



27 July, 2009

Mr Paul Jacobus  
4<sup>th</sup> floor  
Competition Group  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London  
SE1 9HA

## Wholesale Mobile Voice Call Termination

Preliminary consultation on future regulation

Response to Consultation dated 20|05|2009

Version 2

### About FleXtel

FleXtel is an ethical Network Operator, established in 1992, licensed since 1993 and fully interconnected with BT. FleXtel delivers high quality, high value flexible terminating Number Translation Services to businesses and consumers, based in the UK and abroad.

William Goodall founded and funded FleXtel. Before that he was a founder member of the Vodafone team (1983-1989) as Head of Telecoms, responsible for fixed switching and interconnect with BT and Cable and Wireless subsidiary Mercury. He then worked as an independent consultant in the 1990's, advising clients at the most senior level about interconnect and regulatory matters in Europe, the former Soviet Union, the Far and Middle East and the USA.

### Consumer Protection

FleXtel has been a strong and vocal advocate for better consumer protection within the UK and EU telecoms industry, whilst at the same time supports minimal regulatory intervention that is targeted to protect consumers, whilst at the same time also promotes fair and strong competition. Today, this overarching objective is not being delivered by either Ofcom or the EU Commission.

### The Disease of Price Opacity

Rather than the dealing with the malignant disease of severe call price opacity, instead Ofcom and the EU have so far been distracted by treating a range of its symptoms, typically in a piecemeal manner..

These symptoms are:

- Rapacious price gouging – 0870, 0800 (mobile)
- Scams & swindles – 070 and 0871
- A plethora of mobile and fixed tariffs...  
Designed to bamboozle consumers and businesses e.g.
  - Charging in whole minutes (including BT)
  - Increasing call setup charges from 4.7p to over 9p (including BT)
  - Restricted “fair use” bundles (including BT)
  - Variation of weekend and evening definitions (6pm/7pm & not Saturday)
- Outrageous Mobile roaming rates
- **High Wholesale Termination rates**

- Leading to Consumer outrage, that drives...
- Tactical, reactive and unfocussed micro-regulation, that damages competition.

This consultation, like so many issued by Ofcom, deals with just one symptom of the diseased patient, i.e. the unacceptably high mobile termination rates.

Ofcom's suggested treatments offer only palliative care for consumers, in order to be seen to be doing something, presumably to justify Ofcom's generous salaries and luxury offices, on a prime site next to the Thames.

### The Cure

FleXtel offers a solution that will not only start to cure the disease, it will also drive down prices through fairer and stronger competition. It works simply by empowering consumers, to make informed choices when purchasing calls. Thus it also protects them from devious tariff structures, designed to obscure rapacious pricing.

Amongst other things this 'cure' will offer:

- Easy call price comparison.
- Protect consumers and businesses from...
  - Rapacious pricing – 0870, 0800 (mobile)
  - Some scams & swindles – 070 and 0871
- Simplify tariffs, by exposing price trickery.
- Drives down retail prices towards cost.
- **Drives down costs and thereby "Wholesale Termination rates"**
  - Expensive terminating networks will be exposed, via higher retail cost-based pricing  
e.g. pricing of mobiles calls to other networks will show variation.
- Reduce Consumer outrage.
- Better, lighter regulation that supports competition and lowers the barrier to market entry.

