



# Modifications to the National Telephone Numbering Plan and Application Form for 08 Telephone Numbers to reflect retail price and numbering arrangements for calls to 0845 and 0870 numbers

Final Statement

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## Section 1

# Summary

- 1.1 This statement sets out Ofcom's final decision in relation to certain changes to the National Telephone Numbering Plan ('the Plan') and the Telephone Numbering Application Form for 08 numbers ('the 08 application form'). These changes are intended to make clearer to Communications Providers the retail pricing arrangements for calls to 084 and 087 numbers, and the basis on which Ofcom allocates 084 and 087 number blocks.
- 1.2 This statement follows on from Ofcom's statement and further statutory consultation *Calls to 0845 and 0870 numbers: review of retail price and numbering arrangements published in April 2004* ('the April 2004 Statement and Statutory Consultation'). That document detailed Ofcom's decision (following a consultation document published by Ofcom in September 2003) as to appropriate retail pricing arrangements for calls from the BT network to 0845 and 0870 numbers. In particular, Ofcom decided that the current link on the BT network between BT's retail price for 0845 and 0870 calls and BT's standard (pre-discount and call package) retail price for geographic local and national calls respectively should remain in place. The April 2004 Statement and Statutory Consultation contained a statutory consultation on consequent changes to the Plan and the 08 application form to clarify these arrangements. This statutory consultation is brought to a conclusion in this statement.
- 1.3 During the consultation period on changes to the Plan and the 08 application form, Ofcom received 37 responses. Ofcom has considered these responses in coming to the conclusions set out in this statement. Ofcom has decided that the changes to the Plan and the 08 application form as set out in the April 2004 Statement and Statutory Consultation should be implemented with three minor changes in light of comments received during the consultation period.
- 1.4 Section 2 of this document provides the background to the statutory consultation. Section 3 sets out the responses received by Ofcom during the consultation period that related to the substance of the statutory consultation and Ofcom's comments on these responses. Section 4 presents Ofcom's conclusions in light of comments received. The Annexes to this document list the respondents to the consultation, summarise and comment on points made by respondents that fell outside the scope of the statutory consultation, set out the final modification to the Plan and the final 08 application form Direction, confirm that the necessary legal tests to make these modifications have been satisfied, and include a glossary of terms used in the document.

## Section 2

# Introduction

## Scope

- 2.1 This document sets out Ofcom's final decision in relation to certain changes to the National Telephone Numbering Plan ('the Plan') and the application form for 08 Telephone Numbers (the 08 application form) following public consultation. The document contains the Modification to the Plan (see Annex 3) and the Direction to amend the 08 application form (see Annex 4). Both these measures are intended to provide additional clarity to the industry as to the retail pricing arrangements for 084 and 087 numbers and the basis on which blocks of 084 and 087 numbers are allocated by Ofcom.
- 2.2 This document does not revisit Ofcom's previous decisions that:
- the current link on the BT network between BT's standard (pre-discount and call package scheme) retail price for 0845 and 0870 calls and geographic local and national calls remain in place; and
  - Terminating Communications Providers (TCPs) be able to choose (and subsequently change) the retail price on the BT network (from a ladder of established retail price points) for each block of 0844 numbers they are allocated by Ofcom.

## Consultation process

- 2.3 On 26 September 2003 Oftel published a consultation document 0845 and 0870 numbers: *Review of retail price and numbering arrangements* ('the September 2003 Consultation'). This document is available on the Ofcom web site at: <http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/2003/0845condoc0903.pdf>
- 2.4 Oftel published the September 2003 Consultation in response to concerns about the potential for consumers to be misled by the description of the 0845 and 0870 Number Translation Services ('NTS') number ranges as 'local rate' and 'national rate' respectively, and also in response to concerns about the knock-on impact of BT's June 2003 standard retail price reductions for local and national calls on TCPs. The September 2003 Consultation described and provided an initial evaluation of five different options for the future retail pricing arrangements for 0845 and 0870 calls:
- Options 1(a): the geographic/non-geographic link between retail prices for 0845/0870 and standard local/national call prices on the BT network is not broken and there is no change to the retail pricing arrangements for 0844 and 0871 calls;
  - Option 1(b): the geographic/non-geographic link is not broken for 0845 and 0870 numbers on the BT network, but the retail pricing arrangements for 0844 and 0871 calls are modified to allow tariffing at the 10k block level;
  - Option 2(a): the geographic/non-geographic link on the BT network is broken, Ofcom's allocation arrangements for 0845 and 0870 numbers remain unchanged, and it is possible for those allocated 0845 and 0870 numbers by Ofcom to choose the retail prices on the BT network for each 10k or 1k block they are allocated;

- Option 2(b): the geographic/non-geographic link on the BT network is broken, 0845 and 0870 numbers are allocated in 1k blocks and it is possible for those allocated 0845 and 0870 numbers by Ofcom to choose the retail prices on the BT network for each 1k block they are allocated; and
  - Option 3: the geographic/non-geographic link on the BT network is broken, and Ofcom sets the retail prices for calls to 0845 and 0870 numbers.
- 2.5 Responses to the September 2003 Consultation were received from a wide range of stakeholders and these are also available on the Ofcom web site.
- 2.6 In December 2003, Oftel joined four other communications regulators to form the Office of Communications (Ofcom). Ofcom regulates the communications sector under the new framework established by the Communications Act 2003 ('the Act').
- 2.7 On 29 April 2004, Ofcom published a statement and further statutory consultation *Calls to 0845 and 0870 numbers: review of retail price and numbering arrangements* ('the April 2004 Statement and Statutory Consultation'). This document is available on the Ofcom web site at <http://www.ofcom.org.uk/consultations/past/0845/?a=87101>.
- 2.8 The April 2004 Statement and Statutory Consultation set out Ofcom's decision to implement a slightly modified version of Option 1(b) in relation to retail pricing arrangements for calls from the BT network to 0845 and 0870 numbers, namely that:
- the current link on the BT network between BT's retail price for 0845 and 0870 calls and BT's standard (pre-discount and call package) retail price for geographic local and national calls respectively will remain in place;
  - calls to numbers in the 0844 non-geographic range (which are not linked to BT's standard local rate) will continue to be subject to a price cap of 'up to 5p per minute or per call' on the BT network. However, pricing arrangements for calls to these numbers will be made more flexible within this price cap to give Communications Providers more control over their revenues if they choose to use this range; and
  - Ofcom will work with the industry to produce guidance to NTS Service Providers using 084 and 087 numbers on how these numbers (and in particular, pricing indications for calls to services on these numbers) can be advertised so that they are not misleading to consumers.
- 2.9 The April 2004 Statement and Statutory Consultation also contained a statutory consultation on certain modifications to the Plan and the 08 application form that were set out in Annex K and Annex L of that document. The purpose of these modifications was to make it clearer to Industry and those applying to Ofcom for allocations of 084 and 087 numbers the basis on which these numbers are allocated. The deadline for responses to the statutory consultation was 31 May 2004.
- 2.10 Ofcom received 37 responses to the statutory consultation, of which nine were confidential or the respondent wished to remain anonymous. The remaining 28 responses are available on Ofcom's web site at [www.ofcom.org.uk/consultations/responses/0845/responses/?a=87101](http://www.ofcom.org.uk/consultations/responses/0845/responses/?a=87101). Ofcom has considered these responses (see Section 3 and Annex 2) in coming to the conclusions set out in this statement.
- 2.11 This statement should be read in conjunction with the September 2003 Consultation and the April 2004 Statement and Statutory Consultation. The following sections of these documents are particularly relevant: the background in Chapter 1 and the

description of the available policy options in Chapter 3 of the September 2003 Consultation, the analysis of policy options in Section 4 and Ofcom's decision in Section 5 of the April 2004 Statement and Statutory Consultation and additionally as explained in paragraphs 2.12 and 2.13 below.

### **Links to other Ofcom work**

- 2.12 The relationships between Ofcom's work on retail pricing of 0845 and 0870 numbers and other Ofcom work on NTS were set out in Section 2 of the April 2004 Statement and Statutory Consultation. Ofcom considers that these relationships have not changed substantively since the publication of that document and therefore Ofcom does not consider that it is necessary to discuss these relationships further in this statement.

### **Legal framework**

- 2.13 This statement sets out Ofcom's decision in relation to the changes to the Plan and the 08 application form proposed in the April 2004 Statement and Statutory Consultation. Annex 5 of this statement describes the required legal tests for making such changes, and how these legal tests are satisfied in this particular case. During the consultation on the proposed changes to the Plan and the 08 application form, some questions were raised about the legal basis of Ofcom's policy on the retail pricing and numbering arrangements for calls to 0845 and 0870 numbers. Ofcom has addressed these questions for completeness in Annex 2 of this statement. The legal framework for this policy was discussed at paragraphs 1.7-1.9 and in Annex D of the April 2004 Statement and Statutory Consultation, and is not reproduced here.

## Section 3

# Responses to statutory consultation

## Introduction

- 3.1 The April 2004 Statement and Statutory Consultation contained a statutory consultation regarding certain modifications to the Plan and the 08 application form. These modifications were set out in Annex K and Annex L of that document. The purpose of these modifications was to make it clearer to Industry and those applying to Ofcom for allocations of 084 and 087 numbers the basis on which these numbers are allocated. The consultation questions were set out in Annex C of the April 2004 Statement and Statutory Consultation, and were:

**Question 1:** *Ofcom proposes to modify the Plan in relation to the designations for 0844, 0845 and 0870 and 0871 numbers as shown in Annex K. Do you have any specific comments on the proposals to modify the Plan in this manner?*

**Question 2:** *Do you have any comments on Ofcom's proposed revised telephone numbering application form (as set out in Annex L) for 08 numbers?*

- 3.2 The deadline for responses to the statutory consultation was 31 May 2004. During the consultation period, Ofcom received 37 responses to the statutory consultation, of which nine were confidential or the respondent wished to remain anonymous. The remaining 28 responses are available on Ofcom's web site at [www.ofcom.org.uk/consultations/responses/0845/responses/?a=87101](http://www.ofcom.org.uk/consultations/responses/0845/responses/?a=87101).
- 3.3 In this Section, Ofcom summarises the responses received to the two consultation questions set out above, and Ofcom's comments on these responses. Respondents also raised concerns that were beyond the scope of the consultation on the modifications to the Plan and the 08 application form. In order to acknowledge and appropriately address these concerns, Ofcom summarises these wider concerns (including those that may have already have been raised as a result of the September 2003 Consultation and been dealt with in the April 2004 Statement and Statutory Consultation) and for completeness sets out Ofcom's comments in Annex 2.

