VAT. We recommend breaking the link with geographic rates and the application of a single service charge[11] below the range's ceiling. This would mean that only 03 numbers would be required to be treated in packages like geographic numbers.

It is important to keep the range open as, whilst some SPs migrated away from 0870 following the changes implemented in August 2009, many SPs have kept services on 0870 despite the loss of revenue share. This implies that the number(s) is more significant than the revenue share; had they wanted to change tariff or migrate to a parallel 03 number, they would have done so by now. Forcing these SPs to migrate should not be implemented any more than customers with 0500 numbers should be required to relinquish their numbers. In any event, it is difficult to see that they would be causing any consumer harm.

It is worth noting that an 087 range is less confusing for consumers than separate 0870 and 0871 numbers.

4.2.7 09 numbers

We agree that 09 numbers should be included in the unbundled tariff.

This is also a good time to review the price maxima for this range. The upper limits have been in place since 1997 and need to be reviewed for both pence per minute (ppm) and pence per call (ppc). They do not allow fixed and mobile operators to compete on a level playing field. Mobile operators can charge up to £10 whilst fixed operators can only charge up to £1.53 including VAT.

Raising the cap from £1.53 could be done in two phases. The first phase should take into account inflation and increased consumer inclination to participate. This would take the upper limit to £3. This could be done easily under the existing PRS regulations in the PhonepayPlus (PPP) 12th Code of Practice.

A second phase could align prices across fixed and mobile operators, by introducing a set of higher rate service of up to £10 designed for charity donation and new services e.g. higher competition prize values and multi round/longer call time competitions. These services should

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[11] BT Payphones is exempt from the NTNP price maximums for calls to the 0870 number range.

be subject to the additional consumer and industry protection measures designed to complement the PPP 12th Code.

These measures should protect vulnerable customers and include:

- new rules regarding pricing consents
- outpayment delays (the “30 day rule”)
- the need for PCA at key price points
- prior permission opt-ins

In addition, rules such as positive consent when a call cost reaches £10 will still be needed.

We also believe that further consumer protection may be needed to protect low income customers. For example, we would consider barring these higher rate services on our BT Basic package (unless the customer asks for the bar to be lifted). This would ensure that this group of customers has extra protection from unexpected bills.

To keep the access charge at a reasonable level, originators should have the ability to recover service charges from SPs where higher rate PRS services incur substantial bad debt. This would not impact services that do not incur high levels of bad debt or customers who pay their bills.

The use of higher rate PRS for charitable fundraising should be introduced as early as possible with a VAT free tariff (subject to HMRC agreement).

4.2.8 118 numbers

We agree that 118 services should be included in the unbundled tariff, subject to retaining the split pricing options used for these services. For example, calls costing £1 per minute plus 50 pence per call now would have an additional element: the originator’s access charge.

We are concerned about CPs charging Directory Service Providers (DQ SPs) to open 118 numbers from their networks. We think it is likely that more CPs would seek to recover lost margin from the introduction of unbundled tariffs through charging DQ SPs to permit access to their 118 codes. This pushes up the cost of providing 118 services to end-users. This not only puts upward pressure on pricing, it also restricts consumer choice and availability of access to 118 services. We strongly urge Ofcom to use this consultation as an opportunity to stop this behaviour (see also section 6.2). This will ensure that moving to reciprocal and transparent pricing acts in the interests of consumers rather than restricting their choice, as happens today. The unbundled tariff allows sufficient opportunity for CPs to recover any differential network costs they incur whilst allowing customers improved clarity of what they can expect to pay for using the service.

5. Practical concerns for the unbundled tariff

As discussed in section 3, the unbundled tariff addresses a number of the identified market failures. There are, however, practical issues that need to be resolved to ensure the pricing rules for this new tariff are clear. Clear policy and rules at the outset will ensure all of industry complies with the structure. Consistency is key to making this new way of pricing a success for both consumers and industry.

Should the unbundled tariff option be chosen as the way forward, we are keen to work with industry to resolve the practical issues outlined below.

5.1 The Access Charge

We agree that the access charge needs to be as simple as possible. This will make customer communications and competitor price comparisons easier. Specifically:

- **Single access charge** – we agree that a single access charge per tariff will simplify NGCS services. Rules should be flexible enough to allow for future development. For example, whilst it may make no sense to have a time of day variation at the outset this may be needed in the future.

- **Pence per minute** – we agree that it is right to have a pence per minute rate as the primary access charge. However, given that there will be pence per call service charges, and even combination pence per call plus pence per minute service charges, we believe it would be appropriate for the access charge to follow the same format

- **Set Up Fees (SUFs)** – we believe that raising a SUF/minimum call charge would be appropriate in the unbundled tariff model. The SUF drop charge is simple to communicate and already applies to all chargeable geographic and NGCS calls. Without it, the access charge pence per minute rate may need to be higher than it otherwise would. Customers would pay neither the access charge nor the SUF for calls made within inclusive calls packages. This means that they would not have to worry about additional costs and would simply pay the service charge. Currently [✂] of chargeable NGCS calls made by BT Retail consumer customers are not included in a package. If BT were to include both the access charge ppm rate and SUF in plan for chargeable NGCS calls, the proportion of calls not in a package would [✂], thereby providing even better value to customers and allowing a standard approach to more inland calls.

The key issue that Ofcom must address is pricing transparency. However, if after the launch of this model, Ofcom is concerned that the effects of competition are insufficient to curb excessive pricing, a price cap may be needed. Our analysis shows that only a common cap across both fixed and mobile operators could address market failures. Any cap would need to be set at a sufficiently flexible level to allow all CPs to compete and price innovatively. In addition, any cap should be automatically adjusted to allow for inflation and mandatory charges such as VAT.

5.2 The Service Charge

The service charge also needs to be as simple as possible:

- **Single service charge** – ideally all originators (fixed and mobile) should be required to charge the consumer no more than the published service charge for a given number block. A general constraint on bespoke service charges may be necessary to avoid consumers seeing no improvement in pricing clarity. We discuss this further in section 6.2

- **Time of day variation** – service charges will be much easier for consumers to remember if there is no time of day variation. If this sort of variation is needed in the future, industry will need to adopt standard peak and off peak rules

- **Setting the service charge** – there are a number of factors to consider here. A logical place to start would be with the payment that terminating operators receive from BT for calls to relevant NGCS numbers (known as POLOs). The following factors need to be considered:

    - **Rounded prices** – BT POLOs are calculated to four decimal places. A service charge with four decimal places will not be suitable for advertising and promotion. Terminators will want existing POLOs rounded up (or less likely down) to the nearest penny and will need to agree reasonable principles to enable settlement

    - **VAT** – service charges must be shown to customers as inclusive of VAT in advertisements. In addition, where the rate of VAT changes, originators should be able to adjust service charges accordingly

    - **Maximum Prices** – if improved consumer clarity is to be achieved, there should be a maximum service charge for each number range (with the exception of 118 services, where Ofcom notes that this is a competitive market where SPs need to be free to differentiate and price accordingly). Within that, each number block should have a single (maximum) service charge at any level at or below this limit. These maxima should be regularly reviewed by Ofcom to enable the effects of inflation and/or changing market conditions to be taken into account

    - **Call duration and price rounding** – terminators/SPs should not be able to request service charges rounded up (to the nearest minute or £1 for example). This will curb opportunities for setting bespoke service charges and arbitrage.