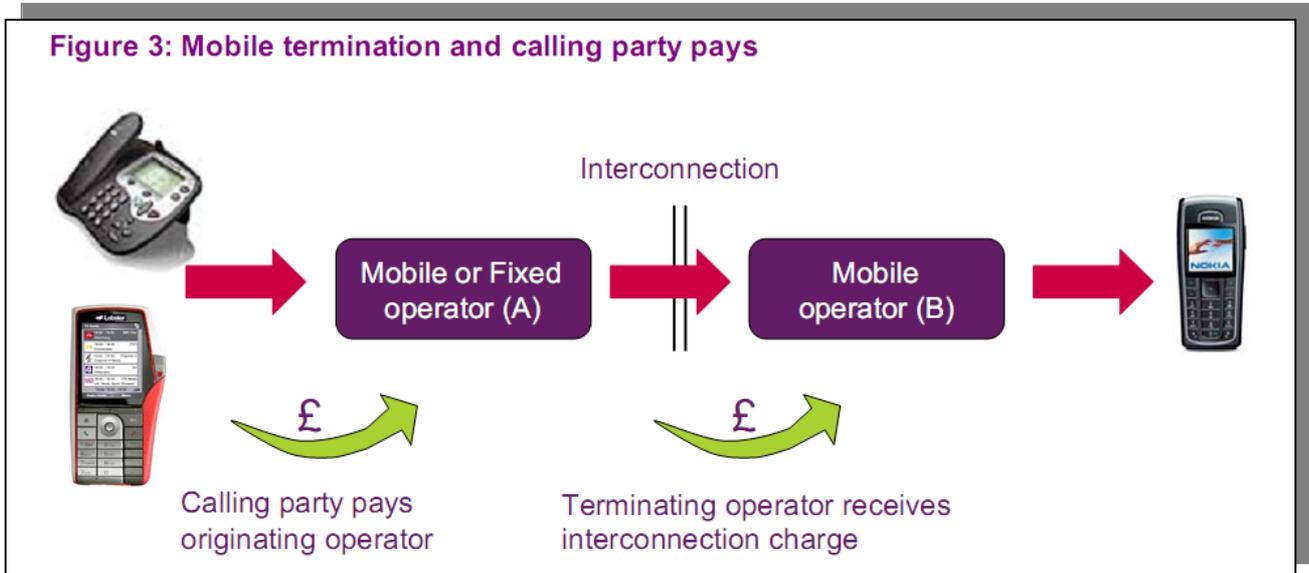
This "magical fix" is obvious to erudite economists and should have been put in place in 1984, but the technology wasn't available.

It certainly could and should have been mandated by the EU in the early 2000 and thereby forced upon the industry in 2003. However, it appears that, at that time, the EU, Governments and the young "NRA" style regulators had no appetite to face-up the big Telecom operators throughout Europe e.g. BT, France Telecom and Deutsche Telecom.

**So how long will Ofcom prevaricate,  
fail to grasp this nettle and  
continue to fiddle (*with micro-regulation*)  
whilst Rome burns?**

## The Relevance to Wholesale Mobile Termination Rates

Consider the Figure 3 provided by Ofcom in section 2:



We agree with this diagram, it demonstrates the revenue flow, commercial logic and common sense of the ‘calling party pays’ (CPP) regime.

However the one key fact that is missing is that **there is no driver to push Retail Prices down**, since the caller cannot easily and conveniently discover the price of the call, at the time of purchase (i.e. dialling).

If the caller could easily know **EXACTLY the call price before the call was placed**, then and only then, could the caller make an *“informed transactional decision”* and decide whether the call price offers fair value.

### **Calls would therefore become more aggressively selected on price.**

It is an established economic fact that the effect of the introduction of improved retail price transparency, would a stronger downward pressure on retail prices towards underlying costs. This margin squeeze is what makes markets efficient. Thus as retail prices fell towards cost, they would start to expose the real underlying cost.

**For calls to mobile networks,  
over 90% of the OCP call origination cost  
is the Mobile Call Termination Rate (MCT).**

Like rocks exposed as the tide flows out, once this confusing and rapacious retail pricing regime is driven out of the system, the underlying MCT will soon become visible to the consumer.

The consumer will then start to select calls to mobiles on the basis of MCT. They will even complain to family, friends, and colleagues, that their mobile is “too expensive” to call e.g.

***“Change to Virgin, your Vodafone is too expensive to call”***

This is all the regulation Ofcom and the EU needs. In retail shops the wholesale price does not need regulating. It is the Retailers (OCPs) who have dangerous and worrying

SMP and drive down the wholesale price of goods and services. e.g. with Tesco's, Asda driving down milk prices for the farmer, below costs.