## Responses relating to the proposed modification of the Plan

BT considered that:

- 3.4 Ofcom's proposed text for insertion in the Plan 'Communications Providers should check actual prices with Originating Communications Providers' required clarification and suggested "Service Providers should check actual prices with Originating Communications Providers" instead;
- the designations of 0844 and 0871 in the Plan be modified to make it clear that the price range for 0844/0871 is up to and including 5p/10p per minute/per call (and that the relevant text in the 08 application form be updated in the same way);
  - Ofcom should make it clear that 5p tariffs should be in the 0844 range going forward; and

- no SPs with 5p in the 0871 range for example should be required to move to the 0844 range, but the 0871 range should simply not be allocated any longer at the 5p price point.
- 3.5 C&W considered that the proposed modifications to the Plan would represent a breach of section 51(3) of the Act, since the modifications require BT and only BT to adhere to certain retail pricing obligations. C&W noted that section 51(4) of the Act sets out that access related obligations should be set under SMP conditions, not general conditions. C&W also noted that Section 56(1) of the Act does not allow Ofcom to use the Numbering Plan to set restrictions on Communications Providers that have not been allocated those numbers. Setting retail pricing constraints on BT through the Numbering Plan is therefore outside the scope of the Numbering Plan as defined in the Act. C&W considered that the Numbering Plan does not create enforceable obligations, since adherence to the Numbering Plan, as required by General Condition 17, relates to those allocated numbers, not the Originating Communications Provider in the case of NTS numbers. C&W felt that it was not sufficient for Industry and Ofcom to rely on BT's goodwill to implement these arrangements.
- 3.6 Ntl considered that changes to the Plan were not necessary as the Plan was not incorrect as it was. Ntl felt that Ofcom's proposed changes were more confusing, given that BT and other operators charge a variety of non-local tariffs for calls to 0845 for example. Ntl noted that some number ranges within 0844 are also charged at BT's local call rate. Because the proposed changes to the Plan include the words 'before discounts and call packages' ntl felt that the changes would be ineffectual and would not provide increased clarity for consumers.
- 3.7 Thus felt that:
- the designation of 0845/0870 calls as 'BT Standard Local/National Call Retail Price' would not provide any information to consumers, whether they are BT customers or customers of other Originating Communications Providers. In particular, Thus pointed out that CPS customers may assume (because they retain a BT line) that they will pay the BT price for calls to these numbers; and
  - Thus would have to advertise its competitor (i.e. BT) each time it quoted the price for its own services. Although a universal brand name for the 0845/0870 ranges is desirable in Thus's view, "BT" should not be the basis for that brand name.
- 3.8 Leicestershire Trading Standards welcomed Ofcom's proposals to amend the Plan. However, it raised a concern about the proposed addition of the words *'The designations set out in this section are not intended for pricing information for the purposes of advertising. Communications Providers should check actual prices with Originating Communications Providers.'* It pointed out that it is advertisers who wish to put pricing information in their advertisements, rather than Communications Providers, who need to avoid misleading consumers. It also considered that, to avoid misleading consumers, advertisers would need to check and track actual prices on all available tariffs with all Originating Communications Providers. It suggested therefore that the second sentence of the text quoted above be deleted.
- 3.9 Consumer respondents felt that Ofcom's proposals to modify the Plan were unacceptable for consumers. However, the points raised by consumers related to Ofcom's policy decision to implement Option 1(b) in the April 2004 Statement and Statutory Consultation, rather than the detail of the modifications to the Plan set out



in Annex K of that document. Therefore Ofcom considers that these points are more appropriately dealt in Annex 2 of this document.

### **Ofcom's comments on responses relating to the proposed modification of the Plan**

- 3.10 Ofcom agrees with the point made by both BT and Leicestershire Trading Standards in relation to Ofcom's proposal to add the following text to the Plan: *'The designations set out in this section are not intended for pricing information for the purposes of advertising. Communications Providers should check actual prices with Originating Communications Providers.'* Ofcom also notes that Ofcom intends, as set out in the April 2004 Statement and Statutory Consultation, to produce guidance for advertisers of 084 and 087 numbers. Ofcom has therefore decided to delete the second sentence of this text.
- 3.11 In relation to BT's points about the relevant tariff ranges for BT customers for 0844 and 0871 numbers, Ofcom agrees that the designations of 0844 and 0871 in the Plan should make it clear that the price range for 0844 numbers is up and including 5p per minute / per call for BT customers, and that the price range for 0871 numbers is up to and including 10p per minute / per call for BT customers, which in both cases is the practice that Ofcom (and Oftel before it) has previously applied to these number ranges. Ofcom has therefore decided to slightly amend the proposed modifications to the Plan and the 08 application form to clarify this point.
- 3.12 In relation to the existence of 5p tariffs in the 0871 range, Ofcom notes that Oftel/Ofcom has allocated 95 blocks of 0844 numbers at a tariff point of 5ppm, and only 9 blocks of 0871 numbers (0871 54 and 0871 58) at the same tariff. When designating the 0871 range, the decision was taken not to have a tariff floor so that time of day variations which would cross any tariff floor would still be possible, to provide as much flexibility as possible in the interests of service providers and consumers. Communications Providers applying for blocks of 0871 numbers may have specific reasons for applying for 0871 numbers (e.g. contiguity with other number blocks). On both these grounds, Ofcom does not consider it necessary to prohibit price points at 5p or under in the 0871 range.
- 3.13 Ofcom notes C&W's concerns that the proposed modifications to the Plan might be contrary to various provisions of the Act. Ofcom does not seek to create retail pricing obligations or access related obligations by means of the proposed modifications to the Plan – this is made clear at paragraph D.16 of the April 2004 Statement and Statutory Consultation. At paragraph 5.1 of that document, Ofcom makes it clear that the purpose of modifications to the Plan is to provide information to the Industry about the basis on which these numbers are allocated, since it appears to Ofcom that there is considerable misunderstanding about this. The previous designations of the 084 and 087 ranges in the Plan had the potential to cause misunderstanding in the Industry, since they lumped 0844 and 0845 numbers together into one designation (similarly for 0870 and 0871), and contained the wording "at Originating Communications Provider's 'Local/National Rate'" which may have given some members of the Industry the impression that those numbers were allocated with the expectation that all Originating Communications Providers would observe the geographic/non-geographic retail price link for calls to 0845 and 0870 numbers. The changes to the Plan are simply a record of Ofcom's policy, and are not the mechanism by which Ofcom would seek to enforce the geographic-non-geographic link for 0845 and 0870 numbers. The legal framework for Ofcom's involvement in and enforcement of retail pricing arrangements for 0845 and 0870 calls was summarised at Annex D of the April 2004 Statement.

- 3.14 Ofcom notes ntl's view that changes to the Plan are not necessary. As set out at paragraphs 5.1 and 5.2 of the April 2004 Statement and Statutory Consultation, Ofcom considers that the proposed changes to the Plan are necessary to make it clear to the Industry (not consumers) the basis on which 084 and 087 numbers are allocated by Ofcom, since some members of the Industry appeared not be entirely clear what the arrangements for pricing of these number ranges were. The inclusion of the wording 'before discounts and call packages' in the new designations in the Plan is necessary and accurate, since it explains to the Industry that the geographic-non-geographic link is between 'headline' prices rather than discounted prices.
- 3.15 In relation to Thus's point that the proposed revisions to the Plan would not provide any information to consumers, Ofcom would make the same point as in the previous paragraph. The modifications to the Plan are intended to provide information to the Industry, not consumers. Ofcom is not suggesting that "BT" be part of a universal brand name for 084 or 087 services. In Ofcom's view, the terms 'basic rate' and 'higher rate' used in the new designations of the 0844/0845 and 0870/0871 ranges in the Plan are more likely to be useful in this context. Ofcom notes that there is no obligation on advertisers of 084 and 087 numbers to provide pricing information on advertisements. Any pricing indications provided must not, of course, be misleading to consumers. As set out at paragraph 5.1 of the April 2004 Statement and Statutory Consultation, Ofcom intends to produce guidance to advertisers of services on 084 and 087 numbers to reduce the scope for consumers to be misled.

### Responses relating to the proposed revisions to the 08 application form

- 3.16 BT considered that:
- on the first page of the 08 application form, it would be better to simply state in one place that all tariffs referred to on that page in the form relate to calls from BT lines only, rather than adding this to each line. This would then make it clear that the "Freephone" description etc also only applied to BT lines, in keeping with the view Ofcom puts forward in the April 2004 Statement and Statutory Consultation that it cannot oblige other companies to adhere to any tariffing rules;
  - the tariff information for 0844 numbers on the Ofcom web site was helpful and asked that it be retained rather than removed as indicated by the proposed new wording at 5(ii) of the 08 application form namely 'note that from a certain date – of which Ofcom will advise you – tariffs for 0844 numbers will no longer appear on the web site but you will still need to indicate the tariff you intend to use for BT customers for these blocks;
  - in column six of section 5 of the 08 application form, it is not clear why an approximate rather than precise tariff is requested. BT would prefer this to show the precise tariff, to seek to minimise the risk of tariff proliferation, e.g. 4.25p and 4.28p.
- 3.17 Consumer respondents felt that the proposed changes to the 08 application form were unacceptable, since the new text referred to BT's charges prior to BT's recent retail price changes. They felt that any prices listed as examples should be the lowest operator's charges, otherwise it could appear that Ofcom was endorsing BT's charges.