    - **0845/0870** – if these call types are to be included in the unbundled tariff consideration will need to be given to how the service charge is set as many originators currently include these in call packages (also see section 4.2.5).

- **Claw back**[12] – where the service charge is pence per call it is up to the terminator to ensure that the call is terminated within 60 seconds. Should a call exceed this, the originator must be able to charge the terminator on a pence per minute basis in order to recover its costs.

5.3 Migration to unbundled tariffs

It is difficult to comment on the time needed to implement an unbundled tariff as there are practical issues regarding implementation that need to be resolved. Therefore, we have not carried out any detailed feasibility work on costs and timescales.

Ofcom suggests that, in the longer term, disaggregated billing is needed so that the consumer can see the access and service charges listed separately on the bill. Although this is potentially confusing for consumers as it doubles the information they may see, there may be benefits in identifying the service charge for calls where the access charge is included in bundles. Ofcom's research suggests that the majority of customers do not require this level of granularity as most of those surveyed thought that the monthly bill total provided sufficient detail. If further research proves that this billing development would be beneficial for consumers, we will of course assess this further.

In the meantime, the benefits sought by Ofcom could be achieved by greater pricing visibility at or before the point of making the call and more information on customers' bills. We think that this could be implemented via SP and originator marketing messages. Specifically via:

- A new SP marketing message for all media. For example, "It costs xp to call this service plus your call provider's access charge."
- Enhancements to originators' marketing content to explain the operator's access charge and how it is treated in calling plans
- Messages on the customer's bill explaining how the total cost of the call is shared via the access and service charge. For example, a message alongside NGCS charges explaining that the charge includes an access charge

Improvements in these areas would deliver pricing transparency without the need for expensive system changes. This also means that the unbundled tariff is rolled out in a much shorter timescale. This is key as the market is in decline and consumer confidence in these services needs to be restored as quickly as possible.

5.4 Migrating to the service charge

Migrating to a new regime will have significant impacts on the contractual arrangements for interconnection.

For example, a move to an unbundled tariff means that termination rates will change. Currently, operator termination rates can only be changed by either party issuing an Operator

[12] Some services charge on a pence per call basis. The originator retains an amount to cover its costs which is based on the call lasting no longer than 60 seconds. However, some services are designed in a way which can lead to longer call durations. As the originator cannot charge the caller any more money, they recover their additional costs from the terminator using "clawback".

Charge Change Notice (OCCN) to which the other party agree. The new rates do not become binding until this has been done. This process leads to many disputes.

For the unbundled tariff, it is not yet clear whether it would be appropriate for BT to issue OCCNs or for other CPs to do so. It should be noted that often many smaller CPs fail to acknowledge or return OCCNs, which could impede a smooth transition. For all concerned, it is imperative that we are able to move cleanly to the new model with all players signed up and agreed to all rates from the date of implementation.

Contractual changes will require detailed discussion and negotiation between BT and industry. Should the unbundled tariff be chosen as the way forward, we will be happy to start industry discussions to find an acceptable solution.

None of this should present a barrier to migration but it will take time to move to any new regime. We agree with Ofcom that we need to ensure that the new arrangements minimise the scope for disputes between CPs over payments for NGCS calls.

5.5 Advertising and communication

We agree that a national awareness campaign to inform consumers about the changes is necessary. We will work with Ofcom and industry on how best to do this.

5.6 International Calls

The proposed regime needs to consider internationally originated traffic to UK NGCS. An unbundled model cannot be imposed across national borders. Opening up international access to NGCS often requires complex negotiations. In addition price changes can be difficult to agree. Therefore we propose the arrangements and termination rates currently in place for internationally originated NGCS remain in place. If it is believed that a review is required, it should be independent of this consultation.

5.7 Payphones

The penetration of mobile handsets is now above 100% of the population and mobile use is continuing to rise[13]. This has pushed public payphone use to the back of the queue for customers making calls away from home. More than [✂] already fail to recover day-on-day operating costs. Very few payphone users do so regularly and most are used by consumers only in an emergency when they are unable to make the call by any other means. As such, their use and operation is distinct from anything else in the calls market.

BT Payphones already operates a free to caller policy for 080x and 0500 numbers, however, the level of chargeable non-geographic calls makes up only [✂] of total payphone call volumes. It is reasonable to assume that use will reduce further in a regime where pricing is applied with greater consistency across all networks. Evidence of this type of customer migration away from payphones can be seen in the recent decline in payphone-originated calls

[13] http://stakeholders.ofcom.org.uk/binaries/consultations/msa/statement/MSA_statement.pdf

to the DWP's Crisis Loans. Call minutes have dropped an astonishing [✂][14] in one year following the number becoming free from mobiles.

This said, we continue support a transparent charging model that allows consumers to understand what they will pay to make a call, regardless of the network or media used. However, operational complications will mean that we will need to make some adjustments to implement Ofcom's proposed unbundled tariff. These complications are not unique to BT, but reflect the challenges of how these can be implemented via public payphone charging. We believe these will also be issues for other payphone operators.

Call charges can only be applied in terms of time against the smallest allowable coinage (10p). But, subject to this minimal issue, charges can be applied at pence per minute rates, such as those proposed for the service charge element of Ofcom's model. The minimum fee applied to each chargeable call would need to be retained as this is the only mechanism that allows some of the overheads to be recouped. However, customer price list messaging could be amended to make clear the minimum fee element of each call is applied as a pence per call charge for NGCS calls from BT payphones instead of a pence per minute access charge. In addition, neither the mechanism nor the software can be amended to apply single-drop or fixed fee charges. However, by putting a restriction against numbers using single-drop charging that is higher than the current minimum fee, we can protect against much of the risk of potential fraud.

5.8 Implementation

In moving to any new regime, there will be a range of issues requiring clarification and resolution. We discuss these in detail in Annex 3. They include:

- **Assumed handover point** – we agree with Ofcom's view that it is important for termination rates for NGCS calls to reflect the point at which the call is handed over to the terminator. It is the terminator who "owns" the traffic and as such makes the decision on whether to extend its network in order to collect calls at an earlier stage or to buy conveyance from a CP

- **Transit** – we agree with Ofcom that the current asymmetric responsibilities for paying for transit should be simplified. Transit charges should be paid by the terminator

- **Porting Differential –** Ofcom's description of the problem known as "Porting Differential" [15] is correct. It arises wherever there is a difference in the termination rates charged by the donor and recipient operators. There are a number of potential solutions

- **Interconnect billing** – any solution needs to be practical and, most importantly, billable. We believe that, subject to certain assumptions, interconnect billing could support the unbundled tariff without the need for significant developments.