So all this MCT control and regulation is a waste of time and money and severely distorts competition and reduces the appetite for investment. It's just another a symptom of market failure, due to a severe and chronic disease of call price opacity.

### **Call Price Opacity in Detail**

In this consultation, Ofcom has completely under-weighted the core issue that Telecoms consumers do not have pricing information available at the point of sale. The point of sale being the moment the consumer places a call – which is an irrevocable commitment to pay for the call.

In most other consumer markets, pricing information is required to be at hand at the point of sale e.g. shops, petrol stations.

### **The consumer is not required to memorise pricing information, provided elsewhere e.g. on a website or in a pamphlet.**

For example, it would be considered **ludicrous**, if consumers had to visit <http://www.tesco.com>, in order to memorise prices. Then, later, enter the supermarket and select products, without any prices being at hand. Then to only receive their bills a month or even three months later!

But this is exactly what the Telecoms industry expects of its consumers.

For example, on-line nearly 200 page tariff tables that requires a degree in mathematics to decode.

e.g. For T-mobile:

Pay monthly:

[http://www.t-mobile.co.uk/content/pdf/pay\\_monthly\\_customer\\_call\\_charges.pdf](http://www.t-mobile.co.uk/content/pdf/pay_monthly_customer_call_charges.pdf)

Pay as You go:

[http://www.t-mobile.co.uk/content/pdf/pay\\_as\\_you\\_go\\_customer\\_call\\_charges.pdf](http://www.t-mobile.co.uk/content/pdf/pay_as_you_go_customer_call_charges.pdf)

Even the BT tariff is very complex, for example look at **BT's Residential Price List**:

<http://www.productsandservices.bt.com/consumer/consumerProducts/pdf/UKInternationalprices.pdf>

I am sure you'll agree, that this 28-page document is complicated and FlexTel believes it to be wholly inaccessible to the average consumer.

However, this document excludes important pricing information for special numbers, such as **Premium Rate**, Freephone, Personal and NTS services.

To get accurate pricing for these services, the BT's Residential and Business special number call price list must be consulted:

<http://www.productsandservices.bt.com/consumer/consumerProducts/pdf/SpecialisedNos.pdf>

### **This 66-page tome is a serious challenge to everyone, except rocket scientists!**

Embedded in these documents are all the tariff tricks to milk the consumer – whole minute charging, rounding up for the call and even for VAT. There are also different time bands, evening start at 6pm or 7pm, weekends vary and have excluded Saturday from time-to-time. Call set-up fees vary from 4.7p to over 7p depending on the package/option.

By coincidence BT pricing has become more opaque ever since Ofcom removed Oftel's price controls and stated "competition is working and BT pricing no longer needs such control".

**What a joke this would be, if it wasn't such a serious issue.**

How then can Ofcom (*and the EU commission*) expect the market to function properly, with such determinedly dense price opacity? Or perhaps is it the regulators that are dense or that they just lack any competent economists?

Ofcom has relatively recently tried again to promote Numbering Pricing ladders, in the vain hope and expectation that the consumer would be interested in memorising these as a "guide" and that they might be future proof.

This policy has become even more dubious, given the recent 0870 changes, where ironically Ofcom has breached its own policy by trying to make 0870 cheaper than 0844 and 0845, yet 087x except 0870, remains above 0845. Confused, I'm not surprised!

The recent 0870 wholesale termination intervention, was not evidence based, it was badly targeted and not proportionate. It was also unnecessary, and therefore was in breach of section 6 of the Communications Act 2003. It is the death-knell of a vibrant 0870 industry that gave BT a serious problem. Well done BT, a clever piece of lobbying for intrusive and destructive regulation.