## Ofcom's comments on responses relating to the proposed revisions to the 08 application form

- 3.18 In relation to BT's comments about the first page of the revised 08 application form, Ofcom considers that the purpose of the modifications is to make it clear to those applying for 08 numbers what the retail pricing arrangements are for calls to those numbers. Ofcom believes therefore in the interests of providing clear information to potential allocatees that the references to pricing being for BT customers should be repeated in each row of the table on the first page of the 08 application form. Ofcom considers that there is no evidence of significant confusion in the Industry about the retail pricing arrangements for 080 numbers, unlike 084 and 087 numbers. The fact that the Plan requires that any charges for 080 calls be notified to callers at the start of the call also clarifies the retail pricing arrangements for these numbers. Ofcom therefore does not consider it necessary to add the phrase 'for BT customers' to the Freephone description on the first page of the 08 application form.
- 3.19 In relation to BT's comment that tariff information for 0844 numbers should be retained on the Ofcom web site, Ofcom notes that under Option 1(b), the generality of 0844 number blocks will be allocated by Ofcom in 10k blocks (as currently), but additionally they will be tarified by BT at the 10k block level. This will mean that there is no longer any need for Ofcom to publish information about the retail price for each 0844 10k block. This is because, unlike the existing situation, the tariff for each 10k block will no longer be governed by the other blocks in the same 100k range. (This is exactly the same reason that tariff information does not appear on the Ofcom web site for 0844/0871 numbers allocated in 1k blocks by Ofcom). In addition, given that Option 1(b) gives TCPs the freedom to change the retail price for 0844 blocks on the BT network at the 10k block level, it would be impractical for Ofcom to have to modify the National Numbering Scheme ('the Scheme') each time a TCP changed the retail price for an 0844 block. BT's Retail Price List will provide the necessary tariff information to consumers.
- 3.20 Ofcom notes BT's comment about the text in column 6 of Section 5 of the 08 application form (*which states 'for 0844 and 0871 (non Internet) blocks show tariff (to nearest 1p for BT customers) from those tariffs on web site'*). This text has not changed as a result of this consultation process, apart from the insertion of the words "for BT customers". Ofcom and now Ofcom requires approximate tariff information only, since this helps Ofcom assign a number block from ranges that already have a suitable tariff that is close enough to the tariff that the applicant requires, without constraining the TCP's choice of tariff unduly. Ofcom continues to consider this is an appropriate balance between the requirements of the TCP and the desire to prevent unnecessary tariff proliferation.
- 3.21 Ofcom notes the point raised by consumers that the proposed new text in the 08 application form is unacceptable since it refers to BT's charges prior to BT's recent retail price changes. As set out in Section 7 of the April 2004 Statement and Statutory Consultation, the proposed changes to the 08 application form are simply intended to ensure that the application form is consistent with the new designations of 084 and 087 numbers in the Plan. The purpose of these changes is to provide clearer information to members of the Industry as to the basis on which these numbers are allocated to them by Ofcom, as Ofcom considers that some members of the Industry may not be entirely certain about how these numbers work. The proposed changes to the 08 application form should not in any way be considered to represent Ofcom endorsement for any particular Originating Communications Provider's charges.

## Section 4

# Conclusions

- 4.1 Having considered all responses to the April 2004 Statement and Statutory Consultation, Ofcom has decided to make the modifications to the Plan set out at Annex 3 of this document, and to issue the Direction to amend the application form for 08 numbers as set out at Annex 4 of this document. Ofcom considers that the modifications to the Plan and the application form for 08 numbers meet all the required legal tests in the Act, as set out in Annex 5.
- 4.2 The modifications to the Plan and amendments to the application form for 08 numbers are the same as those on which Ofcom consulted in the April 2004 Statutory Consultation, with only three minor changes that Ofcom has decided to make in light of responses received and for the reasons set out in Section 3 of this document.
- Ofcom will not insert the following sentence after the heading in Part A of the Plan as previously *proposed* 'Communications Providers should check actual prices with Originating Communications Providers.'
  - Ofcom will add the words '*and including*' to the new designations of the 0844 and 0871 number ranges in the Plan. The first part of the 0844 designation will therefore read '*Special Services basic rate: charged at up to and including 5p per minute or per call for BT customers....*'. The first part of the 0871 designation will therefore read '*Special Services higher rate: charged at up to and including 10p per minute or per call for BT customers....*'
  - Ofcom will add the words '*and including*' to the descriptions of the 0844 and 0871 number ranges on the first page of the 08 application form, and in sections 5 and 7 of the 08 application form. This means that, for example, the description of the 0844 number ranges on the first page of the 08 application form will read '*Special services basic rate: up to and including 5p for BT customers...*'.

## Annex 1

# List of respondents

A1.1 Ofcom received 37 responses to the April 2004 Statement and Statutory Consultation. The respondents are listed below, except for nine who either wished that their response remain confidential or who wished to remain anonymous. The remaining 28 responses are available on Ofcom's web site at [www.ofcom.org.uk/consultations/responses/0845/responses/?a=87101](http://www.ofcom.org.uk/consultations/responses/0845/responses/?a=87101).

Amalia Feltham  
Arvin Felton  
Brendan Blake  
British Telecom  
Cable & Wireless  
David Caldwell  
Dr R Feltham  
J Rowe  
John Hoque  
Leicestershire TS  
Mark Ebner  
Michael Siebert  
Mr & Rev Mrs JB Pennington  
Neil Caldwell  
Nicholas Lawrence  
Nigel Nathan  
Ntl  
Pam Jones  
Paul Kendall  
Paul Tweney  
Rachel Feltham  
Ray Parnell  
Roger Bose  
Roger Jeavons  
Rosy Dunbar  
Steven Browning  
Thus  
William Young

## Annex 2

# Responses outside the scope of the statutory consultation

A2.1 In this Annex, Ofcom summarises and comments on responses received that were beyond the scope of the consultation to modify the Plan and the 08 application form as set out in the April 2004 Statement and Statutory Consultation. The Annex is divided into two sub-sections. The first sub-section sets out responses that raised new points in relation to Ofcom's policy decision, and Ofcom's comments on these points. The second sub-section sets out responses that raised issues that were covered in the April 2004 Statement and Statutory Consultation, and reiterates Ofcom's position on these issues.

### New policy points raised by respondents and Ofcom's comments

- A2.2 BT suggested that Ofcom's guidance to advertisers of 084 and 087 numbers should include guidance to advertisers of Freephone 080 numbers. BT asked whether advertisers would be able to advertise such numbers as being free of charge, given that some mobile operators charge for calls to these numbers.
- A2.3 Ofcom's view is that Ofcom decided to produce guidance to advertisers of 084 and 087 numbers because this appeared to Ofcom to be the area where advertisers faced the most uncertainty, and where they ran the biggest risk of inadvertently or deliberately misleading consumers. Ofcom is not currently aware of similar problems with Freephone numbers, particularly given the requirement that any charges for Freephone calls be notified to the caller at the start of such calls. Ofcom will however consider the scope of its proposed guidance, and whether this should include Freephone numbers.
- A2.4 BT considered that if Ofcom was not able to force all OCPs not to charge for 080 calls, then this could result in serious consumer detriment. For example, if calls to 0808 80 "Freephone Confidential Helpline" numbers were chargeable, these might be disclosed on itemised bills.
- A2.5 Ofcom notes BT's view, and notes that the Telephone Helplines Association (THA) worked with Oftel to create the 0808 80 'Freephone Confidential Helpline' range and the user criteria. Ofcom understands that the THA is working with mobile operators on this issue to ensure integrity of the confidential helpline range.
- A2.6 BT believed that if a TCP changed the retail price of an 0844 block that was in use, Ofcom should set out how this change should be communicated to consumers.
- A2.7 Ofcom notes that all OCPs are required to publish tariff information under General Condition 10 of the General Conditions of Entitlement, which were set by the Director on 22 July 2003 pursuant to section 45 of the Act by way of publication of a Notification pursuant to section 48(1) of the Act. Ofcom also notes that in its response to the September 2003 Consultation, the Advertising Standards Authority set out that it was likely to consider an advertisement misleading if the price of a phone call changed significantly shortly after an advertisement was published. Ofcom accepts that these two measures may not provide perfect protection for consumers, which is one of the reasons why (as set out at paragraph 5.1 of the



April 2004 Statement and Statutory Consultation) Ofcom has decided to limit flexible tariffing to the 0844 range only at this stage.

- A2.8 BT noted that ICSTIS only regulates calls that cost more than 10p per minute or per call, not 10p per minute/per call and above as stated by Ofcom at paragraph 3.24 of the April 2004 Statement and Statutory Consultation.
- A2.9 Ofcom agrees with this point and notes that the ICSTIS Code of Practice that governs the provision of PRS only has statutory backing from Ofcom in respect of services priced at more than 10p per minute or per call.
- A2.10 Ntl expressed concern about how Ofcom had summarised ntl's response to the September 2003 Consultation. In particular, ntl did not consider that its proposal for allowing Terminating Communications Providers more control over their terminating revenues should be portrayed as 'insulating' the terminating payments from the retail price for calls, against the interests of consumers. Ntl pointed out that its proposal would be that the terminating payment could be varied by negotiation. Ntl considered that giving Terminating Communications Providers more control over their revenues would be in the interests of consumers because Terminating Communications Providers could then provide the level of service and functionality that consumers required.
- A2.11 Ofcom notes ntl's comment but remains of the view that responses from Terminating Communications Providers to the September 2003 Consultation expressed preferences for disconnecting or 'insulating' 0845/0870 terminating payments from the retail call price. Ofcom notes the possibility that, under ntl's proposal, the terminating payment could be varied by negotiation, but Ofcom does have concerns about how realistic it would be to expect this to happen in practice. Ofcom accepts that competition to the benefit of consumers may not only be relevant in terms of retail pricing, but also in terms of additional functionality.
- A2.12 Thus noted that BT business customers for example would be paying the 'BT Standard Local/National Call Retail Price' for calls to 0845/0870 numbers and geographic calls. However Thus considered that there was nothing to prevent BT from changing their business tariffs to match the "Together" ones at some future point, resulting in the term 'BT Standard Local/National Call Retail Price' ultimately having no meaning.
- A2.13 Ofcom notes that Ofcom's proposed definitions of 'BT Standard Local Call Retail Price' and 'BT Standard National Call Retail Price' are as follows:
- 'BT's Standard Local Call Retail Price' means the retail price for a Local Call made by BT customers which operates as the standard retail price before the application of calling packages and discounts as shown on BT's retail price list.'*
- and*
- 'BT's Standard National Call Retail Price' means the retail price for a National Call made by BT customers which operates as the standard retail price before the application of calling packages and discounts as shown on BT's retail price list'.*
- A2.14 These definitions set out Ofcom's policy that 0845 and 0870 must be charged to BT customers at prices that operate as the standard retail prices for Local or National calls on the BT network. It is Ofcom's policy therefore that the basis on which these

numbers are allocated is that they should reflect BT's standard retail prices for geographic calls on BT's network.