[14] Calls to DWP from BT payphones for September to December 2009 (pre-free calls from mobiles) compared to the same period in 2010.

[15] Consultation paragraphs A5.176 to A5.178.

6. Wholesale regulation

6.1 Wholesale Call origination

Based upon the finding that BT possesses SMP in wholesale call origination on a fixed narrowband network,[16] Ofcom has continued to apply the NTS Call Origination Condition to BT as both an originator and retailer of calls. As we state elsewhere in this response, this regime links BT's retail NTS charges with payments to NTS terminators and this has acted as a cause of commercial disagreements between BT and terminators.

The nature of the call origination market has changed markedly over the last 10 years. Due to the impact of mobiles, competing fixed line networks, Carrier Pre Selection (CPS), Wholesale Line Rental (WLR) and the level of competition, many consumers and service providers gain no benefit from Ofcom's BT specific NTS legislation.

This view is supported by comments made by C&W[17] with regard to the 0845 number range "*where falls in BT's retail price have created uncertainty for TCPs and SPs about the amount of termination revenue they would receive*". If Ofcom breaks the link between BT's retail charges and out payments to terminators, the source of this revenue uncertainty would be removed.

Regulation at the wholesale level - especially where aligned to the unbundled tariff proposal - should be proportionate and focused only where it can be effective in delivering consumer benefits. For this objective to be achieved, it needs to be applied (if at all beyond the requirement on BT to provide wholesale call origination) on an industry-wide basis.

6.2 BT's wholesale negotiation power

Ofcom (and a number of CPs in their responses to Ofcom's Call for Inputs) has suggested that BT's position of SMP in the wholesale call origination market will provide opportunity for BT to abuse its negotiation strength when dealing with other CPs. Such allegations are unfounded and incompatible both in terms of (a) our past record in this area and (b) our obligations on End to End Connectivity. We discuss the economic arguments on this matter in Annex 4.

Regarding (a) the issue of any perceived BT negotiating power arising from call origination has not been specifically raised in past disputes and Ofcom has never found BT to have abused its market position in that respect.

On (b), we are unable to refuse to originate or send NGCS traffic through to terminating CPs. This stands in marked contrast to other CPs (especially some 118 originators) who are not subject to the same restraints and who have in the past refused to open access to BT's NGCS numbers on their networks. We highlight how 118 services are adversely affected by this in section 4.2.8.

[16] Review of the fixed narrowband services wholesale markets September 2009.
[17] Review of Non-Geographic Calls Services - Cable&Wireless Worldwide, 24/05/2010.

If the new NGCS regime is to be effective, then we believe that Ofcom needs to address potential issues around both the matter of access and also of bespoke service charges in the unbundled tariff.

Ofcom must enable fair access by all, to all parts of the value chain – from caller through to service provider. This will ensure that any variations in treatment will be objectively justified according to the marketplace. This will give the industry certainty and be both more appropriate and efficient than an SMP condition on BT alone. It would also avoid a number of complaints and problems of the type which have arisen in the past and some of which continue to the present time, such as the blocking of 118 numbers.

We would be happy to discuss with Ofcom the current and prospective legal mechanisms that it currently has or will have available to it to achieve this fair access across the value chain.

6.3 Deregulation

Total deregulation without the recourse for dispute resolution by the regulator would not be appropriate at this time.

However, Ofcom should not assume that BT would abuse its position in the event of deregulation. As mentioned earlier in this document, when presented with commercial freedom via the removal of 0870 from the requirements of the NTS Call Origination Condition, we did not seek to negotiate higher retentions or to charge above Ofcom's objective of a geographic based retail charge.

In its assessment of the NTS Charge Control[18] currently underway, Ofcom should remove the current regulatory burden on BT for originating NGCS calls. Any future regulation (and we agree that there will have to be some form of regulatory framework in place if consumers and SPs are to be supported[19]) must address only the problems identified as preventing the market from functioning as desired.

[18] Ofcom's February 2011 review of "Wholesale charges for Number Translation Services & Premium Rate Services".
[19] For example, through changes to the National Telephone Numbering Plan and a review of the End to End Connectivity obligations.

7. Ofcom's questions

Q2.1 Do you consider that the scope for this review, set out above, is appropriate? If not how would you suggest that it should be modified and why?

We are broadly in agreement with Ofcom's analysis of the scope of the review. Ofcom, in meeting its obligations within the Communication Act, must consider proposals which are of benefit to consumers' needs. Research has shown that consumers continue to be dissatisfied with NGCS services. Lack of pricing transparency is still a significant issue which previous reviews of NTS have not adequately addressed. It is appropriate therefore that Ofcom's review focuses on proposals which are aimed at addressing consumers' concerns. Ofcom also rightly seems to be mindful of the impacts of regulatory change on all parties in the value chain.

We note that Ofcom has omitted any recommendation for 055/056. Measures need to be taken for these ranges to minimise the risk that today's problems with 08 and 09 are not simply moved to 05. We suggest a simple way forward for these ranges in section 4.2.3 above.

Q2.2 Do the summary of the history of NGC services and the rationale for this review capture all the essential concerns which this review should be seeking to address? If not, please set out those issues which you consider are not being considered and why these should be included in the review at this stage.

Please see our commentary on the rationale for the review in section 2. In summary we agree that a comprehensive review is necessary to address:

- the issue of pricing transparency brought about by the asymmetry of regulation
- the high level of disputes which the current regime encourages
- Ofcom's aim to further the interests of citizens and consumers

History (see our further comments in Annex 2)

Ofcom originally introduced the NTS regime with the aim of stimulating and incentivising the development of services based upon non-geographic numbers. BT, as the then regulated operator for call origination, was mostly heavily constrained in how much it could retain when it originated calls to these services.

Subsequent reviews and related disputes continued to reflect these principles (the introduction of the NTS formula in 1996, the January 2000 Statement and the 2002 C&W dispute on the application of BT retail discounts). Ofcom focused upon revenue certainty for terminators in the context of a regime which linked their payments to BT's retail prices.

However, the market has developed in such a way as to become closer to a "free for all" where customers have no real idea what they are likely to pay for calls to these services and the revenue certainty for terminators has disappeared.

Some of this proliferation of outcomes is due to the fact that BT is still regulated via the NTS Call Origination Condition such that any price messaging, as well intentioned as it is, only gives half the picture on call prices because only BT's prices are understood (to some degree at least) by consumers. Developments to the competitive environment (as set out below) mean that this review is therefore long overdue.

The competitive landscape and rationale for change

NGCS termination

Ofcom first reviewed the fixed wholesale narrowband services market in 2003 (a subset was reviewed in 2005 but did not include call termination). In that review Ofcom stated "*The difference is justifiable in that non-geographic call termination markets are subject to different payment arrangements that are not purely 'calling party pays' and, moreover, they are competitive in the UK*."