**The cure for all this micro-management and regulatory nonsense,  
is to empower consumers,  
by delivering accurate pricing at the point of sale.**

This would hail the end to the industry requiring consumers to memorise 100 of pages of prices or to ask them to calculate the prices from tariffs, typically based on well-over 6 variables!

For the mobile phone user, (over 50% of the call origination market, according to Ofcom's own research) this means that, at the point of sale, the consumer can be located anywhere.

**It therefore follows that the only available place  
to deliver accurate pricing information at the point of sale  
is via the phone itself.**

**Pre-Call Announcements**

Ofcom has dabbled with the concept of Pre-call announcements (PCAs) as crude means to convey an idea of pricing, elsewhere. For example Ofcom made a gross error of judgement by attempting to use PCAs both the 070 and 0870 interventions. Both interventions were suspended due to the serious health and safety risks associated with PCAs and the fact that they breach ITU regulation E.182.

Ofcom seems incapable of identifying lessons, let alone learning from them. In this the recent Premium Rate Scope Review consultation, PCAs raised their ugly heads again and Ofcom did not even address the risks adequately. It glossed over the engineering input that **proves PCAs to be unsafe**. This evidence was attached as Appendix 1 to FlexTel's input to that consultation and will not be repeated here.

## Call Price Labelling as opposed to PCAs

However, the underlying concept of price delivery via PCAs has merit, it just needs to be built upon and expanded if Ofcom is to regulate properly, i.e. so that its methodology is consistent with other national regulations, in particular:

- 1) **Any regulatory intervention should be safe.**
- 2) **Consumers should be empowered to make informed choices.**

### Item 1

Ofcom, no doubt, will be aware of the various Health and Safety regulations.

These include the need for Ofcom to make a full and proper Risk Assessment of any proposed **network** intervention. Since PCAs would change system and network operation risk the stability of a plethora of complex automatic life critical systems they create such a risk.

Telecoms systems have been developed over decades on the working assumption that call flow is not interrupted for 10 seconds or more, whilst a PCA is played. Hence ITU E.182 to protect the inter-operability of such systems.

### Item 2

Has been clarified and underpinned recently by the Consumer Protection from Unfair Trading Regulations 2008. These wide ranging Regulations became law on the 26th May, 2008 and **apply to all business sectors**. They are highly relevant to the malaise in the Telecom market. They support pricing information, as an important aspect of consumer protection. The regulations state (*in terms of the definition of misleading actions*) that:

“price or the manner in which the price is calculated” is a consideration “if it or its overall presentation in any way deceives or is likely to deceive the average consumer” such that “it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise”.

Obviously placing a call is clearly a “transactional decision”. Even in bundled call packages an “in-bundle call” uses up the bundle limit and therefore increases the likelihood of the limit being breached and costs being incurred. In any case many call types, such as premium rate calls, are outside such bundles. So deciding to place a call will depend on its price, which clearly should be to hand at the point of sale i.e. before a consumer decides to agree to pay for it by dialling (*i.e. makes a transactional decision and places the call*). The detailed regulations are available here:

[http://www.opsi.gov.uk/si/si2008/uksi\\_20081277\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20081277_en_1)

## So What is FlexTel's Solution?

Consider this FlexTel Number: **0871 234 5678**

From 1<sup>st</sup> of August this will be "premium rate" number, so I'd better warn those readers who are consumers, but not businesses, and might be tempted to dial it, about its price, as follows:

***"Each phone call costs 10pence per minute from a BT landline, calls from other networks may vary, mobile costs will be considerably higher"***

This text is simply a "fig leaf" that translates into "none PC speak" as:

**"I haven't got a clue what this call will cost you".**

Of course you can check yourself by looking at page 72 of your T-mobile tariff that was provided above (40 p/min) or, if your on BT, then on page 21 of the special number call price list (it's actually missing, but it is just under 10p/min). Why the 30p difference? Ask T-mobile, we don't know.

So now you can see why FlexTel believes that the consumer should be able to find out the price of the call at anytime and from anyplace. How can this be done simply for the consumer?

