



28 May 2013

Elizabeth Gannon
Competition Group
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Dear Ms Gannon,

Response to Ofcom's consultation on simplifying non-geographic numbers

This is the response of British Sky Broadcasting Group plc ("**Sky**") to Ofcom's consultation on "*Simplifying non-geographic numbers - Policy position on the introduction of the unbundled tariff and changes to 080 and 116 ranges*" dated 15 April 2013 and updated on 18 April 2013 (the "**Consultation**").

Ofcom requested a view from stakeholders on the legal instruments that would implement Ofcom's "minded to" position set out in the Consultation, as well as consulting on proposed dispute resolution guidance for 080 and 116 number ranges.

Inclusion of calls to non-geographic numbers in call bundles

The proposed changes to General Condition ("**GC**") 17.29(b) appear to restrict the ability of originating communications providers ("**OCPs**") to have flexibility to set call tariffs. Specifically, it appears that OCPs will be restricted from including calls to non-geographic numbers within "inclusive" call bundles offered to consumers.¹ Going forward, OCPs must either include all calls to Unbundled Tariff Numbers within the call bundle, or exclude all calls to Unbundled Tariff Numbers from the bundle.

Ofcom states that its policy will offer "*some flexibility for OCPs in tailoring their bundled call packages to meet consumer preferences*" (Part B of the Consultation, paragraph 9.46). However, Sky considers that the binary choice afforded to OCPs will likely result in OCPs excluding all calls to Unbundled Tariff Numbers from bundles of "inclusive" calls. This would limit consumer choice and result in the perverse outcome of consumers paying for calls that could otherwise have been included in inclusive bundles.

It is not apparent from the Consultation that Ofcom has considered what would be the impact on consumer awareness or consumers' use of non-geographic numbers if calls to some Unbundled Tariff Numbers were included in call bundles. Consumers appear to be able to distinguish readily between 08, 09 and 118 numbers and therefore there is no reason to require OCPs to include either all or none of these numbers in call bundles. We request that Ofcom confirms the position in relation to call bundles and, in particular, whether OCPs will be afforded a degree of flexibility to include certain Unbundled Tariff Numbers within call packages.

¹ Calls to the following non-geographic number ranges 084, 087, 090, 091, 098 and 118 ("Unbundled Tariff Numbers")



Transparency obligations

We have the following comments on Ofcom's proposed amendments to the transparency obligations in the GCs, specifically GC 14:

1. As a general comment, our view remains that the existing price disclosure obligations that apply to other charges (including pursuant to the General Conditions, the Consumer Protection from Unfair Trading Regulations 2008 ("**CPRs**") and the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing ("**CAP Code**") and the UK Code of Broadcasting Advertising ("**BCAP Code**") apply equally to the Access Charge ("**AC**") and are sufficient to ensure that the necessary pricing information is provided in respect of non-geographic numbers. Given these existing powers, Sky does not consider it necessary that further powers are required and we are concerned that further overlapping powers will create regulatory uncertainty in what is a fast paced environment.
2. Specifically, our view is that Ofcom's proposed amendments to GC 14.12 and 14.13, which require the provision of information on the Service Charge in advertising materials, should be removed as communications providers are already subject to prescriptive rules, under the CAP Code and BCAP Code, on how we describe our prices in our advertising. These rules already require us to make clear all non-optional charges and fees (such as the Service Charge) which customers are required to pay in order to receive a service.
3. In addition to this, Sky considers that the CPRs already sufficiently address Ofcom's proposed requirements in GC 14.12 and 14.13 to ensure that relevant information is clearly available to consumers where necessary. It is an unfair commercial practice prohibited by regulation 3 of the CPRs to omit material information in an advertisement that as a result is likely to cause the average consumer to take a transactional decision he would not have taken otherwise. As we mentioned in our response to Ofcom's 2012 consultation, there is guidance issued by the Committee of Advertising Practice's Copy Advice Team, which sets out when it is necessary to state the cost of calls in advertising so that the advertisement is not misleading. It would be sufficient that this current guidance be updated to reflect the unbundling of charges for calls to non-geographic numbers without introducing new GCs.
4. Our final comment on Ofcom's proposed amendments to GC 14 is in respect of GC 14.8 – we note that it is proposed that communication providers' ACs should give equal prominence to charges for "*call packages, including bundles*". We agree that ACs should be transparent, but requiring that they are given the same level of prominence as the subscription charges for each talk package is a particularly onerous obligation and would require OCPs to set out their ACs in the body copy of their marketing alongside the subscription charges, even where telephony services are not the focus of such marketing (for example, where the marketing focuses on the benefits of a TV service but the subscription price point being advertised includes telephony services). We believe that such a requirement would be disproportionate to the benefits realised by customers.

Dispute Guidance

Sky has also considered Ofcom's proposed dispute resolution guidance for 080 and 116 number ranges (the "**Dispute Guidance**"). Sky supports "Principle 1" of the Dispute Guidance, namely that OCPs should not be denied the opportunity to recover the efficient cost of originating calls to free to caller numbers. Furthermore, Sky considers it entirely appropriate that OCPs should be able to recover



network costs (i.e., those costs associated with operating the network and enabling the call to be made) as well as certain non-network costs including those associated with customer service (e.g. those associated with billing, customer care and bad debt).

Yours sincerely,

A handwritten signature in black ink, appearing to read "J Logendra", is positioned below the "Yours sincerely," text.

Jason Logendra
Legal Advisor