Within the 2009 review of the fixed wholesale narrowband services market, the only termination market that Ofcom defined and considered was the market for wholesale fixed geographic call termination. Ofcom did not consider the non-geographic call termination market. Since the introduction of the Communication Act 2003, the non-geographic call termination market has never been designated as requiring any ex-ante regulation. We believe that we should be treated in exactly the same way as any other player in the terminating market.

NGCS retail call origination

BT does not have SMP in the fixed retail narrowband services market. We have already demonstrated our willingness to charge responsibly in this area. The removal of 0870 from the definition of NTS in the NTNP effectively removed BT specific NTS regulatory obligations for origination of calls to 0870 numbers. However, we did not choose to set higher than geographic retail rates for 0870 as did some other NTS originators, adhering instead to its promise to charge 0870 calls at geographic rates and to include them in our call packages.

Q2.3 Do you consider our proposed approach and framework for analysis is fit for the purpose of this review?

We welcome a change to the current regulatory environment and the proportionate application of powers under the EU Directives.

The introduction of new regulatory measures must also encourage investment and innovation[20]. Indeed, the government published a consultation in January of this year ("Principles for economic regulation: call for evidence[21]"), with the intent "*to reaffirm the importance of stable and predictable regulatory frameworks to facilitate efficient investment and sustainable growth; provide greater clarity about the respective roles of Government, regulators and producers; and set out the characteristics of a successful framework for economic regulation."*

In a similar vein, Ofcom is required to have regard for the desirability of encouraging investment and innovation (section 3(4)(d) of the Act). This is being underlined by the consultation mentioned above. The Government wishes to ensure that there is a stable regulatory environment for investors so is pressing the case for more regard to be given to investment incentives. Any regulation imposed by Ofcom should support this initiative as well as ensuring consumer protection.

[20] Section 3(4)(d) of the Communication Act 2003 Act, paragraph 2.34.
[21] The Principles of economic regulation: call for evidence can be found at http://www.bis.gov.uk/Consultations/principles-for-economic-regulation-call-for-evidence?cat=open

Q4.1 Do you consider that the analysis set out in this Section and in more detail in Annex 2 represents fairly the consumers' concerns? In particular: does it provide a reasonable assessment of the type and extent of the detriment consumers currently experience? And does it identify all the relevant factors?

We agree this is a reasonable assessment of the consumer issue. Please see further commentary in section 2.

Q4.2 In this section and in Annex 2 we set out our views of the main factors that contribute to the current outcomes, specifically the interaction of poor price transparency for consumers combined with poor incentives leading to vertical and horizontal externalities. Do you accept that this analysis is a valid assessment of the incentives of the market participants? Do you consider that the implications for consumers we draw are sound and represent a useful basis for assessing appropriate regulatory responses? If not, how would you categorise the relationships and motivation underpinning consumers and OCPs' behaviour?

We agree with Ofcom's conclusions on competition[22]. The current regulations are so loosely set that originators, particularly mobile operators have been able to ignore them with comparative impunity.

We note that Ofcom identifies fixed originators as likely subject to a tariff package effect and not just the mobile operators. We argued in context of recent disputes that any mobile termination package effect could be counterbalanced by a fixed termination package effect given that terminators also provide multiple products often in competitive packages to mobile operators.

We think that Ofcom's discussion on consumer detriment to "locked in" SPs is rather speculative. This type of behaviour is generally not in the interest of SPs as they will quickly acquire a bad reputation which could impact their broader business. Similarly, whilst there may be some incentives for SPs to "free ride" the collective brand we think that these SPs are a distinct minority more likely related to fraud under PRS.

We discuss these subjects further in Annex 4.

Q4.3 We have identified five key areas of consumer detriment as a result of the poor transparency and poor incentives in the market: reduction in demand for NGC, relative prices not reflecting consumers' preferences; costly avoidance strategies; increased fraud risk and loss of service diversity; and the disproportionate impact these problems have for low income mobile only households when accessing essential services. Do you consider that this represents a comprehensive summary of the impact on consumers? If not, how should it be modified and why?

We agree with the headline categorisation of the market failure. Please see further commentary in section 2.

There are a number of additional factors we believe Ofcom has inadequately assessed. For example, the growth of alternative media such as smart phones and the internet which

[22] Consultation paragraph A2.158.

compete to provide a range of entertainment and information services previously available only through NGCS.

Q4.4 Do you consider that our assessment of the state of the market in the absence of ex ante regulation is a reasonable extrapolation of the evidence? If not, why?

We do not agree with Ofcom's assessment that the NGCS market without ex-ante regulation would necessarily fail to find an appropriate means to negotiate terms. However, there would be a period of considerable disruption which would likely be extended without support from the regulator.

We have behaved responsibly and do not accept that absent regulation we would worsen the current situation. We have strong incentives to develop the NGCS value chain as we are active in downstream termination and hosting.

Q5.1 Do you consider that the analysis set out in this Section and in more detail in Annex 3, fairly represents the wholesale relationship and issues in this market? If not, why?

We generally agree with Ofcom's analysis of the implications of current regulation at the wholesale level. The impact of the NTS Call Origination Condition results in constraints in two competitive markets; the retail call origination market and the NTS termination market. BT's ability to compete in the retail call origination market is curtailed by its obligation to pass through NTS revenue to the terminator, effectively limiting BT's ability to deliver innovative pricing initiatives in this space.

Similarly, the NTS terminator is curtailed by the inability to set its own termination charges for number ranges covered by the "NTS formula" due to the uncertainty of revenues which ebb and flow subject to changes in BT's retail charging arrangements:

- geographic call originators "own" the number range and provide the service. They purchase call termination from the terminator as a final input to complete the call service
- non-geographic call terminators "own" the number range and provide the service. They purchase call origination from the call originator to enable access to their services.

We agree that there is an issue for SPs in the current environment for NGCS, due to (a) the link between BT's retail charges and POLOs (this has led to disputes and causes revenue uncertainty); and (b) the high retail charges made by some NTS originators, especially the mobile networks.

We are therefore of the view that the application of the wholesale NTS Call Origination Condition is a contributory factor in the breakdown of relationships between NGCS call originators and service providers/terminators.

Absence of ex-ante regulation

We do not agree that were ex-ante regulation to be removed; any commercially based termination rates that would apply would automatically present undesirable outcomes for consumers.

Both ends of the NGCS value chain are reliant on each other. The terminator/SP is reliant on calls being sent; even from small operators e.g. a bank's SP would not want their customers being unable to contact the bank regardless of the size of the originator who sends the call. The large originator would not want a situation in which one of their consumers could not call their doctor whose number may be hosted on a small terminator's network.