- A2.15 Leicestershire Trading Standards welcomed the new designations of 'Special Services basic rate' and 'Special Services higher rate' and considered that these could be safely used as pricing indications to consumers. It noted that consumers could obtain exact prices from their Originating Communications Providers' price lists. It asked to be involved (along with representatives of the wider trading standards community) in the production of the Ofcom guidance on the advertising of 084 and 087 numbers.
- A2.16 Ofcom notes Leicestershire Trading Standards comments and looks forward to considering these issues with Leicestershire Trading Standards as part of the process of producing the Ofcom guidance.
- A2.17 Consumer respondents felt that Ofcom's proposals were unacceptable for consumers for several reasons. They believed that all revenue sharing numbers were supposed to be readily identifiable by consumers under the UK numbering system i.e. using the 09 prefix. They felt that many consumers (particularly vulnerable consumers such as the elderly) were confused about the costs of calling 08 numbers – and noted that 0870 numbers could appear very similar to 080 freephone numbers to consumers, yet were functioning as covert premium rate numbers, without ICSTIS regulation. They suggested that ICSTIS could therefore regulate 084 and 087 numbers (including a requirement for pricing information to be displayed in all advertisements), or the costs of migration to 09 numbers could be met out of the revenue share obtained by service providers.
- A2.18 Some consumer respondents suggested that service providers could continue to use 08 numbers with no revenue sharing – which would also encourage operators to include these calls in their discount packages. Alternatively, consumer respondents suggested that service providers requiring number translation services could use geographic numbers and pay their phone companies separately for translation services. They felt that 0845 and 0870 numbers could therefore be abolished by a certain cut-off date, and capped at a fixed price prior to that date (with clear guidance to advertisers on how these numbers could be advertised without misleading consumers).
- A2.19 Consumer respondents felt that the current system gave companies an incentive to use non-geographic numbers rather than geographic numbers, and to keep callers on hold in lengthy queues. It was noted that the use of non-geographic numbers was proliferating, including by government departments, helplines and credit card companies. It was felt that revenue from non-geographic calls was being used to subsidise the costs of routing calls to call centres abroad – resulting in the loss of British jobs.
- A2.20 As noted at paragraph 3.15 of the April 2004 Statement, Communications Providers are obliged by General Condition of Entitlement 10 to publish "clear and up to date information on [their] applicable prices and tariffs" for all calls including 084 and 087 calls. However, Ofcom is aware of growing consumer concerns about how these arrangements are functioning, and has committed to a fundamental re-examination of the NTS framework to address these wider concerns later this year, as well as producing guidance to advertisers of 084 and 087 numbers on how these numbers can be advertised without misleading consumers. The consultation in the April 2004 Statement and Statutory Consultation was limited in scope to changes in the Numbering Plan and the Application Form for 08 numbers to make clearer to the



Industry the basis on which 084 and 087 numbers are allocated pending Ofcom's further work. Ofcom further considers that the issue of use of non-UK call centres to answer calls from the UK is beyond the scope of this statement.

### **Responses raising points covered in the April 2004 Statement and Statutory Consultation and Ofcom's comments**

A2.21 BT recognised that Ofcom's April 2004 Statement is a holding position, pending further work in the NTS Framework Re-examination. BT welcomed the retention of geographic linking for calls to 0870 and 0845 numbers for the immediate future, and that no changes were being proposed for the 0870/0871 ranges. BT considered that the geographic link would give consumers a broad sense of the likely tariff, even if this was not 100% accurate. BT also welcomed rejection of Option 2 which it considered would have led to consumer confusion and greater SP/ISP uncertainty than exists under the current rules.

A2.22 BT considered that Option 1(b) as proposed by Oftel in the September 2003 Consultation did not include the ability for TCPs to change the retail price at the 10k block level in the 0844/0871 ranges, and therefore that Ofcom had modified this option in the statement section of the April 2004 Statement and Statutory Consultation to include this facility. BT considered that this was unacceptable because:

- it had not in BT's view been the subject of consultation;
- BT believed that it exposed consumers to 'covert' tariff changes for blocks already in use resulting in more customer complaints to BT (and it would be very difficult – even if it were attempted - to inform all consumers adequately of the tariff change);
- it exposed SPs/ISPs to the uncertainty of tariff changes imposed on them unilaterally by TCPs; and
- BT felt the facility may not be much used by TCPs anyway, given the difficulties for them in agreeing such changes with all ISPs/SPs using numbers from that block.

A2.23 In BT's view, tariffs of in service number blocks should not be changed unless such blocks are relinquished by the CP, returned to Ofcom and re-allocated to a new CP after a period of sterilisation.

A2.24 Ofcom considers that Option 1(b) has always included the ability for TCPs to change the tariff of 0844/0871 blocks in use. This is made clear at paragraph 3.22 of the September 2003 Consultation:

*“Under Option 1(b), as an additional incentive to encourage Terminating Communications Providers to use the 0844 and 0871 number ranges, Oftel's policy would be that most 0844 and 0871 numbers would be both allocated and tariffed at the 10k block level (apart from those allocated in 1k blocks for Internet-only use). This would mean that it would [be] possible for those allocated numbers to set their own retail prices for each 10k block, and to subsequently change these retail prices without having to change their numbers.”*

A2.25 At paragraph 3.24 of the September 2003 Consultation, Oftel explicitly acknowledged the risk to consumers of covert price changes under Option 1(b) and cross-referred to similar issues with Options 2(a) and 2(b) (see paragraphs 3.24 and 3.47 of the September 2003 Consultation). In the April 2004 Statement and Statutory Consultation, Ofcom dealt with this concern by limiting Option 1(b) to the 0844 range only, since it is a lower retail price range than 0871, and will allow the

incidence of retail price changes without adequate consumer awareness to be monitored in a lower risk range (see paragraph 5.1 of the April 2004 Statement and Statutory Consultation). This is the only difference between Option 1(b) in the September 2003 Consultation and the April 2004 Statement and Statutory Consultation. As it is a restrictive change (i.e. has less impact than the original proposal) rather than an expansive change, Ofcom considers that it has adequately consulted on the implementation of Option 1(b).

- A2.26 In relation to TCPs unilaterally changing the retail price of a 10k 0844 block and thereby creating uncertainty for ISPs and SPs using numbers from that block, Ofcom notes that ISPs/SPs will have commercial contracts for the use of the numbers with the TCPs. It is expected that ISPs/SPs and TCPs will be able to commercially negotiate the terms under which the retail price of the block may or may not change. This would seem to Ofcom to create much less uncertainty for ISPs/SPs than the current arrangements on the 0845/0870 blocks whereby unilateral changes to BT's retail prices for geographic calls create knock on uncertainty for both TCPs and ISPs/SPs.
- A2.27 BT considered that Ofcom does have powers to enforce retail tariffs on BT and companies other than BT via the Plan and the Scheme, given that BT considered that Oftel/Ofcom has done this in the past, although BT did not particularise. In its view, it was not therefore clear, given Ofcom's logic in relation to the lack of enforceability of retail pricing via the Plan and the Scheme, that Ofcom could enforce the requirement in the Plan for CPs for example to announce charges for Freephone calls.
- A2.28 Ofcom remains of the view that it cannot control retail prices by means of designations in the Numbering Plan. Ofcom believes it can however enforce the requirement to route Freephone calls to an announcement prior to connection, if the OCP wishes to charge for the Freephone call. This would be by means of Numbering Condition 17.5, which states "The Communications Provider shall install, maintain and adjust its Public Electronic Communications Network so that it routes Signals and otherwise operates in accordance with the National Telephone Numbering Plan ...."
- A2.29 BT pointed out that an ISP/SP that exported a number to another TCP would still be vulnerable to changes in the tariff of the parent 10k number block by the original CP. It might be difficult for the TCP to inform the ISP/SP of these changes.
- A2.30 Ofcom considers that the ISP/SP – TCP commercial arrangements could cover such situations. The ISP/SP could become aware of changes to the tariff of their service via the BT price list, or retaining contact with the TCP for such matters. Paragraphs 3.50 and 3.62 of the September 2003 Consultation explicitly noted the issues relating to number portability in relation to Options 2(a) and 2(b). For example, at paragraph 3.50, the September 2003 Consultation stated:
- "if numbers were ported to a different Terminating Communications Provider, the retail pricing arrangements for those numbers on the BT network would continue to be those set by the donor Communications Provider, unless the arrangements for whole number block portability applied."*
- A2.31 Ofcom considers that it is clear that a similar issue arises under Option 1(b). Ofcom was therefore aware of this issue in coming to a decision to implement Option 1(b). In Ofcom's view, as long as ISP/SPs are aware of this limitation in the use of 0844 numbers, this should not unduly limit the possible benefits to TCPs, ISPs and SPs

of having the flexibility to change the retail price at the 10k block level for blocks already in use.

- A2.32 Ntl expressed disappointment with the outcome of Ofcom's work on 0845/0870 pricing and believed Ofcom's decision would give no stability to terminating revenues nor would it increase clarity for consumers. Ntl requested that none of the changes set out in the April 2004 Statement and Statutory Consultation be implemented (for example that the changes in the Numbering Plan be put on hold for 6 months), as any such changes might be invalidated by the outcome of Ofcom's forthcoming NTS framework re-examination.
- A2.33 Ofcom considers that the reasons for Ofcom's decision are set out in the April 2004 Statement and Statutory Consultation. Under Option 1(b), the changes from the status quo are in fact limited, the only significant difference being that tariffs for 0844 numbers should be able to be changed by TCPs at the 10k block level. Ofcom published the April 2004 Statement and Statutory Consultation because it considers that it is important to provide clarity to the NTS Industry as to Ofcom's current policy regarding the basis on which 084 and 087 number ranges are allocated (not least as there appeared to be considerable confusion in the Industry on this matter and a clear starting point for future work was vital), pending the outcome of Ofcom's NTS framework re-examination.
- A2.34 Ntl considered that Ofcom's proposed changes to the 0844 range would not make the 0844 range any more attractive to TCPs or NTS Service Providers. Ntl felt they would be unlikely to find any benefit in being able to set retail prices at the 10k block level. Ntl recommended limiting the number of charge bands on 0844, and revising the existing charge bands on 0844 to give more price clarity to consumers. Ntl believed that migration to the 0844 range was unlikely, particularly given that the upcoming framework re-examination could change the regime for 0845/0870. Ntl reported that its service provider customers have indicated that forced migration to 0844 (even with the use of diallers to minimise churn), in some cases to different retail prices, would not be in the interests of consumers.
- A2.35 Ofcom notes ntl's comments about the use of the 0844 number ranges. As set out at Annex E of the April 2004 Statement and Statutory Consultation, Ofcom considers that migration to 0844/0871 number ranges is feasible for TCPs and NTS Service Providers who wish to achieve revenue stability pending the outcome of Ofcom's NTS framework re-examination. The purpose of the changes to the tariffing arrangements for 0844 ranges is to give more flexibility to TCPs who wish to use these ranges. Ofcom will monitor the extent to which there is actual demand for such flexibility, and does not consider that the new arrangements will place an undue burden on the Industry based on cost and timescale information contained in responses to the September 2003 Consultation.
- A2.36 Thus expressed disappointment at the decision taken by Ofcom in the April 2004 Statement and Statutory Consultation, as in Thus's view Ofcom's decision did not resolve any of the existing problems with NTS but instead created new ones. Thus noted that in its view, Ofcom's decision meant terminating revenue for 0845/0870 calls would still be subject to variability as a result of retail pricing decisions by BT, leading to disputes and margin squeeze allegations.
- A2.37 As set out at paragraph 3.50 of the April 2004 Statement and Statutory Consultation, Ofcom considers that migration to the 0844/0871 number ranges is available to TCPs who wish to secure revenue stability. Ofcom also set out at paragraph 2.14 of the April 2004 Statement and Statutory Consultation its decision

to undertake a re-examination of the NTS framework to consider how the NTS regime can best meet the needs of all stakeholders and whether any changes would deliver net benefits. The issue of terminating revenue on the 0845/0870 number ranges will be considered again as part of that re-examination.