Why not deliver the accurate price by just pre-fixing the number with "\*".

**\*0871 234 5678**

This would deliver a free call which announces the accurate price for a call to **08712345678** taking into account:

- 1) *The current mobile or phone network;*
- 2) *The current time of day;*
- 3) *The current day of the week;*
- 4) *The current owners tariff;*
- 5) *The current state of this call package bundle;*
- 6) *The desired number that is being price checked.*

**Today we expect Consumers to work this lot out!**

This potential pricing service could be called **Call Price Labelling (CPL)**

An alternative we've considered is "Call Price Check", but it is clear price labelling that is the fundamental economic driver, that is missing from the Telecoms market.

### **Safety of CPL versus PCAs**

CPL is safe, since it does not interfere with the normal call path and hence does not vary the engineering parameters upon which millions of systems rely. So avoids all the dangers inherent in PCAs.

Unlike PCAs, which disrupt existing services, CPL is an additional and separate service, hence it cannot destabilise existing services. It also is a lower volume service, since not all calls must pass through it.

### **CPL is Lower Cost than PCAs**

FleXtel expects most consumers to use it only occasionally, to find out the latest price for certain “suspect” call types e.g. 09xx, 070 and 0870. This will lower the cost to industry, whilst maintaining the same benefits.

### **CPL is more Beneficial the PCAs**

Like most consumers, I personally don't want the inconvenience and the irritation and the time wasting experience of having to listen to the same old PCA every time I place a call. But I do want a Price checks at hand, accessible at my convenience, from wherever I wish to place a call. Unlike PCAs, CPL delivers this benefit without consumer detriment.

**CPL will empower consumers to make informed choices,  
when purchasing calls (*making transactional decisions*).**

Furthermore, Regulators and industry bodies (Ofcom, PhonepayPlus, the FCS etc) only need to mandate that the availability of CPL is mandatory and is widely published.

This can be achieved by requiring every advert containing **any phone number** must also contain the following information:-

- 1) ***“Free call price check? Just dial star, then the number”***  
or...
- 2) ***“To find out the call price, just dial star, then the number”***  
or...
- 3) ***“What's the call price? Dial star, then the number”***  
etc...

How much better than the current vague warning, as required by Ofcom and PhonepayPlus for premium rate 09 and 087x (*but not 0870*) calls.

Furthermore the cost of publicising this service, will be borne by the consumers of terminating services, in their own publicity material.

### **CPL Feasibility**

Is it feasible? ...of course.

Unsurprisingly, the incumbent and entrenched telecom providers have said it's all too complex and too expensive to implement. It is FleXtel's view that it is their unconstrained tariff structures (*designed to bamboozle the public*) that are too complex.

Those Telecoms operators who cannot implement Call Price Labelling (CPL) just need to simplify their tariffs. ...Now, wouldn't that be a refreshing change?

In any can are these carriers to be trusted in this viewpoint, considering they have a prejudicial interest in protecting market-share, using such rapacious pricing and complex opaque tariffs?

FleXtel believes this stance is nothing but a facade, designed to protect lucrative cash-cow interests and cheat consumers. As an ethical provider FleXtel has no such corrupt interest in protecting high call prices. It wishes to deliver best value to consumers.

**Since BT and the mobile network operators pay the bulk of Ofcom's funding,  
is Ofcom strong enough to challenge the big players on this one?**

### **But isn't FlexTel being too prescriptive?**

FlexTel would admit that its offered solution may not be the optimum solution, but we challenge Ofcom to facilitate a proper, public debate involving all stakeholders, including consumers.

From FlexTel's point of view it will stop some mobile retailers charging up to £1 per minute for a call, that costs them less than 6p. CPL will expose rogue and rapacious corporate telecom pricing, which damages the UK economy and encourages scams. These scams cause Ofcom and PhonepayPlus to tighten ineffective rules and regulations and so stifle innovation in the underlying bona fide market.