As previously stated, it should not be assumed that we would price excessively if removed from the constraints of NGCS regulation. When presented with such commercial freedom in the recent past, we did not do so. This would support Ofcom's own assumptions that competition in the retail market is a deterrent to excessive pricing if coupled with pricing transparency.

Wholesale without ex ante regulation

Even if Ofcom were to remove ex ante regulation from the wholesale layer of NGCS call origination, BT's bargaining power would still be constrained by its obligations to provide end to end connectivity, a situation which is unique (currently) to BT. The large number of CPs involved in negotiations would itself be a limitation on individual negotiations, as Ofcom concedes. Consequently commercial arrangements would have to be standardised to be practical.

Further, current ex ante regulation at the wholesale layer addresses BT's designated market power in wholesale call origination. It does not, and is not intended to, constrain BT's commercial ability to negotiate as a terminator, where no SMP applies. Nor does it constrain other large terminators from exercising their strong negotiation position as a large terminating operator. If Ofcom considers that regulatory intervention is necessary to achieve pricing transparency, it would have to apply to all on an equal basis if it is to have any effect.

We believe that Ofcom's assessment of the way in which termination rates are currently determined in this section of the consultation document is incomplete. Ofcom's analysis does not cover BT to BT termination arrangements. Termination payments to numbers hosted on the BT network for calls originated on the BT network are also affected by BT's wholesale call origination obligations.

Q5.2 Specifically, do you agree with our assessment of the market experience for SPs', including in hosting markets? Do you agree with our assessment of SPs' concerns about price transparency and the impact on their incentives? If not, how would you characterise the market from the SPs' perspective?

We agree that SPs are very concerned about price transparency. For example, when they contract for what is stated in the NTNP to be a 5ppm 0844 number (prior to VAT related changes); they advertise this as per the ASA guidance. However, their non-BT callers may be charged considerably more. This results in complaints to the SP even though the SP has no control over the charges imposed by non-BT originators.

Where services are "locked" and consumers have to make a call, the impact of call pricing on call volumes is likely to be limited. However, many services are price sensitive and are set by the SP at a pricing level they believe will be attractive to their target market segment(s). These services are “unlocked” and consumers can easily make a choice of whether to make a call or not. Retail charges set above the perceived value of the service have a negative effect on traffic and on the SP’s business model.

We also believe that SPs do not generally like the message: "other providers may vary and mobiles significantly more" as it deters customers from calling them.

Q5.3 Do you agree with: our assessment of the OCPs’ incentives and behaviour and our preliminary views of the outcome for OCPs under the current market conditions? Are there other factors we should take account of in our analysis? How complete do you consider the tariff rebalancing effect would be in the event of any changes to retail prices, and what impact might any reduction in NGC prices have on consumers?

Please see our assessment of Ofcom’s economic analysis in Annex 4.

Q5.4 Do you agree with our assessment on the complexity of the market relationships between OCPs and TCPs and the balance of bargaining power summarised in this Section and set out in detail in Annex 3? If not, what factors do you consider this analysis should include or give a different weight to?

We agree that the relationship between originators and terminators is complex. The current regime is characterised by disputes between the two sets of parties, some of which have been driven by the regulation surrounding these services. Our views on relative negotiating power are discussed in more detail in Annex 4.

We agree with Ofcom’s conclusion that service charge Option 2a should be implemented. This is the only way that Ofcom can ensure that the potential negotiating power of all large (and even small) NGCS originators is made equitable.

Other CPs are not constrained by end to end obligations. Without a total restriction on bespoke service charges, applicable to all CPs as proposed in 2(a), Ofcom cannot guarantee that they will not be negotiated and that the new regime hampered by inequitable commercial agreements. A restriction on BT alone as a terminator would also be disproportionate. Our commercial position would be unreasonably weakened relative to other CPs who would enjoy the ability to set advantageous bespoke charges. See also section 6.2.

Q5.5 Do you consider that our assessment of the state of the market in the absence of ex ante regulation is a reasonable extrapolation of the evidence? If not, why?

We support the need for ongoing regulation to mandate that all originators data fill number ranges offering new Next Generation Network services within a short time frame and either deliver to the AHP or have a bulk transit agreement with the terminator to deliver calls to the AHP from the actual handover point.

Mandating that the entire service charge is paid to the terminator would also lead to certainty in the market for the SP whose negotiation would therefore be just with his terminator. Originators would therefore retain all of the access charge.

We believe that Ofcom's assessment of the state of the market in the absence of ex ante regulation is simplistic. Specifically, it fails to take into account the fact that all originators and terminators already have existing NGCS business arrangements in place. These provide significant revenue streams which players will not want to lose. The idea that if BT, as an originator, could not agree rates with a terminator would subsequently disconnect that terminator's number ranges is misplaced. Further, market power does not necessarily reside amongst "bigger" players at the expense of smaller ones; the latter can often find third parties to negotiate rates or terms and conditions in any case using transit.

In addition, if it was deemed that we or any operator had dominance in any particular market then any suspected anti-competitive behaviour could be dealt with under the Competition Act.

Q6.1 Do you agree with our assessment of the likely failure of deregulation to address the identified market failures? If not, please explain why, ideally with reference to the analysis set out Annex 2 and 3.

Yes we agree with Ofcom's assessment that deregulation may not address the market failures. Please see section 2 for more detail.

Q6.2 Do you consider that we were right to put aside consideration of wholesale intervention at this stage? If you disagree please set out your views, ideally with reference to the wholesale analysis set out Annex 3.

We agree with Ofcom's approach in principle but not all of Ofcom's conclusions with respect to BT (see Annex 4). Regulation of NGCS should be designed to protect consumers, avoid disputes and encourage investment and innovation. Any wholesale intervention solely to curb terminators' ability to achieve revenue certainty, as suggested by a number of Mobile Network Operators (MNOs), would not be appropriate.

Q6.3 Do you agree with our assessment of the limitations of informational remedies to address the totality of the identified market failures? If not, what informational solutions would you propose and to what extent do you see that they would resolve the market failures identified, ideally with reference to the analysis set out Annex 4.

Yes. Whilst informational remedies have merit they do not address the underlying issue regarding excessive pricing by some originators. We support an informational remedy being added to the unbundled tariff.

Q6.4 Do you agree with our assessment of unbundled tariffs as a potential remedy for the market failures identified? Do you agree with our assessment of the pros and cons of this approach? What do you consider would be the impact of the introduction of unbundled tariffs in this market? Ideally include in your response reference to the analysis set out Annex 5.

Yes, providing we are able to resolve the practical issues regarding implementation and providing the new scheme is applied consistently to all CPs. This is a considered solution that addresses many of the identified market failures. It will deliver greater consumer pricing transparency and incentives to SPs to innovate while ensuring originators recover their costs plus make a reasonable commercial margin. The proposal is likely to restore customer confidence and grow consumer demand. See sections 3 and 5 where our thoughts are provided in more detail.