- A2.38 Thus considered that 0844/0871 numbers were not adequate substitutes for 0845/0870 numbers, since 0845/0870 numbers are the most recognised and therefore the most marketable NTS numbers. Thus wished to have explicit retail price ceilings, controls on interconnect rates and strong universal brands for the 0845/0870 number ranges.
- A2.39 Ofcom considers that in the April 2004 Statement and Statutory Consultation, Ofcom was not consulting on its decision to implement Option 1(b), but rather on the detailed changes to the Plan and the 08 application form required to implement Ofcom's chosen option. The reasons for Ofcom's decision to implement Option 1(b) are set out in that document. However, Thus's outstanding concerns will be considered as part of Ofcom's NTS framework re-examination.
- A2.40 One Industry respondent (who provided a confidential response) pointed out that in its view bulk migration to new number ranges is not simple. This respondent felt that Ofcom's exploration of the issues surrounding migration was not sufficiently detailed. It felt that Ofcom relied on data from the American market and the use of dialler technology, not taking into account the differences between markets and the practical difficulties of installing new diallers in the UK market. It was noted that customers might not want to migrate to 0844/0871 numbers.
- A2.41 As set out at paragraph 3.50 and in Annex E of the April 2004 Statement and Statutory Consultation, Ofcom does not consider that migration of ISP customers to new number ranges is simple, but rather that it is feasible and that all ISPs have had access to suitable technology to enable migration to take place with low churn and at relatively low cost. Ofcom has carried out considerable research in this area, not just limited to collecting data from other markets outside the UK, but also seeking detailed information (by means of the September 2003 Consultation and otherwise) from ISPs active in the UK market. As set out at paragraph E.2 of the April 2004 Statement and Statutory Consultation, migration data was collected from six major UK ISPs, collectively serving more than 60% of narrowband internet users in the UK. As set out at paragraph E.9, one ISP was able to successfully migrate 95% of its active metered internet access customers without manual intervention by the ISP. Ofcom therefore considers that it has sufficiently explored the issues surrounding migration to justify the conclusion that migration to other number ranges is a feasible route for data NTS service providers in particular who wish to secure terminating revenue certainty. Dial-up ISP customers typically have little visibility of the actual number being dialled, since this is done automatically by the computer making the connection to the ISP. In the case of ISPs, whether or not customers wish to migrate to 0844 numbers will depend on whether ISPs can make the process as smooth as possible, and can justify the change by providing better service on the new number ranges as a result of more revenue certainty (which should be the case, since ISPs have previously stated to Ofcom that revenue uncertainty on 0845 numbers will ultimately be harmful to the level of service provided to consumers).
- A2.42 Both this respondent, C&W and consumer respondents felt that Ofcom's decision had failed to take adequate account of BT's retail price changes and the increasing lack of distinction between local and national call prices, which negated arguments

about consumer transparency. They asked that Ofcom reconsider its conclusions in this light.

- A2.43 In Ofcom's view, Ofcom did consider the impact of BT's recent retail price changes in the April 2004 Statement and Statutory Consultation (see for example paragraphs 2.16-2.17, 4.12, and 5.2). Ofcom acknowledged in that document that these changes would place additional strain on the description of 0845 and 0870 prices as being BT's standard local and national call prices. However, as set out at paragraph 5.2 of the April 2004 Statement and Statutory Consultation, the primary purpose of the geographic/non-geographic retail pricing link on the BT network for 0845/0870 calls is not to provide consumer information, but rather to act as a consumer protection measure by ensuring reasonable retail prices for calls to these number ranges in the absence of a suitable alternative mechanism for doing so. Ofcom has set out its reasons for deciding to implement Option 1(b) in the April 2004 Statement and Statutory Consultation. The statutory consultation contained in that document was limited in scope to the changes to the Plan and the 08 application form required to implement Ofcom's chosen option. However, Ofcom notes that Ofcom will further address the wider functioning of the NTS regime as part of its NTS framework re-examination.
- A2.44 C&W considered that Ofcom cannot rely on the NTS Call Origination Condition to enforce BT's adherence to certain retail prices, since this Condition is a wholesale obligation placed on BT as a result of BT's SMP in the fixed wholesale call origination market.
- A2.45 Ofcom notes that the April 2004 Statement and Statutory Consultation set out Ofcom's policy as to the appropriate retail pricing arrangements for 0845 and 0870 calls, namely that the link between the standard retail prices for these calls and the standard retail price for local and national geographic calls on the BT network (before discounts and call packages) be maintained. As explained at paragraph D19 of that document, where necessary, Ofcom may consider exercising its ex ante powers including those under the BT NTS Call Origination Condition or, if appropriate, its ex post powers under the Competition Act. Ofcom also intends to consider the wider functioning of the NTS regime as part of Ofcom's NTS framework re-examination.
- A2.46 Consumer respondents wanted Ofcom to force all phone companies to charge their own local or national call rates for calls to these numbers, which would also mean much less revenue share available for the TCP. Consumer respondents suggested that the revenue share could be an agreed fraction of the OCP's normal call charge rather than a fixed amount. They considered that this would prevent distortions of the market and promote free competition. This was because they believed that BT's competitors would otherwise find it difficult to compete with BT or would not carry 084 and 087 calls at all, since the revenue share is based on BT's old retail prices for calls to 084/087 numbers, rather than on the competitor's own retail prices for calls to local/national geographic numbers. Some consumer respondents considered that BT had deliberately engineered these arrangements to its own advantage.
- A2.47 Ofcom considers that the proposal that Ofcom regulate all phone companies to only charge their own local or national geographic rates for calls to 0845/0870 numbers was considered as Option 5 in the April 2004 Statement and Statutory Consultation, following similar suggestions from respondents to the September 2003 Consultation. Ofcom decided not to implement Option 5 for the reasons set out at paragraph 4.33 of the April 2004 Statement and Statutory Consultation, in brief

because it would involve heavy retail price regulation on OCPs without SMP, and because it could significantly constrain competition on the basis of geographic call prices. Ofcom notes that the current NTS arrangements are not particularly to the benefit of BT, as BT is required by regulation to originate calls to NTS numbers at cost. Although BT terminates some NTS calls, other TCPs are equally active in providing NTS call termination. The proposal to vary the absolute value of the revenue share according to the retail price charged by the OCP was not proposed by respondents to the September 2003 Consultation, and consideration of new options was beyond the scope of the April 2004 Statutory Consultation. However, Ofcom intends to consider further options for the future of NTS as part of its NTS framework re-examination.

- A2.48 Consumer respondents noted that non-geographic numbers were frequently excluded from the discount schemes offered by phone companies, which they felt to be a direct result of the revenue sharing on these numbers and unacceptable to consumers. Consumer respondents suggested that all monthly fixed cost call packages should include non-geographic calls.
- A2.49 Ofcom notes the potential for consumer confusion and frustration as a result of the fact that geographic calls tend to be fully included in call packages and discount schemes, whereas non-geographic calls such as calls to 084 and 087 numbers tend to only be partially included, or are not included at all. This issue was also raised in responses to the September 2003 Consultation. Ofcom considers that an obligation on all OCPs to fully include non-geographic numbers in their discount schemes would be similar to Option 5, considered in the April 2004 Statement and Statutory Consultation, in that it would involve retail price regulation on all OCPs, including those without SMP. Ofcom decided not to implement Option 5 for the reasons set out at paragraph 4.33 of the April 2004 Statement and Statutory Consultation.

### Annex 3

# Modification to the provisions of the Plan under section 56(2) of the Act

## Modification to Part A of the Plan under section 56(2) of the Act

### WHEREAS:

- A. section 56(2) of the Act provides that it shall be Ofcom's duty from time to time review the Plan and make such revisions that they think fit, provided such revisions are made in accordance with section 60 of the Act;
- B. section 60 of the Act applies whereby General Condition 17 is a numbering condition for the time being having effect by reference to provisions of the Plan;
- C. by virtue of the Transitional Provisions, references to the Director in General Condition 17 should be read as references to OFCOM;
- D. Ofcom issued a notification pursuant to section 60(3) of the Act of a proposal to make a modification to Part A of the Plan on **29 April 2004** ('the Notification')
- E. a copy of the Notification was sent to the Secretary of State;
- F. in the Notification and accompanying consultation document OFCOM invited representations about any of the proposals therein by **31 May 2004**;
- G. by virtue of section 60(5) of the Act, OFCOM may give effect to the proposal set out in the Notification, with or without modification, only if-
  - i. they have considered every representation about the proposal that is made to them within the period specified in the notification; and
  - ii. they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- H. OFCOM received responses to the Notification and have considered every such representation made to them in respect of the proposals set out in the Notification and accompanying consultation document and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;
- I. for the reasons set out in the Statement accompanying this modification OFCOM are satisfied that, in accordance with section 60(2) of the Act, this modification is:
  - objectively justifiable in relation to the matters to which it relates;
  - not such as to discriminate unduly against particular persons or against a particular description of persons;
  - proportionate to what the Modification is intended to achieve;
  - in relation to what it is intended to achieve, transparent;

- J. for the reasons set out in the Statement accompanying this modification OFCOM are satisfied that they acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- K. in considering whether to make the modification proposed in the Notification Ofcom have complied with all relevant requirements set out in section 60 of the Act.