By delivering a simple call-price-check mechanism, CPL, will serve to protect the vulnerable citizen, promote competition and so drive down prices for the benefit of the consumer. This drive down of retail prices, that will in-turn drive down wholesale prices.

For more details see:

<http://flextel.com/ofcom/call-price-labelling.html>

and

<http://flextel.com/ofcom/>

### **UK Consumer Campaigns**

Without good pricing information, then we can all expect more treatment of the symptoms occurring in the UK and the EU. Examples of this are the well-meaning, but misguided campaigns such as Terminate-the-Rate and Saynoto0870.

These superficially attractive and seductive campaigns, only serve to damage competition.

They drive tactical regulations and therefore simply serve to move the problem elsewhere e.g. higher mobile prices or, as in the USA, paying for incoming calls to mobiles.

So, if you think email spam is bad, just wait until you're paying for incoming calls and your callers pay next to nothing!

These campaigns have the right overall intention and we support that, but balance and rigour is what's needed, if consumers are to win a long-term benefit.

**These campaigns are just a symptom of retail price opacity,  
not the solution!**

## **EU European Commission**

Even the EU, encouraged by populist ideals, are attacking outrageous mobile call prices and roaming charges by tinkering with the beguiling, but corrupting, concept of price caps, instead of looking at consumer empowerment, as the strategic way forward.

## **Policy**

CPL should be part of Ofcom's (*and the EU Commission's*) overarching core strategy. Not a set of flawed micro-regulatory interventions for mobile termination/roaming rates, 070 numbers, 0870 numbers, 087x (*not 0870*) numbers and 09x numbers.

These interventions, whilst well meaning, threaten to disrupt markets and confuse consumers further. They also simultaneously reduce choice, whilst serving to kill off grass roots competition and innovation.

**They are sticking plaster solutions to the malignant disease of retail price opacity.**

## **This Consultation**

The lack of a strong policy position by Ofcom for the delivery of consumer empowerment misleads the whole document, once again, down a regulatory cul-de-sac. A cul-de-sac, that leads to harm both to consumers and to competition.

## **Our formal Response to the consultation Questions:**

*Question 3.1: Do you agree with our preliminary view on market definition? Has anything changed, or is anything likely to change within the period of the next review, which would materially impact on the definition of the market(s)?*

Yes, except that Ofcom has failed to consider Call Price Opacity and its impact on the market price versus demand efficiency. See above for details.

*Question 4.1: Do you agree with our view? Or are there other developments, not considered elsewhere in this consultation document, for potentially removing the underlying causes of SMP?*

No, Ofcom has failed to consider Call Price Opacity and its impact on the market efficiency and SMP. See above for details.

*Question 5.1: What are likely to be the main sources of detriment to consumers of excessive termination rates in the period 2011 to 2015?*

Business consumers will be disadvantaged, if termination rates are not driven down to costs, but a regulatory approach risks moving termination rates below cost with disastrous consequences, as per 0870 on the 1<sup>st</sup> August 2009.

New entrants need to be able to set terminations rate, at any price. Then take the business risk of either the market rejecting them or accepting the value proposition.

Prices should not be set by some academic, sitting in an ivory tower next to the Thames. This harks back to price control in the former Soviet Union and risks inward infrastructure investment.

*Question 6.1: Should our policy approach to regulating MCT change? For example, given the possible benefits, should we adopt a policy of reducing termination rates as far and fast as we reasonably can, within the boundaries of sound economic policy, and whilst recognising underlying cost differences? If our policy approach did change, what do you think are the relevant factors for us to consider in deciding on the best future policy to regulating MCT?*

Ofcom should introduce CPL, then after the benefit becomes visible and **at the right time**, remove all controls from wholesale termination rates, both fixed and mobile.

*Question 6.2: Are there additional options (other than the six set out in this consultation) that we should consider? If so what are they and what advantages/disadvantages do they offer?*

Yes, see answer to 6.1.