Q6.5 Do you agree with our assessment of maximum price as a potential remedy for the market failures identified? Do you agree with our assessment of the pros and cons of this approach? What do you consider would be the impact of the introduction of maximum prices in this market? How should such a scheme be structured? Ideally include in your response reference to the analysis set out Annex 6.

We believe that this option has merit. However, as a standalone option it fails to fully address the identified market failures. We agree with Ofcom's assessment of the pros and cons (see section 3.5). Our analysis shows that market failures could only be addressed by common maximum prices across both fixed and mobile operators

We already adhere to the maximum prices in the NTNP. However others do not and have no obligation to do so. Therefore the main impact of the introduction of such a model is to do no more than "level the playing field". This may curb excessive pricing and reduce revenues for some originators and so consumers will have better protection. However, maximum prices will not necessarily restore consumer confidence. Combined with the fact that the flows of money in the value chain will not be certain, SPs will still have no incentive to innovate. Therefore not all the market failures would be addressed.

Q6.6 Do you agree with our assessment of the impact of different options relating to calls to Freephone numbers summarised in this Section and set out in full in Annex 7? In particular, do you agree with our preference for 080 to be "free-to-caller"?

We agree with Ofcom's preference for 080x services to be free to caller. Pricing consistency is essential. This is a simple and clear message for consumers – free means free[23]. It also addresses Ofcom's concerns regarding low income mobile only consumers. The change will give these consumers free access to essential services such as help lines and government departments.

Wholesale charging arrangements need to be clear at the outset otherwise there is a risk that this simple solution will lead to disputes.

As stated in 4.2.1 above, there is the possibility that originators could choose to bar calls to Freephone number ranges. To provide an incentive for originators to route these calls, Ofcom could consider introducing an access charge only number range e.g. 081, based on the 0844 model, where the access charge would be capped at a low level and the terminator would receive no service charge.

[23] Which is not to say that the resource costs of provision will ultimately be likely recovered from consumers for these calls.

Q6.7 Do you agree with our assessment of the impact of different options relating to calls to numbers which prices are linked to the prices of geographic calls (03,0845,0870) summarised in this Section and set out in full in Annex 7? In particular, do you agree with our preference for 03 to be the only range with calls prices at geographic rates?

We broadly agree with Ofcom’s assessment. We agree that the 03 number range from a customer perspective should remain as it is. We agree that the geographic link for both 0870 and 0845 should be broken and that they should be re-structured to fit the unbundled tariff model. In doing so, all existing 0845 and 0870 services should each have a single service charge. These should largely replicate existing termination rates. We do not think that either range should be closed. Please note our comments in section 4.

The 055 and 056 ranges are not suitable for the unbundled tariff solution. We suggest in section 4.2.3 how these ranges may be taken forward – they should not be closed down; there is no evidence of them causing consumer harm and we propose measures that ensure that they will not in future.

Q6.8 Do you agree with our assessment of the impact of different options relating to calls to revenue share ranges (084, 087, 09, 118) summarised in this Section and set out in full in Annex 7? In particular, do you agree with our preference for:

We broadly agree with Ofcom’s assessment. The unbundled tariff should be used for 084 (including 0845), 087 (including 0870), 09, and 118.

Each number block within these ranges should have a service charge that applies to all originators (where calls are collected at the AHP). 084, 087 and 09 should each have their own maximum service charge price ceilings so that when customers see them, they know that the service charge will not exceed that price and any individual block may have a lower service charge. For example, 5ppm and/or 5ppc for 084, 10ppm and/or 10ppc for 087 (all price ceilings to exclude VAT in the NTNP). This will help build customer confidence.

Q6.9 Do you agree with our assessment of the impact of different options relating to calls to 07 numbers which are not mobile numbers (070/076) summarised in this Section and set out in full in Annex 7? In particular, do you agree with our preference for reducing the revenues available from these calls so as to remove the incentives for fraud?

We broadly agree with Ofcom’s assessment that something still needs to be done to reduce consumer detriment caused by the inability of consumers to differentiate between 070/076 and mobile number ranges. The harm may be reduced by capping 070 and 076 at national mobile call price maxima. We suggest measures in section 4.2.4 that would help minimise problems both now and in the future.

Q7.1 Do you consider 18 months would be a reasonable period for the implementation of an unbundled tariff structure? What are you views on staging for the potential implementation? In particular, would it be desirable to move more quickly to restructuring charging to reflect the new regime even if detailed billing would not be ready? What are your views of the technical cost of potentially introducing the new regime and how could implementation be staged to minimise these cost (see also Annex 7 for a discussion of costs)? What are your views on the communications' challenges for potentially introducing this new structure and how should they be addressed?

It is difficult to give a reasonable estimate of the time needed to implement the unbundled tariff as there are practical implementation issues which will first need to be resolved. See section 5 for more detail. If disaggregated billing is seen as an essential part of the unbundled model, we would recommend phased implementation, to allow the benefits to be realised before changes to billing systems can be completed.

Regardless of how this solution is implemented we agree that a national campaign to raise awareness amongst consumers will be needed.

Q7.2 Do you consider 6 months would be a reasonable period for the implementation of the maximum price structure? What are your views of the cost of the potential new regime and how could implementation be staged to minimise these cost? What are your views on the communications challenges for introducing this potential new structure and how should they be addressed?

Yes. We already adhere to a set of maximum prices and could easily change these to any new rates set by Ofcom. We believe this should also be relatively simple for other operators to do as they already revise prices regularly.

A new SP consumer advertising message could also be simple to implement. However this may need to be phased in to allow for changes to print media and to minimise any costs.

We believe implementation costs associated with this option should be minimal as prices could be changed via business as usual processes.

Q7.3 What are you views on the implementation period of up to 6 months for the change to Freephone charges? What are your views of the challenges to the implementation of the new regime and how could implementation be managed to overcome these challenges and minimise any cost? What are your views on the communications challenges for introducing this potential new structure and how should they be addressed?

If 080x is made free to caller and we have to bill SPs (for example to cover a different origination cost), then this will entail billing development. This may take in excess of 6 months dependent on the details of the change. We would also need to communicate the change to all our SPs in the form of a contract variation. The time and cost taken to do this should not be underestimated as we have many tens of thousands of SP customers.

There may also be a need for a wholesale billing development which could take considerably longer. It is essential that, if introduced, any money which needs to be paid to mobile originators is the same for all mobile CPs. To have varying payments would introduce a very complex billing development which would be both lengthy and expensive. This would severely delay any implementation timescales, maybe into a number of years.

One simple and effective way to communicate the change to mobile phone users is to replace the existing pre-call announcement, typically "this call will be charged" with "this call is now free".

Q7.4 What are you views on the implementation period of up to 3 years for the modification of the 0870/0845/070/076 ranges? What are your views of the challenges to the implementation of the new regime and how could implementation be managed to overcome these challenges and minimise any cost? What are your views on the communications challenges for introducing this potential new structure and how should they be addressed?

The implementation period will very much depend on what Ofcom decides in each case.