**THEREFORE-**

- 1. Ofcom in accordance with section 56(2) of the Act hereby make the following modifications to the Plan to take effect on the date of publication of this notification:

- a) In paragraph 1 of the Definitions and Interpretation section of the Plan the following definitions shall be deleted:

'Local Rate' means an indication the price for the call is equivalent to the rate for a Local Call as set by the relevant Originating Communications Provider, where such a rate exists.

'National Rate' means an indication the price for the call is equivalent to the rate for a geographic National Call set by the relevant Originating Communications Provider, where such a rate exists.

'Special Service' means a service paid for through the telephone bill of a Subscriber, and charged at rates set out in Part A of this document up to 10p per minute or National Rate, whichever is highest. The cost of the call to an 08 numbers may be paid by the Called Party (eg 080 Freephone Numbers), shared between the Customer and the Called Party (eg, 0845 Local Rate numbers), or paid wholly by the Customer (eg 0870 National Rate Numbers)

- b) In paragraph 1 of the Definitions and Interpretation section of the Plan the following definitions shall be inserted (in alphabetical position) –

'BT's Standard Local Call Retail Price' means the retail price for a Local Call made by BT customers which operates as the standard retail price before the application of calling packages and discounts as shown on BT's retail price list.

'BT's Standard National Call Retail Price' means the retail price for a National Call made by BT customers which operates as the standard retail price before the application of calling packages and discounts as shown on BT's retail price list.

'Special Service' means a service paid for through the telephone bill of a Subscriber, and charged for BT customers (before the application of calling packages and discounts) at rates set out in Part A of this document.

- c) The following shall be inserted after the heading in Part A of the Plan –

The designations set out in this section are not intended for pricing information for the purposes of advertising.

- d) In Part A1 of the Plan the following sections shall be deleted –



084	Special Services: up to 5p per minute or per call, set by Terminating Communications Provider, or at Originating Communications Provider's 'Local Rate' (inclusive of value added tax)
087	Special Services: up to 10p per minute or per call, set by Terminating Communications Provider, or at Originating Communications Provider's 'National Rate' (inclusive of value added tax)

- e) In Part A1 of the Plan the following sections shall be inserted (in numerical position) –

0844	Special Services basic rate: charged at up to and including 5p per minute or per call for BT customers, set by Terminating Communications Provider inclusive of value added tax (the price charged by other Originating Communications providers may vary)
0845	Special Services basic rate: charged (before discounts and call packages) at BT's Standard Local Call Retail Price for BT customers inclusive of value added tax (the price charged by other Originating Communications providers may vary)
0870	Special Services higher rate: charged (before discounts and call packages) at BT's Standard National Call Retail Price for BT customers inclusive of value added tax (the price charged by other Originating Communications providers may vary)
0871	Special Services higher rate: charged at up to and including 10p per minute or per call for BT customers, set by Terminating Communications Provider inclusive of value added tax (the price charged by other Originating Communications providers may vary)

2. Ofcom have sent a copy of this modification to the Secretary of State.

3. In this Modification:

- 'the Act' means the Communications Act 2003;
- 'the Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
- 'General Condition 17' means General Condition 17 of the General Conditions of Entitlement set by the Director on 22 July 2003 pursuant to section 45 of the Act by way of publication of a Notification pursuant to section 48(1) of the Act;
- 'OFCOM' means the Office of Communications;
- 'the Plan' means the National Telephone Numbering Plan published by the Director on 22 July 2003 pursuant to section 56 of the Act, as modified;
- 'Transitional Provisions' means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.

4. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them otherwise any word or expression shall have the meaning it has in the Act, or if it has no meaning there, in the Plan.
5. The Interpretation Act 1978 shall apply as if this Modification were an Act of Parliament.
6. Headings and titles shall be disregarded

Signed by Sean Williams

Partner, Competition and Investigations

On behalf of OFCOM

22 July 2004

## Annex 4

# Direction under paragraph 17.9(a) of the Condition to amend the application form for 08 numbers

## Direction under paragraph 17.9(a) of the Condition

WHEREAS-

- A. paragraph 17.9(a) of the Condition provides that when applying for an Allocation or reservation of Telephone Numbers, the Communications Provider shall use an appropriate application form as directed by the Director from time to time as he thinks fit;
- B. by virtue of the Transitional Provisions, references to the Director in General Condition 17 should be read as references to OFCOM.
- C. OFCOM issued a notification pursuant to section 49(4) of the Act of a proposal to modify a direction given under Condition 17.9(a) directing the appropriate application form for 08 numbers on **29 April 2004** (the 'Notification');
- D. a copy of the Notification was sent to the Secretary of State in accordance with section 50(1)(b) of the Act;
- E. in the Notification and accompanying consultation document OFCOM invited representations about any of the proposals therein by **31 May 2004**;
- F. by virtue of section 49(9) of the Act, OFCOM may give effect to the proposal set out in the Notification, with or without Modification, only if-
  - they have considered every representation about the proposal that is made to them within the period specified in the notification; and
  - they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- G. OFCOM received responses to the Notification and have considered every such representation made to them in respect of the proposals set out in the Notification and accompanying consultation document and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;
- H. for the reasons set out in the Statement accompanying this Direction OFCOM are satisfied that the application form in the Annex to this Direction is appropriate for use by Communications Providers when applying for an Allocation or reservation of Telephone Numbers;
- I. for the reasons set out in the Statement accompanying this Direction OFCOM are satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;

- not such as to discriminate unduly against particular persons or against a particular description of persons;
  - proportionate to what it is intended to achieve; and
  - in relation to what it is intended to achieve, transparent.
- J. for the reasons set out in the Statement accompanying this Direction OFCOM are satisfied that they acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- K. in considering whether to make the modification proposed in the Notification OFCOM have complied with all relevant requirements set out in section 49 of the Act;

## THEREFORE

1. OFCOM in accordance with Condition 17.9(a) hereby direct that for the time being the application form in the Annex to this Direction shall be used by Communications Providers when applying for an Allocation or reservation of Telephone Numbers starting '08' for Special Services.
2. Ofcom have sent a copy of this Direction to the Secretary of State in accordance with section 50(1)(d) of the Act.
3. In this Direction-
  - 'the Act' means the Communications Act 2003;
  - 'Allocation' shall have the same meaning as in the Condition;
  - 'Communications Provider' shall have the same meaning as in the Condition;
  - 'the Condition' means General Condition 17 of the General Conditions of Entitlement set by the Director on 22 July 2003 pursuant to section 45 of the Act by way of publication of a Notification pursuant to section 48(1) of the Act;
  - 'the Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
  - 'OFCOM' means the Office of Communications;
  - 'Telephone Number' shall have the same meaning as in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act;
  - 'Transitional Provisions' means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.
4. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them. Otherwise, any word or expression shall have the same meaning as it has-
  - i. in the National Telephone Numbering Plan published by the Director on 22 July 2003 pursuant to section 56 of the Act, as modified;
  - ii. if, and only if, it has no meaning ascribed as mentioned in (i) above, and only if the context so permits, in General Condition 17 (entitled 'Allocation, Adoption and Use of Telephone Numbers') in Part 2 of the Schedule to the

Notification published by the Director on 22 July 2003 under section 48(1) of the Act;

- iii. if, and only if, it has no meaning ascribed as mentioned in (i) and (ii) above, and only if the context so permits, in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act; and
- iv. if, and only if, it has no meaning ascribed as mentioned in (i), (ii) and (iii) above, and only if the context so permits, in the Act.

5. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

6. Headings and titles shall be disregarded

Signed by Sean Williams

Partner, Competition and Investigations

On behalf of Ofcom

22 July 2004

## Annex to Direction

# Form S8



## SPECIAL SERVICES APPLICATION - NUMBERS STARTING '08'

Service Type:	Number range starting:	Number block size:
Freephone Numbers	0800 XXXX	1000
	080 80XX to 080 87XX	10,000
Special Services basic rate: up to and including 5p for BT customers (non-internet)	0844 2XX to 0844 9XX	10,000
Special Services basic rate: BT's Standard Local Call Retail Price for BT customers	0845 XXX	10,000
Special Services higher rate: up to and including 10p for BT customers (non-internet)	0871 2XX to 0871 9XX	10,000
Special Services higher rate: BT's Standard National Call Retail Price for BT customers	0870 XXX	10,000
Internet Services Free to Caller	0808 90XX	1000
Internet Services Free to Caller – Flat Rate Internet Access Call Origination (FRIACO) product	0808 99XX	1000
Internet Services incorporating un-metered access up to 5p for BT customers	0844 04XX	1000
Non 'BT Discount Scheme' - Internet Services incorporating un-metered access up to and including 5p for BT customers	0844 00XX	1000
Internet Services metered access up to and including 5ppm for BT customers	0844 09XX	1000
Non 'BT Discount Scheme' - Internet Services metered access up to 5ppm for BT customers	0844 05XX	1000
Internet Services incorporating un-metered access up to and including 10p for BT customers	0871 04XX	1000
Non 'BT Discount Scheme' - Internet Services incorporating un-metered access up to and including 10p for BT	0871 01XX	1000

customers		
Internet Services metered access up to and including 10ppm for BT customers	0871 09XX	1000
Non 'BT Discount Scheme' - Internet Services metered access up to and including 10ppm for BT customers	0871 05XX	1000
Internet for Schools (1 block required per Service Provider)	0820 XXXX	10,000
Inbound Routing Codes	08993 XX to 08999 XX	10,000

## Definitions and Interpretation

1. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them. Otherwise, any word or expression shall have the same meaning as it has-
  - i. in the National Telephone Numbering Plan published by the Director on 22nd July 2003 pursuant to section 56 of the Communications Act 2003 (the 'Act');
  - ii. if, and only if, it has no meaning ascribed as mentioned in (i) above, and only if the context so permits, in General Condition 17 (entitled 'Allocation, Adoption and Use of Telephone Numbers') in Part 2 of the Schedule to the Notification published by the Director on 22nd July 2003 under section 48(1) of the Act;
  - iii. if, and only if, it has no meaning ascribed as mentioned in (i) and (ii) above, and only if the context so permits, in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22nd July 2003 under section 48(1) of the Act; and
  - iv. if, and only if, it has no meaning ascribed as mentioned in (i), (ii) and (iii) above, and only if the context so permits, in the Act.
2. The Interpretation Act 1978 shall apply as if this Application Form were an Act of Parliament.
3. FRIACO (Flat Rate Internet Access Call Origination) means the provision of Flat Rate Internet Access Call Origination via a wholesale unmetered internet access product.