*Question 6.3: Do you agree with our preliminary views set out for each of the options? If not, what are the additional factors that we should take into consideration, and why are the relevant to our analysis?*

No, see answer to 6.1.

*Question 6.4: Do you agree with our preliminary view of the De-regulatory option? If not, what are the additional factors that we should take into consideration, and why are the relevant to our analysis?*

No, see answer to 6.1.

*Question 6.5: Do you agree with our preliminary view of the LRIC+ option? If not, what are the additional factors that we should take into consideration, and why are the relevant to our analysis?*

No, this is irrelevant, throw away these dubious calculations and see answer to 6.1.

*Question 6.6: Do you agree with our preliminary view of the LRMC option? If not, what are the additional factors that we should take into consideration, and why are they relevant to our analysis? In addition what do you expect the costs of a move to this option to be?*

No, this is irrelevant, throw away these dubious calculations and see answer to 6.1.

*Question 6.7: Do you agree with our preliminary view of the CBC option? If not, what are the additional factors that we should take into consideration, and why are they relevant to our analysis? In addition what do you expect the costs of a move to this option to be?*

No, this is irrelevant, throw away these dubious calculations and see answer to 6.1.

*Question 6.8: Do you agree with our preliminary view on mandated Reciprocity? If not, what are the additional factors that we should take into consideration, and why are they relevant to our analysis? In addition what do you expect the costs of a move to this option to be?*

No, this is irrelevant, throw away these dubious calculations and see answer to 6.1.

*Question 6.9: Do you agree with our preliminary view of the B&K option? If not, what are the additional factors that we should take into consideration, and why are they relevant to our analysis? In addition what do you expect the costs of a move to this option to be?*

No, this is irrelevant, throw away these dubious calculations and see answer to 6.1.

This option will lead to a call spam nightmare. This is obvious stuff not befitting a regulator. Just look at Skype. Why is there an option to “block callers not on your contact list”?

Now examine the USA properly. Why USA mobile markets are behind Europe? Why do they have a mobile spam call blocking list?

B&K leads to mobile users paying for receiving messages, not necessarily by incoming call charges, but by cross-subsidy with higher outbound call charges or monthly rental fees. Who want to pay for call spam?

What a ridiculous regime! Paying to receive messages was thrown out by the Royal Mail in 1840, by the introduction of the Penny Black postage stamp.

### **In Conclusion**

Time did not permit FleXtel to cover all the issues, due to massive pressure of the ridiculous 0870 change.

The risk of excessive market power by OCPs is of concern to FleXtel and other ethical bona fide TCP's, and could be to the detriment of consumers. How can Ofcom mitigate this risk in a proportionate manner?

What checks and balances will Ofcom place on OCPs such as BT and the mobile operators (*as originators*)?

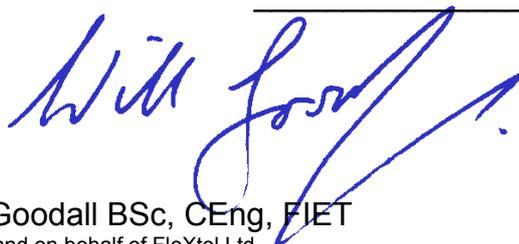
Once CPL is in place, then should not end-to-end obligations be extended to all OCPs for balance and maximal market competition?

However, Ofcom needs to accept that is a paradigm shift is needed in Telecoms regulatory thinking.

This is the “red hot” idea that David Stewart was looking for at the FCS conference last year. He should not discard it, on behalf Ed Richards, in such an out-of-hand manner.

Ofcom needs to go back to basics and think about CPL more carefully.

If adopted CPL will deliver a cure to the worldwide Telecom market failure, a failure due to an omission in Telecoms deregulation, the malignant disease of call price opacity.



William R Goodall BSc, CEng, FIET  
Chairman - For and on behalf of FleXtel Ltd