0870

0870 remains an important number range to customers. Were 0870 to be closed to new supply, the implementation period could be relatively short. However, if Ofcom decided to remove 0870 altogether it would force SPs to migrate to alternative number ranges. This would necessitate their having to make arrangements to inform customers, update advertising and stationery, etc. which would take much longer.

As stated in section 4 of this response, we are opposed to any forced number changes. There are still a significant amount of SPs using the 0870 range. Closing the range to new supply on the basis that it will wither and eventually die is misguided, as the continued use of 0500 demonstrates. We do not believe that existing 0870 customers are interested in migration to 03xx as there is no commercial advantage for them to do so. They would be likely to incur significant costs and, in any case, have already had ample opportunity to migrate voluntarily to 03 had they wished to do so.

0845

0845 numbers are pivotal to many of our larger SP customers (for example the major banks). We would oppose any change to 0845 which reduced the income to terminators or resulted in a change in our ability to maintain our commercial arrangements. Anything which changes the commercial relationships will necessitate a contract variation and the time and cost taken to do this should not be underestimated. If Ofcom did decide to make such a change then, whilst challenging, a 3 year implementation period would be necessary assuming that the termination rates were clear and set at the outset of the 3 year notice period.

070/076

Our main concern is the need to curtail the high charges that consumers often incur when they call these numbers. From our perspective capping these ranges at a similar level to mobile could be implemented in a matter of months.

Q7.5 Do you consider that the potential approach to the potential price publication obligations would be likely to be effective?

Price publication remedies will only be effective if they are combined with the unbundled tariff and if all CPs and SPs adhere to them. Both Ofcom and PPP will need to put in place appropriate processes to ensure compliance. It is essential that any new or amended obligations are simple and easy to implement.

Annex 1 – Ofcom's numbering guide

Ofcom's proposed numbering guide seems to start from the premise that 01 and 02 numbers are cheap to dial, 09 numbers are expensive, and the numbering in between forms a low to high spectrum relating to the cost of a call. We believe there are some problems with that premise and thus the guide as proposed. For example:

- Not complete
  - The proposed guide does not include, for example, 055, 056, 070, 076 or 0870. A guide should say something about all numbers or otherwise customers may worry, for example, that a number they are asked to call or one they see as incoming might be part of a fraud and/or expensive to dial. Significant omissions such as these would undermine the value of the guide
- Accuracy
  - 03 numbers are portrayed as geographic. As Ofcom recognises in its more or less concurrent consultation on geographic numbering, the attribute that customers most value and associate with geographic numbers is the location information. Telling customers that 03 numbers are geographic numbers can only lead to confusion. 03 numbers are not priced - nor is there a requirement to price them - in exactly the same way as geographic numbers. For example, geographic numbers are a mix of local and national rate
  - 098 sexual services numbers were deliberately put in a discrete 09 range. This meaning is lost in the current proposal. Similarly, the distinction between 030 and 033 is lost
- Misleading – we believe the imagery used to divide up the different types of geographic, non-geographic and mobile services is misleading and unbalanced. For example:
  - Calls to 084 numbers are generally cheaper than calls to national rate geographic numbers in particular at peak times (where the customer doesn't have a package) yet are depicted by a "£" sign
  - Calls to 08 numbers are often cheaper than calls to mobile numbers. Even at the 10p per minute ceiling, the call would have to be 10 minutes long to merit a single "£" sign. Calls are more commonly 2-5 minutes, 20-50p
  - Premium Rate – the guide implies that these calls are very expensive (red for danger and three "£" signs). This is not always the case as calls start from as little as 10p and one of the most popular TV voting services is Strictly Come Dancing at 15p per call – less than the cost of a stamp, and less than the cost of a two minute peak time call to a mobile number

We consider that some of these problems can be addressed comparatively easily, but more work is needed on the guide to take into account a more complete appreciation of consumers' needs.

We propose something like the following:

01 and 02	**Geographic numbers**
03, 055, 056, 081*, 084 and 087	**UK-wide numbers at 10ppm or less (plus access charge where applicable)**
07	**Mobile numbers**
080 and 050	**Freephone**
09 and mobile short numbers	**Premium Rate Services charged at 10p per minute or more (plus access charge where applicable)**

*See our suggestion in section 4.3.1 for our proposals relating to a new 081 range.

We also think the imagery proposed by Ofcom needs further consideration and would be pleased to provide suggestions.

Annex 2 – History

Further comments on Ofcom's description of the history of NTS/NGCS[24]

In addition to our comments on question 2.2 regarding the development of the NTS regime, we make some observations in this annex which we believe more accurately reflect the context of the market's history.

Original rationale

The NTS product facilitated a commercial arrangement whereby a terminating operator, hosting a service provider, could purchase call origination services from an Originating Network Operator (now designated Originating Communication Provider). NTS numbers were introduced to give terminators an opportunity to receive calls from any location based on geographic call charging principles. Consequently BT chargeable calls to consumers were priced on the basis of local and national call rates and calls to 080x numbers were free.

Ofcom introduced the NTS formula in 1996 in order to stimulate the development of the services market at the terminating end of the call. The regime provided a revenue flow to the terminator which supported, especially for calls from the BT network, the practice of micro payment arrangements (revenue share). BT, as the dominant call originator at the time, was allowed to retain regulated retail and conveyance costs.

We do not share Ofcom's view as expressed in paragraph 2.13 that *"the NTS regime was underpinned by voluntary commercial agreements".* There were no voluntary commercial agreements in place in respect of POLO payments to terminators for BT transited NTS calls. The fact that BT transited and BT originated NTS calls generated the same POLOs was a result of billing constraints which were in place until recent times.

Regime review

In June 1998 Oftel undertook the first review of the NTS regime; this led in March 1999 to the consultation "*The Relationship between Interconnection Charges and Retail Prices for Number Translation Services"*. The resulting January 2000 Statement introduced a new regime which sat outside of the NTS formula and which was underpinned by two new number ranges, 0844 and 0871. Ofcom introduced this change to address terminator concerns identified in the consultation with: (i) revenue uncertainty due to the impact of the NTS formula linkage with BT's retail charges; and (ii) terminators' stated requirements to set their own termination rates.

The new number ranges allowed terminators to set their own termination rates based on pricing ladder principles. To calculate BT's corresponding retail charge, the NTS Retail Uplift allowance for BT's retail costs was added to a termination price point selected by the terminator. The NTNP also designated number range specific retail call charge ceilings for BT originated calls.

[24] Consultation paragraphs 2.10-2.21 and question 2.2.

2002 C&W Dispute

As a result of a dispute raised by Cable & Wireless, Oftel directed[25] that there should be a provision in 0844 and 0871 pricing ladders for price points which reflected undiscounted retail charges for calls originated by BT.

Further disputes

In paragraph 2.19 Ofcom refers to BT's NCCN 500, issued in April 2004. We applied specific termination charges which were consistent with Ofcom's stated principles for NTS i.e. to encourage the flow of revenue to the termination end of the value chain.