*(Applicants should ensure that all sections have been completed where relevant – incomplete Application Forms may not be processed within the 3-week deadline).*

<b>Your reference (optional):</b>	
<b>Applicant details and date of application:</b> Your name, company name, address, direct telephone, direct fax, direct e-mail, mobile. <i>(Where you are acting on behalf of a Communications Provider (eg a consultant, solicitor, etc), and if you have not previously supplied one, you should enclose a letter from that Communications Provider confirming that you are authorised to represent it).</i>	Date of application:
<b>Communications Provider details:</b> If different from 2. above (eg where you are a consultant, solicitor, etc), provide the name and address of the Communications Provider on behalf of whom you are applying for Telephone Numbers.	
<b>Declaration of ‘Public Electronic Communications Network’ or ‘Public Electronic Communications Service’</b> The information requested in Annex A helps Ofcom to assess your eligibility to be allocated Telephone Numbers. If you are a provider of a Public Electronic Communications Network: confirm whether you have previously supplied the information requested in Annex A (or information equivalent to it), to Ofcom’s Numbering Unit; or if not, you must complete in full all relevant questions in Annex A and submit it along with this form. If you have previously supplied the information in Annex A, then move onto the next question – you do not need to submit Annex A with this form. If you are a provider of Public Electronic Communications Services: you <b>MUST</b> complete all relevant questions in Annex A each time you apply for Telephone Numbers and submit it with this form.	<i>(For providers of Public Electronic Communications Networks, please ensure you <u>have</u> previously supplied the information requested, before you confirm this – your application may be rejected if this is not the case).</i>



Modifications to the National Telephone Numbering Plan and Application Form for 08 Telephone Numbers to reflect retail price and numbering arrangements for calls to 0845 and 0870 numbers

Telephone Numbers required:

When completing the table below, you should:

give a 1st and 2nd choice for each type of Telephone Number block applied for in case the block you have applied for is not available at the time the application is processed;

where applying for 0844 and 0871 (non-internet) blocks, select those within the appropriate tariff as indicated on the web site. If there are no available blocks, you should indicate this below alongside the tariff you require (note that from a certain date – of which Ofcom will advise you – tariffs for 0844 numbers will no longer appear on the web site but you will still need to indicate the tariff you intend to use for BT customers for these blocks). The Numbering Unit will open a new range and then contact you; and

ensure that a maximum of 15 blocks are entered on this Application Form. A new Form S8 should be completed for further blocks.

		Number block Type?	Code - first 4 digits after initial '0'	Next 2 digits of number	Next digit of number (F digit)	Tariff for each number block (including VAT):	Confirm if BT Discount Scheme or Non 'BT Discount Scheme' will apply to block (where relevant)	Planned 'In-Service' Date	Forecast of expected Adoption in 1st 12 months	Forecast of expected Adoption in 2nd 12 months
		e.g. Freephone, Internet Freephone, BT Standard Local Call Retail Price, BT Standard National Call Retail Price, Internet FRIACO, etc.	e.g 8004 - Freephone, 8456 – BT Standard Local Call Retail Price, 8703 – BT Standard National Call Retail Price, etc.	e.g. 34	only required for blocks that are issued in blocks of 1000 numbers – see top of Form	for 0844 and 0871 (non-internet) blocks show tariff (to nearest 1p for BT customers) from those tariffs on web site	(see <a href="#">Oftel Direction</a> )	(applications should not be submitted more than 6 months prior to in-service date)	(%)	(% cumulative)
		(state which)	(SABC)	(DE)	(F)					

Modifications to the National Telephone Numbering Plan and Application Form for 08 Telephone Numbers to reflect retail price and numbering arrangements for calls to 0845 and 0870 numbers

e.g. 1 <sup>st</sup>	1 <sup>st</sup> Choice	Freephone	8006	21	3	free to caller		mid Oct 2003	20	80
	2 <sup>nd</sup> Choice	Freephone	8005	36	2	free to caller		mid Oct 2003	20	80
e.g. 2 <sup>nd</sup>	1 <sup>st</sup> Choice	Internet	8089	02	2	free to caller		beg. Sep	40	100
	2 <sup>nd</sup> Choice	Internet	8089	05	5	free to caller		beg. Sep	40	100
e.g. 3 <sup>rd</sup> Block	1 <sup>st</sup> Choice	Up to and including 10p for BT customers (Non-Internet)	8713	60		7ppm	Non 'BT Discount Scheme'	end Nov 2003	15	90
	2 <sup>nd</sup> Choice	Up to and including 10p for BT customers (Non-Internet)	8714	83		7ppm	Non 'BT Discount Scheme'	end Nov 2003	15	90
1 <sup>st</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
2 <sup>nd</sup>	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
3 <sup>rd</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
4 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
5 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									

5. continued										
		<b>Number block Type?</b>  e.g. Freephone, Internet Freephone, BT Standard Local Call Retail Price, BT Standard National Call Retail Price, Internet FRIACO, etc.  (state which)	<b>Code - first 4 digits after initial '0'</b>  e.g 8004 - Freephone, 8456 – BT Standard Local Call Retail Price, 8703 – BT Standard National Call Retail Price, etc.  (SABC)	<b>Next 2 digits of number</b>  e.g. 34  (DE)	<b>Next digit of number (F digit)</b>  only required for blocks that are issued in blocks of 1000 numbers – see top of Form  (F)	<b>Tariff for each number block (including VAT):</b>  for 0844 and 0871 (non-internet) blocks show tariff (to nearest 1p for BT customers) from those tariffs on web site	<b>Confirm if BT Discount Scheme or Non 'BT Discount Scheme' will apply to the block (where relevant)</b>  (see Oftel Direction)	<b>Planned 'In-Service' Date</b>  (applications should not be submitted more than 6 months prior to in-service date)	<b>Forecast of expected Adoption in 1st 12 months</b>  (%)	<b>Forecast of expected Adoption in 2nd 12 months</b>  (% cumulative)
6 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
7 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
8 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									

Modifications to the National Telephone Numbering Plan and Application Form for 08 Telephone Numbers to reflect retail price and numbering arrangements for calls to 0845  
and 0870 numbers

9 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
10 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
11 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
12 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
13 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
14 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									
15 <sup>th</sup> Block	1 <sup>st</sup> Choice									
	2 <sup>nd</sup> Choice									

**Service and Market:**

For each of the Telephone Number blocks applied for above, give a brief description of the type of Public Electronic Communications Service for which the Telephone Numbers applied for will be Adopted, and the market to be served by the service e.g. calling-card for UK customers, e-fax, internet access, etc.

**Adoption of existing Telephone Number blocks:**

For each type of Telephone Number block applied for above, you should provide details, in the table below, of any other number blocks in the same category (and at the same tariff – where relevant) that you have been allocated to date - consistent with its duty in the Communications Act 2003 to secure best use of numbers Ofcom requires a justification for applying for further numbering capacity where there may be non-utilised numbers.

<b>Number block Type?</b>  <b>e.g. Freephone, Internet Freephone, BT Standard Local Call Retail Price, BT Standard National Call Retail Price, Internet FRIACO, etc.</b>  <b>(state which)</b>	<b>Code – first 6 or 7 digits after initial ‘0’ – show as SABC DE F</b>  <b>(see top of Form for number of digits to specify)</b>  <b>(SABC) (DE) (F)</b>			<b>Tariff for BT customers (only needs to be entered for 0844 and 0871 (non-internet) blocks)</b>	<b>Confirm if BT Discount Scheme or Non ‘BT Discount Scheme’ applies to the block (where relevant)</b>  <b>(see Oftel Direction)</b>	<b>Total Numbers Allocated to End Users: ie, in use or ported out</b>  <b>(Numbers or %)</b>	<b>Total Numbers not in use but contracted out</b>  <b>(Numbers or %)</b>
Freephone	8005	28	6			942	8
Internet Services metered access up to and including 5p for BT customers	8440	95	4			860	35
Special Services up to and including 10ppm for BT customers (non-internet)	8718	13		7ppm	Non ‘BT Discount Scheme’	6540	2050
BT Standard Local Call Retail Price	8459	56				7560	180

## FormS8 - Annex A

### Confirmation of Status:

Ofcom generally only Allocates Telephone Numbers to providers of Public Electronic Communications Networks.

Ofcom may also Allocate numbers, where number resource implications do not preclude allocation, to providers of a Public Electronic Communications Service. Ofcom would also normally expect to see that the provider has arrangements in place for its service to be carried over a network, and, where appropriate, would usually expect the provider to have taken reasonable steps to seek a sub-allocation of Telephone Numbers of the type applied for prior to making the application.

#### Providers of Public Electronic Communications Networks

It is not Ofcom's intention for a Communications Provider to be assessed more than once to determine whether or not it is a provider of a Public Electronic Communications Network.

Therefore, please now complete question A4. If you have answered 'yes' to question A4(a), you do not need to answer questions A1 (a) and (b) below.

If you have not registered i.e. you have answered no to question A4(a), Ofcom needs certain information from you in order to determine whether or not you are a provider of a Public Electronic Communications Network.

Please provide details of:

- a) the Electronic Communications Network on which the Telephone Numbers applied for are intended to be Adopted; (a diagram may be useful to assist Ofcom in assessing your eligibility for Telephone Numbers)
- b) the Electronic Communications Service which you are intending to provide over that network.

#### Providers of Public Electronic Communications Services

In order to determine whether or not you are a provider of a Public Electronic Communications Service, Ofcom needs certain information from you. Please provide details of:

- c) the Electronic Communications Service which you are intending to provide with the Telephone Numbers applied for. Please also provide details of the network on which the numbers you are applying for will be Adopted.