Throughout 2009 we proposed termination charges for 0800, 0845 and 0870 calls in order to address issues regarding market failure. This approach was in keeping not only with the principles of the NTS regime but also with pre-existing pricing ladder principles.

[25] Direction over C&W's proposal that calls to C&W's NTS number ranges should be excluded from BT's Retail discounts (May 2002).

Annex 3 – Interconnection

This annex deals with the various factors that need to be considered when applying the unbundled tariff to interconnect arrangements.

Assumed Handover Point (AHP)

The logical AHP is the Digital Local Exchange (DLE) for the following reasons:

- The access charges relate to the retailing and the origination of the call. Call origination is currently defined as: "…*the conveyance of all signals originating on a customer's exchange line to the first point in the network where those signals can be accessed by another communications provide*[26]*.* The DLE is that first point
- Where terminators have invested in extending their networks to interconnect at the DLE level in order to receive higher termination rates for current NGCS, it is fair and reasonable that they are able to collect the full service charge without incurring any further interconnect charges. i.e. they continue to make a return on their investment
- If the AHP is set beyond the DLE then the originator will be penalised if it has to cover the costs of the additional conveyance from its access charge. Terminators who have invested in DLE Interconnect will also be penalised as those assets will become stranded
- DLE handover is the most network efficient way of routing NGCS calls. CPs must be encouraged and rewarded appropriately for doing so.

Where an originator hands over the call to the terminator at a point in the network beyond the AHP the originator will incur further costs. As the terminator owns the traffic and has decided where to collect it, the originator is entitled to either charge the terminator or to retain some of the service charge for providing this additional conveyance service. Any charge or retention should reflect current commercial arrangements.

Transit

We agree with Ofcom that the current asymmetric responsibilities for paying for transit should be simplified. Transit charges should be paid by the terminator for the following reasons:

- For calls to Freephone numbers the transit charge is currently paid for by the terminator because the terminator pays for the call. The originator should not be charging for these calls and so should not be generating any revenue with which to pay the transit charge. If asymmetry is to be removed for *all* NGCS then the transit charges must be paid for by the terminator
- For services using unbundled tariffs, the access charge is designed to cover the originator's retailing and origination costs. Originators should not have to account for transit costs in their access charge

[26] Review of the fixed narrowband services wholesale markets 15 September 2009 paragraph 6.1.

- The terminator owns the traffic and makes the buy decision i.e. whether to build direct connections or to buy from a transit operator. The originator should not be penalised for decisions on routing arrangements made by the terminator

In order to fully remove asymmetry, services not covered by the unbundled tariff such as 03 should also be designated as terminator pays transit.

Porting Differential

Ofcom's description of the problem known as "Porting Differential"[27] is correct. It arises wherever there is a difference in the termination rates charged by the Donor Network Operator (DNO) and the Recipient Network Operator (RNO).This problem occurs today on certain calls types.

We recognise that resolving any real or perceived portability issues is beyond the scope of this consultation. However, if the unbundled tariff option is to be implemented it would be sensible to do it in such a way that further porting issues are not created.

In order to understand how porting differential would be affected by unbundled tariffs, the following example assumes the SP has a 0844 number, and the maximum permissible service charge for 0844 is 5ppm.

If the service charge for the number block containing the SP's 0844 number is 5ppm it is the terminator who will receive the 5ppm. They will in turn pay the SP a proportion of that service charge. If the SP wants more revenue for its service they have the choice of:

- Seeking a greater share of the service charge from their current terminator
- Moving their service to a number range which will allow a higher service charge e.g. 0871
- Porting their number to another terminator who will give them a greater share. The service charge will remain the same so no porting differential is created.

However, if the service charge is set below the maximum level e.g. 3ppm and the SP would like to move the service to higher service charge e.g. 4ppm:

- They cannot do that on their existing number with their existing terminator because the pricing is applied to the entire 10K number range
- They could keep service with their existing terminator and move to another 0844 number range that is priced at 4ppm
- They could port their number to another terminator who is willing to set a service charge of 4ppm. This is the scenario that will cause a porting differential. The original terminator becomes the DNO and they will receive 3ppm for calls to this number which will be routed to them as they still own the number range. They will then onward route

[27] Consultation paragraphs A5.176 to A5.178.

the call to the new terminator i.e the RNO and pay them 4ppm – thus losing 1ppm on every call.

The following are possible solutions to this problem:

a) **Do nothing** – In some situations individual operators will win and in others they will lose. It can be viewed as a cost of porting customers. However, a porting differential could prove particularly hard on small operators with a high proportion of ported numbers. If we are to move to unbundled tariffs the opportunity should be taken to put something in place that prevents porting differential occurring.

b) **Always pay the lower of the two termination rates** – In our example this would result in the RNO only receiving 3ppm from the DNO. The charges would then net off and there would be no porting differential. However, it would mean that the SP could not port its number to another terminator in order to change the service charge.

c) **Service charge cannot be changed** – When Ofcom issues a number range certificate the rate is stated on it. If a number range is issued with a specific service charge then CPs could be barred from charging any other rate whether a number is ported or not. Again, it would mean that the SP could not port its number in order to change the service charge.

d) **Call trap** – The terminator has to translate the number, usually by using an Intelligent Network (IN) platform, and route the call to its final destination. Calls are handed over from the originator on the near-end principle for reasons of network efficiency. Calls do not route via an originator's IN. However, if an originator was to route calls to other operators NGCS number ranges via it's IN it could "trap" calls to numbers that have been ported onto its own network. The call could then be terminated within the originators network without having to go via the DNO. However, this is not network efficient and would be costly to scale up operators' IN platforms in order to cope with the extra traffic. Also it would not work in instances where the originator is not the RNO.

Options (b) and (c) are the most practical in our view. Although this would prevent SPs from porting their numbers in order to receive a higher service charge, it would not prevent them moving in order to receive a better commercial deal within the existing service charge.

Bespoke service charges would create further potential for Porting Differentials. We are generally against bespoke service charges being allowed in the unbundled tariff solution (see section 5). If bespoke service charges are to be permitted then the parties concerned will need to ensure they agree on how any ported calls are dealt with under their bespoke arrangements.

Interconnect Billing

We believe that the interconnect billing system can support the unbundled tariff without the need for any significant development. However, we have made the following assumptions in reaching this view:

- There are no Pre-Call Announcements
- There are no bespoke MNO origination rates for free-to-caller
- There is no mandatory requirement to support originator/terminator bespoke service charges
- There is no rounding of any sort to the service charge
- Industry-wide time of day definitions are aligned to those currently used for BT interconnect
- The AHP is the DLE (or equivalent near-end platform)

There are many other details which could create development requirements. We would be happy to discuss these with Ofcom as proposals for the new regime become clearer.

Annex 4 – Our economic assessment of consultation annexes 2-4

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