<p><b>Applications from providers of Public Electronic Communications Services</b></p> <p>If you are applying for Telephone Numbers as a provider of Public Electronic Communications Services, where appropriate Ofcom would usually expect your company to have already taken reasonable steps to obtain a sub-allocation of Telephone Numbers of the type you are applying for from a provider of a Public Electronic Communications Network.</p> <p>a) Have you taken steps to obtain a sub-allocation of Telephone Numbers of the type for which you are applying? If not, would you please provide a justification for that; and</p> <p>b) If you have taken steps, would you provide a brief description of the steps you have taken, and state why did you not obtain a sub-allocation?</p>	
<p><b>Interconnection arrangements</b></p> <p>Describe your Interconnection arrangements (or those of the provider of a Public Electronic Communications Network on whose network the Telephone Numbers applied for would be Adopted), if any, with other Communications Providers – a simple network diagram may be useful.</p>	
<p><b>Register of providers of Public Electronic Communication Networks</b></p> <p>Ofcom maintains a voluntary register of providers of Public Electronic Communications Networks.</p> <p>a) Is your company listed on this register?</p> <p>b) If so, under which name is your company registered?</p> <p>c) If different from b), what is the 'trading name' under which your company will sub-allocate the Telephone Numbers applied for in this application?</p>	

(You should e-mail this application form to [numbering.applications@ofcom.org.uk](mailto:numbering.applications@ofcom.org.uk) )



## **Annex 5**

# **Legal tests**

## **Legal tests for modifications to the Plan**

- A5.1 It is Ofcom's duty when proposing a modification to the Plan that it shows how it considers that its proposals comply with the legal tests in the Communications Act 2003 ("the Act").
- A5.2 The effect of the modification as set out at Annex 3 is to clarify the designations of the 0844, 0845, 0870 and 0871 number ranges in the Plan to provide additional information to the industry about the basis on which these ranges are allocated. Definitions of 'BT's Standard Local Call Retail Price' and 'BT's Standard National Call Retail Price', which are terms used in the designations of the 0845 and 0870 number ranges respectively, are also added to the Plan in order to set out in more detail how Ofcom intends that the link is maintained between retail prices for 0845/0870 calls and local/national geographic calls on the BT network. In addition, the definition of 'Special Service' is modified to remove the illustrative examples of different types of Special Service from the definition as Ofcom considers these not to be particularly informative. The definition of 'Special Service' is also modified to remove the reference to a price threshold for Special Services, as Ofcom considers that it is the new designations of the 0844, 0845, 0870 and 0871 number ranges that will contain the relevant pricing information rather than this definition.

## **Section 3 – Ofcom's general duties**

- A5.3 Ofcom considers that the modifications to the Plan are consistent with its general duties in carrying out its functions as set out in section 3 of the Act. The modifications further the interests of citizens in relation to communications matters and consumers in relevant markets for the reasons set out in Section 4 of the April 2004 Statutory Consultation, for example by ensuring that there continues to be pressure on the retail prices of 0845 and 0870 calls, both directly on the BT network by means of these designations, and indirectly on the networks of other Originating Communications Providers due to competitive pressure.

## **Section 4 – European Community requirements for regulation**

- A5.4 In making the modification to the Plan, Ofcom has also considered the Community obligations set out in section 4 of the Act. These include the requirement to promote competition in the provision of Electronic Communications Networks and Electronic Communications Services, and the requirement to promote the interests of all persons who are citizens of the European Union. Ofcom has explained in Section 4 of the April 2004 Statutory Consultation why it considers the modifications to the Plan meet these requirements. In brief, the changes to the Plan make the basis on which Ofcom allocates 084 and 087 numbers clearer. This basis of allocation reflects Ofcom's policy, which provides consumers with a relatively simple message about the price of calls to 0845 and 0870 numbers, and protects consumers' interests by maintaining reasonable retail prices for 0845 and 0870 calls on the BT network (and arguably for 0845 and 0870 calls from the networks of other OCPs as well) due to competitive pressure in the geographic call market, in the absence of a suitable alternative mechanism for doing so. Having consulted, Ofcom continues to consider that the modifications to the Plan meet the requirements of section 4 of the Act.

## **Section 60 – procedures for modifying documents referred to in the numbering conditions**

A5.5 Ofcom is satisfied that the modifications to the Plan meet the tests set out in section 60(2) of the Act being:

- objectively justifiable, in that it relates to Ofcom's duty to publish and modify a Plan and is justified in order to ensure that accurate information is given to those applying for 084 and 087 numbers from Ofcom;
- not unduly discriminatory, in that all Communications Providers eligible to apply for Telephone Numbers may apply to Ofcom for an allocation of 084 and 087 numbers. Although the modifications do refer explicitly to charging for BT customers, Ofcom does not consider this to be unduly discriminatory as Ofcom regards this to be necessary due to BT's SMP in wholesale call origination;
- proportionate, in that the modification to the Plan is the minimum revision to its provisions necessary to ensure accurate information is given to those applying for 084 and 087 numbers; and
- transparent, in that the modifications to the Plan and their effect were set out and consulted upon in the April 2004 Statutory Consultation, and are set out again for completeness in this document.

## **Section 63 – Ofcom's general duty as to telephone numbering functions**

A5.6 In making the modifications to the Plan, Ofcom considers that it is fulfilling its duty in section 63 of the Act (which refers to Ofcom's general duty as to telephone numbering functions), namely that Ofcom is:

- securing the best use of appropriate numbers, in that the revised designations for the 0844, 0845, 0870 and 0871 ranges will continue to allow these numbers to be used for the provision of value-added services, whilst ensuring that there continues to be pressure on retail prices for these services; and
- encouraging efficiency and innovation, in that the modifications to the Plan ensure that those applying for numbers understand what retail pricing arrangements will apply to their services when using these numbers, and those wishing to set their own retail prices in order to fund innovative services will be able to do so.

## **Legal tests for making a direction to amend the application form for 08 numbers**

A5.7 The effect of the Direction set out at Annex 4 is to modify the telephone numbering application form for 08 Telephone Numbers. The modified application form for 08 numbers is attached to the Direction. The changes to the application form are largely administrative, to ensure that the application form is consistent with the new designations of the 0844, 0845, 0870 and 0871 number ranges in the Plan as set out at Annex 3.

## **Section 3 – Ofcom's general duties**

A5.8 In making the Direction, Ofcom has considered its general duties in carrying out functions as set out in section 3 of the Act, in particular the requirement to further the interests of citizens in relation to communications matters and consumers in relevant

markets, by making available an up-to-date application form for Communications Providers to request allocations of 08 Telephone Numbers, which may then be provided to citizen consumers in order to access 08 services.

## **Section 4 – European Community requirements for regulation**

A5.9 In making the Direction, Ofcom has also considered the Community obligations set out in section 4 of the Act. These include the requirement to promote competition in the provision of Electronic Communications Networks and Electronic Communications Services, and the requirement to promote the interests of all persons who are citizens of the European Union. Ofcom explained in Section 4 of the April 2004 Statutory Consultation why it considers the decision in the April 2004 Statement (which results in the need for Ofcom to update the application form for 08 numbers) meets these requirements. In brief, the Direction makes changes to the 08 application form that make the basis on which Ofcom allocates 084 and 087 numbers clearer. This basis of allocation reflects Ofcom's policy, which provides consumers with a relatively simple message about the price of calls to 0845 and 0870 numbers, and protects consumers' interests by maintaining reasonable retail prices for 0845 and 0870 calls on the BT network (and arguably for 0845 and 0870 calls from the networks of other OCPs as well) due to competitive pressure in the geographic call market, in the absence of a suitable alternative mechanism for doing so. Having consulted, Ofcom continues to consider that the Direction meets the requirements of section 4 of the Act.

## **Section 49 – procedures for modifying Telephone Number application forms**

A5.10 Ofcom is satisfied that the modified application form is appropriate for application for 08 numbers and that the Direction meets the tests set out in section 49(2) of the Act, in that it is:

- objectively justifiable, in that it relates to the need to change certain text on the application form to ensure it is consistent with the new designations of the 0844, 0845, 0870 and 0871 number ranges in the Plan, as set out in Annex 3;
- non-discriminatory, in that all Communications Providers affected by the direction must use the same forms, and the modifications are applicable to all applicants;
- proportionate, in that the changes to the application form are the minimum necessary to ensure the form is consistent with the new designations in the Plan, and the form only requests the minimum information necessary for Ofcom to make a decision on whether the applicant is eligible to be allocated Telephone Numbers, or to be allocated further telephone numbers. Communications Providers should note that the revised application form continues to request tariff information for 0844 non-internet blocks beyond the date that 10k tariffing of 0844 numbers commences on the BT network. This is in order to provide information important to Ofcom in the processing of applications for additional numbering capacity; and
- transparent in that the Direction, and its effect, were set out and consulted upon in the April 2004 Statutory Consultation, and are set out again for completeness in this document.

## Annex 6

# Glossary

**Communications provider (CP):**

a person who provides an Electronic Communications Network or provides an Electronic Communications Service.

**ICSTIS:**

the Independent Committee for the Supervision of Standards of Telephone Information Services, the premium rate service watchdog.

**ISP:**

Internet Service Provider. A company that provides individuals and other companies with access to the internet and other related services.

**National Numbering Scheme (the Scheme):**

the day to day record of telephone numbers allocated by Ofcom in accordance with the National Telephone Numbering Plan, and as provided for in section 56(3) of the Communications Act.

**National Telephone Numbering Plan (the Plan):**

a document setting out telephone numbers available for allocation and restrictions on the Adoption and other uses of those numbers, and as provided for in section 56(1) of the Communications Act.

**NTS: Number Translation Services.**

Telephone services using the following numbers: Special Service numbers (including freephone, special local rate and special national rate) and Premium Rate Services numbers (PRS) (services currently provided under 090 and 091 number ranges). Within these ranges calls to 0844 04 numbers for Surftime internet access services and calls to 0808 99 for FRIACO (Flat Rate Internet Access Call Origination) are excluded.

**NTS Service Provider:**

a provider of voice or data services to third parties using NTS numbers.

**Originating Communications Provider (OCP):**

the Communications Provider on whose network a call originates.

**Premium rate service (PRS):**

a particular type of Number Translation Service currently provided on the 090 and 091 number ranges, at the time of writing subject to a separate Ofcom consultation see <http://www.ofcom.org.uk/consultations/current/prs1/prs.pdf?a=87101>.

**SMP: Significant Market Power.**

The Significant Market Power test is set out in European case law, the new EU Communications Directives and the Commission's SMP Guidelines. It is used by the National Regulatory Authorities such as Ofcom to identify those Communications Providers who must meet additional obligations under the Access Directive.

**Terminating Communications Provider (TCP):**

the Communications Provider on whose network a call terminates.